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WASHINGTON, D.C. 20460

AUG 16 2005

OFFICE OF  
AIR AND RADIATION

MEMORANDUM

SUBJECT: Guidance on Incorporating Bundled Measures in a State Implementation Plan

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TO: Air Division Directors

Attached is a final document that provides guidance to States and local areas on State implementation plan (SIP) credit from a group, or "bundle," of pollution control measures or strategies considered in the aggregate. The guidance addresses an issue raised by States at the 2004 Air Innovations Conference and responds to recommendation number 3.1 from the Air Quality Management Workgroup which was subsequently endorsed by the Clean Air Act Advisory Committee. It has been jointly developed by the Office of Air Quality Planning and Standards and the Office of Transportation and Air Quality.

Some areas have implemented most available traditional emissions control strategies and want to try new types of pollutant reduction strategies to attain or maintain the national ambient air quality standards (NAAQS). However, States are often discouraged from adopting or overlook certain innovative measures because they are typically small in quantity and may not individually result in significant SIP emissions reductions credit. In the aggregate, however, such measures can result in a positive impact on air quality and may have other benefits not directly related to attaining or maintaining the NAAQS.

The guidance supports the development of additional emissions reductions from innovative approaches by describing how States can identify individual voluntary and emerging measures and "bundle" them in a single SIP submission. The emissions reductions for each measure in the bundle would be quantified and, after applying an appropriate discount factor for uncertainty, the total reductions would be summed together in the SIP submission. After SIP approval, each individual measure would be implemented according to its schedule in the SIP. It is the performance of the entire bundle (the sum of the emissions reductions from all the measures in the bundle) that is considered for SIP evaluation purposes, not the effectiveness of any individual measure.

Please distribute this guidance to your State and local air pollution control agencies, interested members of the regulated community and the public. An electronic version of this document will be posted at <http://www.epa.gov/ttn/oarpg> under "Recent Additions." If your staff have any questions regarding this guidance, please have them contact David Solomon at (919) 541-5375.

Attachment

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## **INCORPORATING BUNDLED MEASURES IN A STATE IMPLEMENTATION PLAN (SIP)**

# **INCORPORATING BUNDLED MEASURES IN A STATE IMPLEMENTATION PLAN (SIP)**

Prepared by the

Air Quality Strategies and Standards Division  
Office of Air Quality Planning and Standards  
U.S. Environmental Protection Agency

and

Transportation and Regional Programs Division  
Office of Transportation and Air Quality  
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## LIST OF ABBREVIATIONS

<b>BACT</b>	Best Available Control Technology
<b>BART</b>	Best Available Retrofit Technology
<b>CAA</b>	Clean Air Act
<b>CO</b>	Carbon Monoxide
<b>EAC</b>	Early Action Compact
<b>EIP</b>	Economic Incentive Program
<b>HIR</b>	Heat Island Reduction
<b>HOV</b>	High Occupancy Vehicle
<b>LAER</b>	Lowest Achievable Emission Rate
<b>MACT</b>	Maximum Achievable Control Technology
<b>NAAQS</b>	National Ambient Air Quality Standards
<b>NESHAPs</b>	National Emissions Standards for Hazardous Air Pollutants
<b>NSPS</b>	New Source Performance Standard
<b>NSR</b>	New Source Review
<b>NO<sub>x</sub></b>	Nitrogen Oxides
<b>PM</b>	Particulate Matter
<b>RACT</b>	Reasonable Available Control Technology
<b>RFP</b>	Reasonable Further Progress
<b>ROP</b>	Rate of Progress
<b>SIP</b>	State Implementation Plan
<b>SO<sub>2</sub></b>	Sulfur Dioxide
<b>TAR</b>	Tribal Authority Rule
<b>TCM</b>	Transportation Control Measure
<b>TIP</b>	Tribal Implementation Plan
<b>VOC(s)</b>	Volatile Organic Compound(s)

(Note to the reader: as used in this document, the terms “you” and “your” refer to a State or States)

## **Section A: Introduction**

### **1. What is the purpose of this policy?**

Many areas of the country still must adopt and implement additional measures to meet the Clean Air Act (CAA) SIP requirements for attainment, reasonable further progress (RFP), rate of progress (ROP) or maintenance of the National Ambient Air Quality Standards (NAAQS). Some areas have implemented most available traditional emissions control strategies and want to try new types of pollutant reduction strategies to attain or maintain the NAAQS. However, States are often either discouraged from adopting or overlook certain innovative measures because they are typically small-scale and may not individually result in significant SIP emissions reductions credit. In the aggregate, however, such measures can result in a positive impact on air quality and may have other benefits not directly related to attaining or maintaining the NAAQS.

This policy supports the development of additional emissions reductions from innovative approaches to improving air quality by providing provisional pollution reduction credit up-front towards achievement of attainment, RFP, ROP or maintenance requirements from a group, or “bundle,” of pollution control measures or strategies considered in the aggregate.

### **2. What does it mean to bundle measures?**

States can create a bundle by identifying individual measures and “bundling” them in a single SIP submission. The emissions reductions for each measure in the bundle would be quantified and, with an appropriate discount factor for uncertainty applied, the total reductions would be summed together in the SIP submission. After SIP approval, each individual measure would be implemented according to its schedule in the SIP. It is the performance of the entire bundle (the sum of the emissions reductions from all the measures in the bundle) that is considered for SIP evaluation purposes, not the effectiveness of any individual measure.

### **3. What does it mean that this is a policy and not a regulation?**

The CAA and implementing regulations at 40 CFR part 51 contain legally binding requirements. This policy document does not substitute for those provisions or regulations, nor is it a regulation itself. Thus, it does not impose binding, enforceable requirements on any party, and may not be applicable in all situations. The EPA and State decision makers retain the discretion to adopt approaches for approval of SIP measures that differ from this guidance where appropriate and consistent with applicable law. Any final decisions by EPA regarding a particular SIP measure will only be made based on the statute and regulations in the context of EPA notice-and-comment rulemaking on a submitted SIP revision. Therefore, interested parties

may raise questions and objections about the substance of this guidance and appropriateness of its application to a particular situation; EPA will, and States should, consider whether or not the recommendations in the guidance are appropriate in a particular situation. This guidance is a living document and may be revised periodically without public notice. However, the EPA welcomes public comments on this document at any time and will consider those comments in any future revision of this guidance document. Finally, this document does not prejudice any future final EPA decision regarding approval of any SIP measure.

#### **4. What types of air pollution control measures or strategies does this policy address?**

This policy addresses the following air pollution control measures or strategies for attainment, RFP, ROP or maintenance requirement purposes:

1. Stationary source emissions reductions measures or air quality improvement strategies that do not meet the enforceability requirement against a source (known as a “voluntary” measure) or quantification requirement (known as an “emerging” measure) in the standard way as covered by EPA’s policy on “Incorporating Emerging and Voluntary Measures in a State Implementation Plan,” dated September 31, 2004.<sup>1</sup>
2. Mobile source emissions reductions measures; including idling reduction measures for trucks, locomotives, and school buses; retrofit programs; measures implemented under the Best Workplaces for Commuters program; parking cash-out programs; employer-based telecommuting programs; small engine buyback and programs addressed by EPA’s “Mobile Source Voluntary Measures Guidance,” dated October 24, 1997.
3. Traditional emissions reductions measures that individually have small amounts of emissions reductions and typically would not be included in a SIP.<sup>2</sup>

Some specific examples of measures that might be appropriate to bundle are included in Appendix C.

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<sup>1</sup> A voluntary measure is a measure or strategy that is not enforceable against an individual source. An emerging measure is a measure or strategy that does not have the same high level of certainty as traditional measures for quantification purposes. A stationary source measure can be both a voluntary and an emerging measure.

<sup>2</sup> Traditional emissions reductions measures differ from voluntary and emerging measures in that they are enforceable against an individual source and can be reliably and replicably measured or determined.

**5. Is this policy applicable to Tribes if they choose to develop a Tribal Implementation Plan?**

Yes. The 1990 CAA Amendments provide authority for Tribes to implement CAA programs and instructed EPA to adopt regulations so that eligible Tribes may manage their own EPA-approved air pollution control programs under the CAA. The 1998 Tribal Authority Rule (TAR) implements the provisions of section 301(d) of the CAA to authorize eligible Tribes to develop their own tribal programs. Under the TAR, a Tribe may be approved by EPA to be eligible to be treated in the same manner as a State for one or more CAA programs. Such a program may include, but is not limited to, a Tribal Implementation Plan (TIP). To the extent any of the measures included in this guidance are available for implementation by a Tribe, the Tribe may include bundled measures as part of its proposed TIP. As the TAR makes clear, tribal governments are not required to submit a TIP, nor are they subject to deadlines mandated under the CAA. However, EPA must meet its obligations under the CAA. Once a Tribe decides to submit bundled measures as part of a TIP, it would be required to meet the evaluation timeframes identified in this guidance.

**6. What are other relevant EPA policies and guidance?**

The EPA has issued policies and guidance for economic incentive programs, including emerging and voluntary measures and programs. They include:

- A. “Improving Air Quality with Economic Incentive Programs,” EPA- 452/R-01-001, January 2001. This guidance provides additional information on developing and implementing economic incentive based control strategies and is commonly called the Economic Incentive Program (EIP). Emissions reductions that are to be used in trading programs must be consistent with the EIP. This guidance is available at: [www.epa.gov/ttn/oarpg/t1/memoranda/eipfin.pdf](http://www.epa.gov/ttn/oarpg/t1/memoranda/eipfin.pdf).
- B. “Incorporating Emerging and Voluntary Measures in a State Implementation Plan (SIP),” issued September 2004. This policy covers only stationary sources and is available at: [www.epa.gov/ttn/oarpg/t1/memoranda/evm\\_iev\\_m\\_g.pdf](http://www.epa.gov/ttn/oarpg/t1/memoranda/evm_iev_m_g.pdf).
- C. “Mobile Source Voluntary Measures Policy,” October 24, 1997. This policy could cover programs that reduce idling emissions from trucks, locomotives, and school buses, retrofit programs, commuter benefit programs such as Best Workplaces for Commuters programs, parking cash-out programs, employer-based telecommuting programs, and other programs, such as small-engine buyback programs, road congestion pricing, and other transportation-related controls. This guidance is available at: <http://www.epa.gov/otaq/transp/trancont/vmep-gud.pdf>.
- D. “Guidance on SIP Credits for Emission Reductions from Electric Sector Energy

Efficiency and Renewable Energy Measures,” August 5, 2004. Electric sector energy efficiency and renewable energy measures typically will be emerging and voluntary measures. This guidance document is available at: [www.epa.gov/ttn/oarpg/t1/memoranda/ereserem\\_gd.pdf](http://www.epa.gov/ttn/oarpg/t1/memoranda/ereserem_gd.pdf).

This guidance on bundled measures does not change or alter any prior EPA guidance on the requirements for including an air pollution control measure, including a voluntary or an emerging measure or program, in a SIP. In addition, this SIP policy does not change any requirements in EPA’s transportation conformity regulation (40 CFR part 93) for transportation plan, transportation improvement program, and project conformity determinations, as described in Question 15 of this document. The following table illustrates the relationship of these applicable policies to various SIP measures. Key considerations involved in determining the applicability of the policies are the type of source category (i.e., stationary or mobile) involved, and whether the measure is a traditional economic incentive program, or an emerging or voluntary program (as defined in the policies above).

<b>Policies and Guidance</b>	<b>Traditional economic incentive program measure</b>	<b>Voluntary stationary source<sup>3</sup> measure</b>	<b>Emerging stationary source<sup>2</sup> measure</b>	<b>Voluntary mobile source measure</b>
A. “Improving Air Quality with Economic Incentive Programs”	✓	✓	✓	✓
B. “Incorporating Emerging and Voluntary Measures in a State Implementation Plan (SIP)”		✓	✓	
C. “Mobile Source Voluntary Measures Policy”				✓
D. “Guidance on SIP Credits for Emission Reductions from Electric Sector Energy Efficiency and Renewable Energy Measures” <sup>4</sup>		✓	✓	
E. Incorporating Bundled Measures in a State Implementation Plan (SIP)	✓	✓	✓	✓

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<sup>3</sup> “Stationary source” includes “area sources.”

<sup>4</sup> An electric sector energy efficiency and a renewable energy measure will typically be both voluntary and emerging in nature.

**7. Whom should you contact about Federal approval of bundled measures?**

To facilitate Federal approval of bundle of measures, States are encouraged to work with their EPA Regional Office during the SIP development process.

**8. Whom should you contact if you have any questions on this policy?**

State agencies, the regulated community and members of the public with questions concerning a case-specific application of this guidance should contact the EPA Regional Office with responsibility for the air quality planning in the area where SIP credit is being sought.

For general questions about this guidance, please contact David Solomon of EPA's Office of Air Quality Planning and Standards at (919) 541- 5375, or email [solomon.david@epa.gov](mailto:solomon.david@epa.gov).

For questions relating to mobile sources and this guidance, please contact Mark Coryell of EPA's Office of Transportation and Air Quality at (734) 214-4446, or email [coryell.mark@epa.gov](mailto:coryell.mark@epa.gov).

For questions relating to transportation conformity determinations and this guidance, please contact Meg Patulski of EPA's Office of Transportation and Air Quality at (734) 214-4842, or email [patulski.meg@epa.gov](mailto:patulski.meg@epa.gov).

## Section B: What sources, programs, and authorities are relevant to this policy?

### 9. What source types may be addressed in a bundle of measures?

Under this policy on incorporating bundled measures into a SIP, emissions reductions strategies may cover any of the following sources of a criteria pollutant or precursor to a criteria pollutant:

- A. Stationary sources or emission points within a stationary source, including any building, structure, facility or installation that emits or may emit an applicable criteria air pollutant or precursor.
- B. Area sources that are too small and/or too numerous to be *individually* included in a State's stationary source emissions inventory. This category could include facilities that directly emit applicable criteria pollutants or their precursors, products or services sold by wholesale or retail operations that may emit criteria pollutants or their precursors, and individual consumers who may use products or services that emit criteria pollutants or their precursors. (However, for emissions reductions to be used for SIP requirements, the aggregate emissions from the source category, if not individual sources, would need to be explicitly identified in the applicable SIP inventory.)
- C. Certain stationary sources that indirectly affect emissions or ambient air concentrations of criteria pollutants, such as lighter colored road asphalt, reflective roofs, strategic tree planting or energy efficiency measures. Typically, strategies that contain these sources are often referred to as "heat island reduction" or "energy efficiency programs."
- D. Mobile emissions sources that are addressed by programs that reduce idling emissions from trucks, locomotives, and school buses, retrofit programs, and small-engine buyback programs. This category also includes measures where employers offer incentives for commuters to use alternative means of arriving at their worksite, such as mass transit, carpools and vanpools, and telework. Providing employees such commuter benefits may result in removal of cars from the road and a subsequent reduction in criteria pollutants. One way to do this is by conducting a Best Workplaces for Commuters campaign (See Appendix C for more information).

Bundled measures should include only those measures that are considered to be voluntary or emerging measures, or traditional measures too small-scale to be typically included in a SIP. (See answer to Question 4, above.)

**10. Can programs approved under this policy replace existing programs?**

Voluntary and emerging measures should not replace existing measures already required in an applicable permit or SIP. This “antibacksliding” provision is necessary to ensure that less certain or less enforceable strategies cannot be substituted for currently required and enforceable activities.

**11. What is the authority for approving bundled measures under the Clean Air Act?**

The EPA has the authority to approve programs under this policy using the following sections of the CAA:

- A. 110 and 172 regarding emissions reductions needed to achieve attainment of the NAAQS;
- B. 182 regarding economic incentive provisions; and
- C. 175A regarding maintenance plans.

In light of the increasing incremental cost associated with further stationary and mobile source emissions reductions and the difficulty of identifying additional stationary and mobile sources of emissions reductions, EPA believes that it needs to encourage innovative approaches to generating emissions reductions. Consequently, EPA believes that it is appropriate and consistent with the CAA to allow a small percentage of the total emissions reductions needed to satisfy ROP, RFP, attainment, and maintenance requirements to come from programs that may not fully meet the traditional requirements for approval, where appropriate safeguards are provided.<sup>5</sup>

This policy places clear responsibility on a State to ensure that the emissions reductions necessary to meet applicable CAA requirements are achieved. This includes an enforceable SIP commitment, under timeframes discussed below, to evaluate the effectiveness of the bundled measures after they are implemented, and to remedy any shortfalls in emissions reductions. In the event the bundled measures do not achieve the projected emissions or criteria pollutant reductions, the State needs to remedy any SIP shortfall quickly by enforceable emissions reductions from other sources or by showing that the emissions reductions are not needed to achieve applicable attainment, maintenance, or RFP/ROP requirements. The State would make this “showing” or adopt the required enforceable emissions reductions from other sources through a SIP revision.

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<sup>5</sup> Appendix B contains a list of the basic requirements that SIP measures need to meet.

## **12. What limitations apply to programs approved under this policy?**

### **A. Percent limitation**

Due to the innovative nature of voluntary and emerging measures, EPA believes that it is appropriate to limit the amount of emissions reductions allowed for approval from such measures. For voluntary and emerging measures covering stationary sources, there is a presumptive limit of six percent.<sup>6</sup> A separate limit of three percent applies to voluntary mobile source programs. The result is a nine percent limit on the inclusion of voluntary and emerging measures in a SIP.<sup>7</sup> (The nine percent limit includes the six percent stationary source limit for voluntary and emerging measures and the three percent voluntary measures limit for mobile sources.) Emissions reductions from voluntary and emerging stationary and voluntary mobile measures included in a bundle should not exceed the specified percent limits. An example of how to calculate the maximum emissions reductions that may be used from voluntary and emerging stationary measures and voluntary mobile measures in a SIP is provided in Appendix D.

Because the EPA expects that the majority of measures in a bundle will likely be voluntary and emerging in nature, EPA believes that it is appropriate to limit the amount of emissions reductions that can be bundled to nine percent, consistent with the limits discussed above. The nine percent limit applies to the total of all emissions reductions included as bundled measures in a SIP under this policy (including small scale traditional measures), and does not change the six percent limit on emerging and voluntary stationary measures and the three percent limit on voluntary mobile measures. Where two or more sets of bundled measures are being considered, the emissions reductions from all bundles combined should not exceed nine percent.

### **B. Episodic limitation**

Bundled measures can include emerging and voluntary measures that are continuous,

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<sup>6</sup> The six percent stationary source limit is presumptive in that EPA believes it may approve measures into a SIP in excess of the presumptive six percent where a clear and convincing justification is made by the State as to why a higher limit should apply in its case. Any request for a higher limit will be reviewed by EPA on a case-by-case basis.

<sup>7</sup> The nine percent reduction does not apply to an area's total emissions inventory, but only to the increment that is necessary to achieve ROP, RFP, attainment, or maintenance. In order to determine this increment, one must subtract the "carrying capacity" (or level of emissions at which the NAAQS would be attained) from the projected attainment year inventory, reflecting the reductions from all currently adopted Federal/State regulations. The difference is the amount of additional reductions needed to meet the statutory requirement. Emission reductions from nontraditional measures should not exceed nine percent of this difference.

seasonal (in effect only during the season in which an area experiences high pollutant concentrations) or, for certain actions, episodic (implemented during specific periods of high pollutant concentrations, varying by meteorological conditions).

Section 123 of the CAA limits the credit States can take for using dispersion techniques, that include episodic and supplemental controls on emissions from stationary sources that vary based on atmospheric or meteorological conditions. The EPA's regulations implement section 123 at 40 CFR sections 51.100, 51.118, and 51.119. One of the purposes of section 123 is to make sure stationary sources do not rely upon intermittent controls in order to avoid the application of feasible constant emissions controls. In seeking SIP approval for measures under this policy, States would need to take care to avoid seeking SIP credit for episodic controls on stationary source emissions activities that are feasibly regulated through continuously or seasonally applicable emission controls. The EPA could not grant credit to any stationary source episodic control measure that falls within the Agency's definitions of "dispersion technique" at 40 CFR 51.100(hh)(1)(ii) or "intermittent control system (ICS)" at 40 CFR 51.100(nn), except as allowed by EPA's rules.

The EPA believes that section 123 should not, however, restrict credit for non-stationary source episodic or supplemental emissions reductions measures that apply to consumer actions or the use of consumer products or services, for which these controls may represent the only feasible type of control. For example, EPA has formally determined that the use of smoke management in agriculture and silviculture practices, and episodic curtailment of residential wood combustion, are not dispersion techniques limited by section 123. The use of dust suppressants at stationary sources is not a dispersion technique, since these controls are triggered by the rate of dust emissions rather than by varying atmospheric or meteorological conditions. Seasonal controls that are implemented at pre-determined periods of the year and that do not vary with atmospheric or meteorological conditions are not limited by section 123, even if they apply to stationary sources.

Also, EPA has concluded that episodic transportation control measures (TCM) and other mobile source related market response measures may be approved into a SIP under the CAA under certain circumstances. For example, an ozone nonattainment area may want to credit an episodic mobile measure in the photochemical modeling for its attainment demonstration.

### **C. Limitations on uses**

The EPA believes that a State can claim emissions reductions in its SIP from emerging and voluntary programs for purposes of demonstrating attainment or maintenance of the NAAQS, RFP, or ROP. However, if both the evaluation and performance period for a bundle of voluntary and/or emerging measures extends beyond the applicable RFP, ROP, or attainment year, a State cannot rely on such bundle for achieving emissions reductions for statutory RFP, ROP, or attainment SIP requirements. However, emissions benefits from on-road measures can continue to be taken for transportation conformity purposes after the attainment date, if areas

continue to implement the TCMs.

Voluntary and emerging measures, individually or bundled, cannot be used by a source to meet any other emissions reductions requirement such as, but not limited to, the following:

- (1) Reasonable Available Control Technology (RACT),
- (2) Best Available Control Technology (BACT),
- (3) Best Available Retrofit Technology (BART),
- (4) Lowest Achievable Emission Rate (LAER),
- (5) New Source Performance Standard (NSPS),
- (6) National Emissions Standards for Hazardous Air Pollutants (NESHAPS), or
- (7) New Source Review (NSR) offsets or emissions reductions for any emissions trading program.

The RACT rules must be adopted and implemented as required even if a State submits an emerging measures program. Nothing in this policy relieves a State's obligation to adopt and implement required RACT rules.

Only *emissions reductions* programs (e.g., programs to reduce ozone precursors) may be used for RFP/ROP purposes. Both *emissions reductions* programs and *ambient concentration* reduction strategies can be used for maintenance and attainment strategy requirements.

**13. How does a State get SIP approval under this policy?**

A State would submit a SIP to EPA that:

- A. Identifies and describes each measure in a bundle, including the implementation schedule for each measure in the bundle;
- B. Contains projections of emissions or pollutant reductions attributable to each individual measure in the bundle and the sum of all measures in the bundle (including the amount of any discount factor applied), along with relevant technical support documentation, including, for emerging measures, a full discussion of the relevant best available science supporting the measure (see EPA policy on "Incorporating Emerging and Voluntary Measures in a State Implementation Plan (SIP)," issued September 2004);

- C. Enforceably commits the State to implement those parts of the measure for which the State or local government is responsible;
- D. Enforceably commits the State to monitor, evaluate, and report at least every three years to the public and EPA on the effect of the emission or pollutant reduction measure;
- E. Enforceably commits the State to remedy any SIP credit shortfall in a timely manner, as described below, if the bundle of measures does not achieve projected emissions reductions;
- F. Meets all other requirements for SIP revisions under sections 110 and 172 of the CAA; and
- G. Undergoes public notice and comment like any other SIP revision.

See Appendix A for a description of the SIP approval process for bundled measures.

**14. What should a State do if the evaluation reveals a shortfall between predicted and actual emissions reductions from a bundle of measures that have been implemented?**

The SIP submittal needs to include an enforceable commitment that if the State learns through program evaluations (or by other means) of a shortfall (i.e., projected pollutant reductions from a bundle were not or will not be achieved), the State will quickly correct the problem by providing enforceable emissions reductions from other sources or by showing that the emissions reductions are not needed for attainment, maintenance, or RFP/ROP, as applicable. The State would make this “showing” or adopt the required enforceable emissions reductions from other sources through a SIP revision.

Generally, if State rulemaking is not required, any shortfall should be corrected as soon as possible, and no later than 1 year after the program evaluation is completed (or when a State learns of the shortfall). If State rulemaking is required, the State should proceed as expeditiously as possible under the required State process, but the State should correct the shortfall within 2 years of when the shortfall is discovered. However, if the emissions reductions from a measure are necessary to show attainment, maintenance or ROP, the timeframe to correct a shortfall cannot exceed the statutory attainment, maintenance or ROP milestone date for the area.<sup>8</sup> Failure

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<sup>8</sup> For example, in the 8-hour ozone program, a severe-17 area has a maximum statutory attainment date 17 years after the 8-hour nonattainment designation. Since designations were effective 6/15/2004, the maximum statutory deadline is 6/15/2021. However, our implementation rule requires that all emissions reductions needed for attainment must be implemented by the beginning of the ozone season prior to the attainment date. That would

to address this shortfall in a timely manner could lead to a finding of nonimplementation under section 179(a)(4) of the CAA. In such a case, sanctions may be imposed under section 179(b) of the CAA. Additionally, for the 8-hour ozone SIP, any additional measures needed to fill such a shortfall must be implemented by the latest compliance deadline required for all emissions reductions needed for attainment by the attainment date, generally at the beginning of the full ozone season prior to the attainment date.

**15. How does this guidance document affect EPA's existing guidance on transportation control measure (TCM) substitution?**

This guidance document does not change the requirements for substituting TCMs in an approved SIP that are not being implemented on schedule. On April 7, 2004, EPA issued policy guidance that describes the adoption and use of TCM substitution mechanisms, which can be found at: <http://www.epa.gov/otaq/transp/conform/sip-tcm-sub.pdf>. A TCM substitution mechanism provides SIP flexibility by establishing a process by which TCMs in an approved SIP can be removed and replaced with substitute TCMs without the need for EPA to conduct notice-and-comment rulemaking on individual substitutions. In cases where a State has a TCM substitution mechanism in its SIP, an individual TCM measures within a SIP bundle that is not being implemented according to the SIP's schedule could be substituted with a new TCM for that bundle, according to EPA's April 2004 guidance.

**16. How does this guidance document affect transportation conformity determinations?**

This guidance document does not change the requirements for crediting on-road mobile source measures in the transportation conformity process. The transportation conformity regulation (40 CFR part 93) describes the requirements for including emissions reductions from on-road mobile measures in a conformity determination for a transportation plan, transportation improvement program, or transportation project. The conformity rule requires a regional emissions analysis be conducted for all non-exempt highway and transit projects included in the transportation plan and transportation improvement program. In the regional emissions analysis, the emissions from future transportation activities are estimated or modeled, just as they are when creating or revising a SIP's on-road motor vehicle emissions inventory (or "motor vehicle emissions budget"). If SIP credit is obtained for an on-road mobile source measure that is bundled and included in the SIP's budget, this does not preclude it from also being used towards the transportation conformity determination.

In addition, this guidance document does not change the transportation conformity regulation's requirements for timely implementation of TCMs in an approved SIP. For transportation conformity purposes, a TCM is defined in 40 CFR 93.101 as any measure that is specifically identified and committed to in an approved SIP that is either one of the types listed in CAA section 108 or any other measure for the purpose of improving air quality by reducing

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likely mean implementation in the spring of 2020 for the area.

vehicle use or changing traffic flow or congestion. For example carpool programs, measures to increase transit ridership, and high occupancy vehicle (HOV) lanes are examples of TCMs. Technology and fuel-based measures that do not target travel decisions, such as inspection and maintenance, retrofit, and fuel programs, are not considered TCMs that have to meet timely implementation conformity requirements. Section 93.113 of the transportation conformity regulation requires that transportation plans, transportation improvement programs, and projects not from a conforming plan and transportation improvement program must provide for the timely implementation of SIP TCMs according to the implementation schedules in the approved SIP. To implement SIP TCMs in a timely manner, TCMs included in a bundle must include specific descriptions and schedules for each measure. The interagency consultation process would be used during the development of a SIP bundle, so that air quality and transportation agencies can ensure timely implementation of any approved SIP TCMs in future conformity determinations.

**17. How long does this policy last?**

The EPA currently plans to evaluate the effect of this policy after 5 years to determine if it is meeting its goals. The policies set forth in this document are intended solely as guidance, do not represent final agency action, and cannot be relied upon to create any rights enforceable by any party.

## **Section C: What specific guidance applies to bundled measures?**

### **18. When should a State consider using bundled measures in a SIP?**

Areas that are just developing SIPs and areas that have not yet adopted available traditional measures should consider the more traditional measures first, but may also wish to consider emerging or voluntary measures. Typically, voluntary and emerging measures that result in significant emissions reductions, or where the resultant reduction in emission can be reasonably verified, should be evaluated and submitted individually and not included in a bundle of measures.

In general, you should quantify the emissions reductions for each measure in a bundle. States may consider bundling together those relatively small-scale, or local measures, that if reviewed individually would be extremely difficult or inordinately resource intensive to quantify (or verify) for SIP credit. However, when all reductions are summed together and considered in the aggregate such measures may be able to result in meaningful SIP credit, even after an appropriate discount factor for uncertainty is applied. In addition, some of these measures in a bundle might under-perform while others will likely over-perform. Consequently, by considering the total effect of the measures there is a greater likelihood that the desired air quality results will in fact be achieved. Moreover, in certain situations it may be possible to better understand or verify the effect on air quality from certain small-scale measures evaluated as a group rather than individually, especially where these measures are similar in nature. For example, it may be easier or more reasonable to quantify or evaluate the effect of all proposed energy efficiency/renewable energy measures rather than addressing them individually. In this example, the energy savings for each measure would first be quantified, and then the emissions reductions for all energy measures would be quantified based on the total energy savings from all measures.

### **19. What types of measures are appropriate to bundle?**

Typically, measures included in a bundle should be limited to those voluntary and emerging measures that are difficult to quantify or verify from a technical or resource perspective. A bundle may also include measures that individually result in relatively small emissions reductions or air quality benefits. Individual voluntary or emerging measures (including measures that are both voluntary and emerging) that are projected to result in significant emissions reductions should not be included in a bundle, unless the purpose of the bundle is to significantly improve the likelihood of the larger measure's success. For example, a large scale measure involving the purchase of renewable energy might benefit from being bundled with smaller measures promoting voluntary energy conservation, with the overall goal being reduced emissions from power generation.

Traditional emissions reductions measures may also be included in a bundle, but should be limited to measures that individually are too small-scale to provide a meaningful emissions reductions benefit and, as a result, typically would not be included in a SIP. Consequently, a

traditional emissions reductions measure which results in a significant emissions reductions should be evaluated and submitted as an individual measure and not included in a bundle.

The measures contained in a bundle can be diverse (covering a variety of different strategies and source types) or part of a package targeting a specific area or objective (such as, heat island mitigation, social marketing or voluntary programs). A bundle may include certain measures that are too small to meaningfully quantify, but which nevertheless support the overall emission reduction potential of the bundle. In this case, a bundle could include measures for which no quantified emissions reductions is assigned in order to increase or support the overall likelihood of success of the bundle as a whole. Again, given the timely implementation of TCMs is a requirement for transportation conformity, TCMs included in this type of bundle need to have a clearly identified implementation schedule. Also transportation agencies must be consulted before TCMs are included.

Each individual SIP (for example, ozone or PM 2.5) may have its own bundle (or bundles) of measures, again subject to the applicable percent limitation. Measures bundled in one State's SIP (for example, PM 2.5), may or may not be appropriate for bundling in the same State's SIP for another pollutant (for example, ozone). Appendix C contains a listing of certain types of measures that may be appropriate to consider in a bundle of measures.

**20. Can a SIP have more than one bundle of measures?**

Yes, a SIP may contain more than one bundle of measures. However, as discussed in Question 12 (above), the emissions reductions associated with all bundles for any individual SIP should not exceed nine percent. For example, in its ozone SIP, a State could decide to put all heat island mitigation measures in one bundle and group other ozone reduction measures (otherwise appropriate for bundling) in a second separate bundle. Again, the sum total of the emissions reductions from both bundles should not exceed the nine percent limit on the total of all bundled measures, nor should the individual measures in the bundles exceed the six percent limit on voluntary and emerging stationary source measures and the three percent limit on voluntary mobile source measures.

**21. How should you calculate the emissions reductions from a bundle of measures?**

To reflect the fact that the amount of reductions resulting from a bundle of measures may be unclear, the emissions reductions from a bundle of measures should be calculated by either:

- (A) applying an appropriate discount factor to the sum of the emissions reductions from all the individual measures in the bundle to account for uncertainty; or
- (B) by first applying a measure-specific discount factor to each measure and then summing the emissions reductions from all the individual measures in the bundle. In this case, the discount factor may vary among the measures. A discount factor is not applied

to the bundle of measures in this case as the value of each measure has already been individually discounted.

The SIP authority should apply the discount factor to the amount of the emissions reductions to reflect the uncertainty in the emissions reductions estimates. The initially assumed discount is 20 percent; however, a larger or smaller adjustment factor may be appropriate in given circumstances. The greater the uncertainty or amount of reductions claimed, the greater the appropriate adjustment factor. The actual amount of the discount factor (as applied to the bundle or the individual measures in the bundle) should reflect:

- (1) the degree of uncertainty associated with quantifying the emissions reductions from the bundle or individual measures within the bundle;
- (2) the amount of the emissions reductions being credited for the bundle or individual measure within the bundle; and
- (3) the degree of uncertainty associated with verifying the emissions reductions actually achieved by the bundle or individual measure within the bundle.

A high discount factor should be applied where there is a relatively high degree of uncertainty in the ability to quantify, or verify, the emissions reductions, or where the amount of the reductions claimed are significant. Overall, the degree of discounting should reflect the degree of uncertainty associated with the bundle achieving the desired results, considering the magnitude of the emissions reductions claimed.

A bundle may also include measures that, while expected to help improve air quality, are so minute that they are assigned a value of zero for the purpose of quantifying their expected emissions reductions.<sup>9</sup> Such measures should not be considered quantitatively when calculating the number of emissions reductions associated with a bundle. In other words, the amount of emissions reductions credited to such measures should be zero. Nonetheless, such measures, although individually negligible (achieving emissions reductions too minute or uncertain to quantify) may be considered in determining the amount of the discount factor, where they can be shown to support the overall emissions reductions potential of the bundle. Consequently, including numerous individually insignificant measures in a bundle, even those showing zero emissions reductions, can benefit the bundle, under certain circumstances, by reducing the discount factor as appropriate. However, even when mitigating factors minimize uncertainties, a presumptive discount of 20 percent should be applied in all cases unless a

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<sup>9</sup>It is important to note that the transportation conformity rule requires transportation agencies to ensure the timely implementation of all TCMs in an approved SIP, including those that are included in a SIP bundle with a value of zero emissions reductions. State and local air agencies must consult with State and local transportation agencies when considering the inclusion of TCMs in a SIP submission (40 CFR 93.105).

substantial justification is provided for a lower discount rate.

**22. How should a State evaluate the effectiveness of a bundle of measures?**

The primary purpose of program evaluation is to evaluate the amount of reductions actually realized through the bundle of measures and to serve as a basis for adjustments to the measures if the original estimates of emissions reductions are not being achieved. In the SIP submittal, the State needs to develop and include specific program evaluation procedures for the bundle of measures. The State should carefully consider what approach can provide the most effective means to accurately evaluate the bundle of measures. The approach will depend greatly on what type of measures are included in the bundle. States may choose to develop an approach to measure the overall effectiveness of the bundle of measures, or one that evaluates the effectiveness of the individual measures or groups of measures in the bundle.

For example, a bundle of energy efficiency and renewable energy measures could possibly be evaluated in the aggregate by determining the total electricity displaced at local power plants once all the measures are in place and evaluating that value against the original assumptions. On the other hand, in evaluating a low volatile organic compound (VOC) retail paint sales program submitted as part of a bundle, it may be best to use inventory records to evaluate the effectiveness of the individual program.

Statistical sampling may be an appropriate method for assessing program effectiveness, particularly for those measures utilized in the consumer/retail area. For example, for an ozone action day approach to discourage the use of VOC-based consumer products (paints, hair spray, etc.) it may be appropriate to use a consumer survey to evaluate the program effectiveness.

The actual effect of some measures on pollutant levels may be impossible to accurately determine by empirical measurement and will depend instead on updated modeling or scientific calculations. In that case, the state of the science behind the original emissions reductions assumptions should be carefully reviewed and updated to reflect any new information that may now be available. In all cases, there should be some activity measure that can be evaluated to ensure that the emerging measure is being implemented. For example, heat island reduction (HIR) measures require actions to increase the reflectivity of roofs, roads, and pavement. Although these are not direct measures of ozone reduction, they are necessary actions to implement a HIR strategy and can be directly measured and compared to the original assumptions in the HIR strategy and modeling. At the same time, the HIR modeling should be updated to reflect any better science or new information available regarding the efficacy of HIR as an ozone reduction strategy.

Where practical, States may wish to consider evaluating those measures in a bundle for which a zero emissions reductions was assigned to determine the actual emissions reductions achieved. Demonstrating actual reductions from such measures may result in additional reductions beyond those anticipated by the bundle, or could help demonstrate that the overall

emissions reductions of the bundle have been achieved in conjunction with reductions from other measures that may or may not have achieved anticipated reductions. Where the actual emissions reductions achieved from the bundle are demonstrated through the evaluation to be more than the amount originally estimated in the SIP, States may take credit for the additional emissions reductions consistent with EPA policy on the use of voluntary and emerging measures. However, where the emissions reductions demonstrated through the evaluation (or projected improvement in air quality from the bundle) is less than the amount originally estimated, the amount of credit should be adjusted appropriately, and the shortfall remedied in a timely manner (see Question 14 for further information).

**23. What is the timing of evaluation and reconciliation for a bundle of measures?**

When evaluating a bundle of measures in the aggregate, or a group of measures within a bundle, the timeframe should be no longer than the longest timeframe that would apply to any of the individual measures in the bundle or group, and analysis must be completed within the timeframes as necessary to meet any applicable statutory or regulatory requirements.

When evaluating an individual measure in a bundle, States should evaluate the measure within the timeframes set forth in EPA policy and guidance on using voluntary and emerging measures. For stationary source measures, see EPA's policy on "Incorporating Emerging and Voluntary Measures in a State Implementation Plan (SIP)," issued September 2004. For mobile measures, see EPA's "Mobile Source Voluntary Measures Guidance," dated October 24, 1997. A summary of these policies is provided below.

**A. Evaluating individual emerging stationary source measures**

The State should enforceably commit to completing an initial evaluation of the effectiveness of an emerging stationary source measure no later than 18 months after putting the measure in place. Where possible, this evaluation should be done sooner. However, if a State can make a showing that it cannot adequately evaluate the measure within 18 months, it may request additional time to complete the evaluation. The extra time may be necessary in cases where the measure may take a significant amount of time to fully implement, where direct measurement is not possible, or where science has not progressed sufficiently in 18 months to provide a more reliable estimate of the effectiveness of the measure. However, the State must show that there has been a good-faith effort to improve the quantification procedures for a particular emissions control strategy and that real progress has been made in quantifying the emissions reductions. Under no circumstance can the additional time granted for evaluation allow the evaluation to occur less than 2 years before the RFP, ROP or attainment date if the emissions reductions are being used for these purposes. If the evaluation extends beyond these timeframes, the measure should be used solely for maintenance purposes.

Once a State has determined the initial effectiveness of its emerging measure, it

may reevaluate its emerging measures at the same time as other SIP measures. This evaluation should generally occur every 3 years, unless no requirement to reevaluate SIP measures applies to the particular plan.

### **B. Evaluating individual voluntary stationary source measures**

The State should enforceably commit to completing an initial evaluation of the effectiveness of a voluntary stationary source measure no later than 18 months after putting the measure in place (1 year to run the measure and 6 months to analyze the data to determine the measure's effectiveness). This evaluation should be done sooner, where possible. For instance, for a seasonal voluntary program that may only run for 6 months, the timeframe may be 6 months to run the program and 6 months to determine its effectiveness.

Once a State has determined the initial effectiveness of its voluntary measure, it may reevaluate its voluntary measures program at the same time as other SIP measures, generally every 3 years, unless no requirement to reevaluate SIP measures applies to the particular plan, in which case the State would need to reevaluate its voluntary measures program at least every 3 years.

### **C. Evaluating individual voluntary mobile source measures**

States that use voluntary mobile source measures must commit to evaluating their measures. These enforceable commitments would describe how they plan to evaluate program implementation and report on program results in terms of actual emissions reductions. Program evaluation provisions must be accompanied by procedures designed to compare projected emissions reductions with actual emissions reductions achieved. The timing of the evaluations must be specified in the SIP submittal.

For example, a State conducting a Best Workplaces for Commuters campaign should use data gathered during the campaign, such as employees covered and commuting mode split, along with the COMMUTER Model or other appropriate methods as determined by the interagency consultation process, to determine the projected reduction in criteria pollutants resulting from the control measures supporting the campaign. Within 24 months of the campaign's implementation, a web-based survey tool which has been developed by EPA or other appropriate survey methods (including commercially available on-line survey services) can be used to survey metro area employers and their employees designated as Best Workplaces for Commuters to update the originally estimated commute patterns resulting from this voluntary program along with updated emissions reductions. (See [www.bwc.gov](http://www.bwc.gov) for Commuter Model and web-based tool).

A State project that reduces idling from heavy duty trucks by implementing

electrified parking spaces at a truck stop should use data collected by the operator or owner of the truck stop or the electrification technology vendor on the use of the technology. Specifics on how to monitor and record data is available in the “Guidance for Quantifying and Using Long Duration Truck Idling Emission Reductions in State Implementation Plans and Transportation Conformity,” EPA420-B-04-001, January 2004.

Once a State has determined the initial effectiveness of its voluntary measure, it may reevaluate its voluntary measures program at the same time as other SIP measures, generally every 3 years. Where no requirement to reevaluate SIP measures applies to the particular plan, the State would need to reevaluate its voluntary measures program at least every 3 years.

**24. Can more than one State adopt the same bundle of measures?**

Although it is unlikely that two States would develop bundles that included identical types of measures, EPA believes that it is appropriate to allow multiple States to adopt similar bundles of measures as long as the individual bundles meet the criteria outlined in this and other applicable guidance, and the bundles are appropriate for emissions reductions in a State’s nonattainment or maintenance area. However, it is important to note that similar bundles may not result in similar emissions reductions in different areas. Numerous local factors, such as number of sources or population covered, will likely affect the quantity of emissions reductions a measure will achieve in any given location. This is especially true for small-scale community-based measures, which are of the type likely to be bundled. Consequently, the emissions reductions and air quality benefits attributed to a specific bundle of measures should reflect a case- and site-specific evaluation. However, EPA recognizes that there may be certain circumstances where, through the use of appropriate discounting, a bundle of measures used in one area may be transferable to another area with minimal further analysis.

**25. Can the non-air-quality benefits of a bundle of measures be considered?**

Although many innovative types of SIP measures promote improvements in the quality of life, the non-air-quality benefits of a bundle of measures cannot be considered for the SIP requirements for attainment, (RFP), (ROP) or maintenance. However, to the extent that the measures that are part of the bundle provide certain co-benefits (such as public health, economic or non-air-quality environmental benefits), broader support from the public of the bundled measures can be realized by determining and articulating the range of the co-benefits they provide. Consequently, to the extent practical, States should consider quantifying and communicating how a bundle of measures would improve the quality of life in general, and specifically within the nonattainment and surrounding areas. For example, in addition to the air quality benefits, a bike path helps reduce vehicle traffic and saves fuel, while those using the path benefit from the exercise, money saved in reduced fuel use and reduced vehicle maintenance costs. As another example, in addition to reducing air emissions from electric generating power plants, energy efficiency and renewable energy measures can save the consumer money and have

other economic benefits, reduce dependence on foreign sources of fuel, increase the reliability of the electricity grid, enhance energy security and reduce greenhouse gas emissions.

## APPENDIX A

### SIP COMPLETENESS AND APPROVAL PROCESS FOR BUNDLED MEASURES

#### Submittal Criteria

The SIP submittal identifies and describes each measure in a bundle and:

- contains projections of emissions reductions attributable to each measure, along with relevant technical support documentation;
- commits to monitoring, evaluating, and reporting the resulting emissions effect of the measure;
- commits to remedying in a timely manner any SIP credit shortfall if the bundle does not achieve projected emissions reductions;
- meets other requirements for SIPs such as:
  - a showing that the State has legal authority. For example, the evidence may be a letter from the State's Attorney General's office providing an analysis of the legal authority to adopt and implement each State measure under State law.
  - the date of adoption, as well as the effective date of each measure, if this information is not already included for each measure.
  - evidence that each measure is consistent with the provisions of CAA section 110(a)(2)(E).
  - a copy of each measure, indicating the changes made to the existing approved SIP where applicable. The State program and other relevant rules must be signed, stamped, and dated by the appropriate State official indicating that it is fully implementable by the State. The effective date of each measure must, whenever possible, be indicated in the document.
- contains evidence that:
  - the State adopted each measure into the appropriate State mechanism (e.g., applicable State rules), including the date of adoption.
  - the State followed all the procedural requirements in the State's laws and constitution in conducting and completing each measure.
  - the State gave public notice of the proposed changes consistent with procedures approved by EPA, including the date of publication of this notice.
  - the State held public hearings consistent with the information in the public notice and the State's laws and constitution.
  - the State established explicit procedures for including the public in the measure's implementation and evaluation phases, to address any environmental justice issues.
  - the State has sufficient funding and resources to collect data and perform a program evaluation to determine the actual emissions reductions realized by each measure.

## General Process Timeline

The general process timeline for getting your measures approved consists of the following steps:

- The State develops the rule that contains the regulatory provisions of the measure in consultation with appropriate stakeholders - community (including communities of concern), industry, academia, environmentalists and regulators. For programs that do not require regulations (e.g., education or incentive programs to reduce consumer power demands), then the appropriate authority would adopt an enforceable policy (or equivalent) to ensure the measure is implemented. For bundles that include on-road mobile source measures, Federal, State, and local air quality and transportation agencies must consult on the development of such SIP measures according to the federal transportation conformity regulation (40 CFR 93.105(b)) and the State's conformity SIP (required by 40 CFR 51.390).
- The State prepares documentation to support the rule.
- The State submits the rule and supporting documentation to the applicable EPA Regional Office.
- The EPA Regional Office reviews the SIP submittal for completeness and decides whether the rule submittal is complete.
- If the EPA Regional Office considers the SIP submittal to be incomplete, the EPA Regional Office will return the SIP submittal. At this point, the State may revise the rule and/or documentation and resubmit the package.
- The EPA proposes the rule as a SIP revision in the Federal Register and solicits comments on the rule from the public. Based on the public's comments, EPA may require that the State make changes in the rule, prior to final approval.
- The EPA publishes the final approval of the (original or modified) rule in the Federal Register.

The EPA Regions may choose to use the direct final processing procedure for noncontroversial actions. However, due to the innovative nature of this policy, it is very unlikely that any action using this policy will be approved through direct final rulemaking.

## APPENDIX B

### Basic Requirements for Emissions Reduction Measures to Receive Federal Approval in a SIP

NOTE: The following paragraphs provide information on the general requirements for all SIP measures. The EPA's various policy documents for traditional and voluntary measures may provide further details regarding more specific requirements for such measures.

In order to adopt and implement emission reduction strategies to meet SIP CAA requirements, such as RFP, ROP, attainment demonstrations, and maintenance, the reductions from control measures must be:

- A. *Surplus* – The definition of surplus depends on how the emission reduction will be used.

Emissions reductions used to meet air quality attainment requirements are surplus as long as they are not otherwise relied on in air quality-related programs relating to a SIP. For voluntary and emerging measures, EPA believes these reductions should also be surplus to adopted State air quality programs, even those programs that are not in the SIP, such as a consent decree and Federal rules that focus on reducing criteria pollutants or their precursors.

For emissions reductions used for attainment, RFP, ROP, or maintenance, the emissions reductions cannot *already* be assumed for the same requirement, where the requirements are cumulative. An emission reduction may be used for more than one of these requirements. For example, emissions reductions used to meet the RFP requirement may also be used for the attainment demonstration. However emissions reductions are not surplus for such an attainment demonstration if they have already been assumed in that same attainment demonstration.

In other words, States cannot claim emissions reductions that are already assumed in the existing SIP, or that result from any other emission reduction or limitation of a criteria pollutant or precursor that the State is required to have to attain or maintain a NAAQS or satisfy other CAA requirements. In the event that emissions reductions relied on from a measure are subsequently required by a new air quality-related program, such as those listed above, those emissions reductions would no longer be surplus for this purpose.

- B. *Enforceable* – Emissions reductions and other required actions are enforceable in the SIP if :
- (1) They are independently verifiable;
  - (2) Program violations are defined, as appropriate;

- (3) Those liable for violations can be identified;
  - (4) For emerging measures, the State and the EPA maintain the ability to apply penalties and secure appropriate corrective action where applicable;
  - (5) They are enforceable in accordance with other EPA guidance on practicable enforceability;
  - (6) For voluntary measures, the EPA maintains the ability to apply penalties and secure appropriate corrective action from the State where applicable and the State maintains the secure appropriate corrective action with respect to portions of the program that are directly enforceable against the responsible party;
  - (7) Citizens have access to all the emissions-related information obtained from the responsible party;
  - (8) For emerging measures, citizens can file suits against responsible parties for violations, and;
  - (9) A complete schedule to implement and enforce the measure has been adopted by the implementing agency or agencies.
- C. *Quantifiable* - Emissions and emissions reductions attributed to the measure are quantifiable if someone can reliably and replicably measure or determine them. Emissions reductions must be calculated for the time period for which they are used. Any uncertainty in the quantification of emissions reductions should be addressed by the following EPA guidance documents: “Improving Air Quality with Economic Incentive Programs,” “Incorporating Emerging and Voluntary Measures in a State Implementation Plan (SIP),” and EPA’s “Mobile Source Voluntary Measures Policy.”
- D. *Permanent* - An emission reduction strategy must continue throughout the term that the credit is granted unless it is replaced by another measure (through a SIP revision) or the State demonstrates in a SIP revision that the emissions reductions from the measure are no longer needed to meet applicable requirements. This applies to voluntary and emerging measures.
- E. *Anti-backsliding* - To receive SIP approval of any emerging measure or voluntary measure that replaces an existing SIP measure, the State must demonstrate that the

anti-backsliding requirements of section 110 (l) and 193 of the CAA are met<sup>10</sup>.

- F. *Adequately Supported* - The State must demonstrate that it has adequate funding, personnel, and other resources to implement the measure on schedule.

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<sup>10</sup> The EPA has recently clarified applicable requirements for anti-backsliding for the ozone NAAQS in 40 CFR part 51, subpart X.

## APPENDIX C

### POTENTIAL AIR POLLUTION CONTROL MEASURES

The following table of measures is for illustrative purposes only and provides examples of some of the types of measures States may wish to consider for bundling.<sup>11</sup> The inclusion of a measure on the list does not represent any final decision by EPA regarding a particular SIP measure, or bundle of measures. Such decisions will only be made based on the statute and regulations in the context of EPA notice-and-comment rulemaking on a submitted SIP revision. The list is not meant to be an all-inclusive list, and measures on the list may also be considered individually for inclusion in a SIP. The most recent version of the list as well as information on voluntary and emerging measures and other innovative strategies can be found at: <http://www.epa.gov/ttn/airinnovations/>.

The types of control measures that Early Action Compact (EAC) areas have implemented may also be a useful resource. A list of the EAC measures can be found at: [http://www.epa.gov/ttn/naaqs/ozone/eac/20041231\\_eac\\_measures\\_full\\_list.pdf](http://www.epa.gov/ttn/naaqs/ozone/eac/20041231_eac_measures_full_list.pdf).

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<sup>11</sup> Note, the term PM as used in this table refers to direct PM only in the form of PM-10, PM-2.5 or both, depending on the source type.

Type of Measure	Pollutants/ Precursors Addressed	Co-benefits	Description	Additional Information/Contact
Early Morning or Late Evening Refueling of Vehicles	NOx PM VOCs	Reduced fuel usage, reduced exposure to VOCs	Outreach efforts to reduce vehicle refueling during high ozone days either early in the morning or late evening. This could also include actions to not top off the tank.	<a href="http://www.epa.gov/ttn/naaqs/ozone/eac/">Http://www.epa.gov/ttn/naaqs/ozone/eac/</a> See Virginia - Roanoke Early Action Compact SIP Appendix B
Alternative fuel vehicles	NOx PM VOC	Reduced fuel usage	Purchasing alternative fuel vehicles - hybrids, bio-diesel, propane	
Public transit incentives	NOx PM VOC CO	Reduced fuel consumption, vehicle wear, traffic congestion	Increasing public participation in mass transport by purchasing transit passes, lowering the costs of public transit during peak days, or providing employees with a monthly stipend for public transit.	<a href="http://www.seql.org/intersect.cfm">http://www.seql.org/intersect.cfm</a>
Carpool/van pool	NOx PM VOCs CO	Reduced fuel consumption, vehicle wear and traffic congestion. Less parking area needed for employee parking.	Multiple parties traveling together in a single vehicle as opposed to one vehicle per person	<a href="http://www.seql.org/intersect.cfm">http://www.seql.org/intersect.cfm</a>

Type of Measure	Pollutants/ Precursors Addressed	Co-benefits	Description	Additional Information/Contact
Bicycle paths and related infrastructure	NOx PM VOCs CO	Reduced exposure to benzene, reduced vehicle wear; reduced traffic congestion; fuel savings; healthcare savings resulting from lower rates of obesity, high blood pressure and other chronic illnesses associated with lack of exercise.	Developing bike paths and infrastructures to make this a feasible alternative to driving	<a href="http://www.epa.gov/ttn/naaqs/ozone/eac/">Http://www.epa.gov/ttn/naaqs/ozone/eac/</a> See Virginia - Roanoke Early Action Compact SIP Appendix B
Anti-Idling Programs (includes Truckstop electrification)	NOx PM	Reduces CO2, SO2, CO, emissions, reduced noise, reduced fuel usage, reduced engine maintenance, extended engine life, fuel savings	Voluntarily restricting heavy duty diesel engine idling times for trucks, school buses, people parked outside schools.	<a href="http://www.epa.gov/otaq/smartway/idling.htm">http://www.epa.gov/otaq/smartway/idling.htm</a> <a href="http://www.epa.gov/otaq/smartway/documents/420b04001.pdf">http://www.epa.gov/otaq/smartway/documents/420b04001.pdf</a>
Reduce locomotive idling	NOx PM	Reduced noise, reduced fuel usage, reduced engine maintenance and extended engine life	Voluntary or regulatory actions to limit non-road locomotive idling at facilities/years - use auxiliary powered units	<a href="http://www.epa.gov/otaq/smartway/documents/420b04002.pdf">http://www.epa.gov/otaq/smartway/documents/420b04002.pdf</a>
Diesel Retrofit Program	NOx CO PM	Reduces SO2 emissions, reduction in adverse health affects	Identify high-emitting, high-mileage diesel vehicles for retrofit. Also can encourage the use of cleaner burning diesel fuel. This could be buses, construction equipment and/or heavy duty vehicles.	<a href="http://www.epa.gov/otaq/retrofit/">http://www.epa.gov/otaq/retrofit/</a> <a href="http://www.epa.gov/cleanschoolbus/">http://www.epa.gov/cleanschoolbus/</a> <a href="http://www.epa.gov/cleandiesel/construction.htm">http://www.epa.gov/cleandiesel/construction.htm</a>

Type of Measure	Pollutants/ Precursors Addressed	Co-benefits	Description	Additional Information/Contact
Remote Sensing Dirty Screen	VOCs PM	Reduces benzene emissions	Use remote sensing to identify high emitting vehicles and require them to undergo out-of-cycle testing.	
Best Workplaces for Commuters Campaign	NOx VOCs CO PM	Reduces: air toxics, fuel consumption, traffic congestion, greenhouse gas emissions. Employers may need less area for employee parking. Commuter benefits can be used by employers as a recruitment and retention tool.	A city or regional Best Workplaces for Commuters Campaign bundles various measures that produce commuter benefits into a powerful national standard of excellence and challenges large employers including Fortune 500 companies, universities, hospitals and business districts to offer these benefits to employees.	A campaign that results in commuter benefits covering 100,000 employees regionwide may result in the reduction of up to 100 tons VOC, 150 tons NOx, and 850 tons CO per year. Robin Snyder, National Program Manager. Also, see <a href="http://www.bwc.gov">www.bwc.gov</a>
Regional computerized traffic signal system (Intelligent Transportation Systems)	NOx VOCs PM	Reduces CO emissions, reduces travel times and stop-and-go driving conditions	Developing a system to reduce vehicle congestion on surface streets through signal timing and other traffic management programs	<a href="http://www.epa.gov/ttn/naaqs/ozone/eac/">Http://www.epa.gov/ttn/naaqs/ozone/eac/</a> See Texas Early Action Compact SIP, Appendix K
Tree canopy/urban forestry	ozone	Reduces CO2 emissions, reduces energy usage, decreases storm water runoff, improves community livability and walkability.	Area-wide comprehensive tree planting. Strategic planting around homes and buildings directly cools the interior, decreasing air conditioning cost and peak energy demand.	<a href="http://www.epa.gov/heatisland/strategies/vegetation.html">Http://www.epa.gov/heatisland/strategies/vegetation.html</a>

Type of Measure	Pollutants/ Precursors Addressed	Co-benefits	Description	Additional Information/Contact
Cool Roofs	ozone, greenhouse gases	Reduces greenhouse gases, reduces demand for electric power, extended life span of roof	Cool roof systems with high reflectance and emittance reduce building heat-gain and minimize energy use	<a href="http://www.epa.gov/heatislands/strategies/coolroofs.html">http://www.epa.gov/heatislands/strategies/coolroofs.html</a>
Green Roofs	ozone	Reduce heat islands, reduce storm water runoff, increase energy effectiveness of roofs, reduce noise transfer from outside	Vegetated roof systems installed on new or modified roof systems. May be used on industrial facilities, residences, offices and other commercial property. Absorb air pollution, collect airborne particles and store carbon.	<a href="http://www.epa.gov/heatislands/strategies/greenroofs.html">http://www.epa.gov/heatislands/strategies/greenroofs.html</a>
Cool Pavements	ozone	May help with stormwater run off, reduce energy use	Another means to reduce heat island effects by choosing paving materials that lower surface temperatures, especially for large surfaces such as parking areas, air fields, urban roadways.	<a href="http://www.epa.gov/heatislands/strategies/coolpavement.html">http://www.epa.gov/heatislands/strategies/coolpavement.html</a>
Landfill Methane Outreach Program (LMOP)	NOx	Reduces emissions in methane and SO <sub>2</sub> , reduces fuel consumption	A voluntary assistance program that works with stakeholders to encourage the recovery and use of landfill gas. The LMOP provides technical and marketing assistance and helps assess project feasibility	<a href="http://www.epa.gov/lmop">http://www.epa.gov/lmop</a>

Type of Measure	Pollutants/ Precursors Addressed	Co-benefits	Description	Additional Information/Contact
Flexible Work Hours	NOx	Reduces peak hour traffic congestion, reduced motor vehicle emissions, business service hours are extended without overtime or hiring costs	An employer policy that allows for members of the work force to start and stop work at varying times of the day including staggered hours, flexible work schedules and compressed work week	<a href="http://www.seql.org/intersect.cfm">http://www.seql.org/intersect.cfm</a>
Local Government Energy Plan	NOx	Cost savings to the jurisdiction, more efficient energy utilization that helps reduce peak energy demand	Involves the procurement and management of energy resources and production, the sale and distribution of energy and management of spent fuel resources.	<a href="http://www.seql.org/intersect.cfm">http://www.seql.org/intersect.cfm</a>
Open burning/restrictions	VOCs NOx PM	Reduced toxic emissions, improved health benefits, improved water quality from less toxin runoff, reduced haze	Limits on outdoor fire or outdoor smoke-producing process from use of burn barrels, screened pits, backyard incinerators or piled up refuse including yard trimmings, leaves or materials from cleared land	<a href="http://www.epa.gov/ttn/atw/burn/burnpg.html">http://www.epa.gov/ttn/atw/burn/burnpg.html</a>
Low Impact Paving	VOCs ozone	Reduces heat island effect and less water run-off, lower construction and maintenance costs	Strategy for reducing smog-forming emission from paving roads, fire lanes, parking lots and other surfaces with asphalt by using non-petroleum based paving systems, specially formulated sealants and coatings	<a href="http://www.cleanaircounts.org">http://www.cleanaircounts.org</a>

Type of Measure	Pollutants/ Precursors Addressed	Co-benefits	Description	Additional Information/Contact
Gas Can Replacement	VOCs	Reduced benzene emissions, improved indoor air quality, reduced fuel usage. Reduces air toxics exposure.	Develop gas can exchange program where purchased cans replace currently used cans or require merchants to sell low-emission gas cans	<a href="http://www.cleanaircounts.org/gascanreplacement.shtml">http://www.cleanaircounts.org/gascanreplacement.shtml</a>
Gas powered lawnmower buyback program	VOCs NOx	If replaced with electric, additional benefits: reduced noise and air toxics.	Provide incentives for public to trade in gasoline powered lawnmowers for zero emissions equipment (electric or manual)	<a href="http://www.cleanaircounts.org/lawnmowerleafblowerbuyback.shtml">http://www.cleanaircounts.org/lawnmowerleafblowerbuyback.shtml</a>
Sale of Reformulated Consumer Products	VOCs	Reduced air toxics exposure	Cosmetic, Toiletry and Fragrance Association and the Consumer Specialty Products Association agree to sale low-VOC products. Local regulation requiring the sale of these products.	<a href="Http://www.epa.gov/ttn/naaqs/ozone/eac/">Http://www.epa.gov/ttn/naaqs/ozone/eac/</a> See Maryland - Washington County Early Action Compact SIP, Chapter 4
Consumer Products	VOCs PM	Improved indoor air quality, reduced eye and respiratory irritation	Avoid the use of VOC based consumer products such as paints, hair spray, during bad air quality days.	Maryland - Washington County SIP <a href="http://www.mde.state.md.us/Programs/AirPrograms/air_planning/">http://www.mde.state.md.us/Programs/AirPrograms/air_planning/</a>
Low-VOC Paints Program	VOCs	Better indoor and outdoor air quality, reduce eye and respiratory irritation. Reduced air toxics exposure.	Encourage use of low or no VOC paints by public, industry and government. Also, use of these paints for traffic marking materials.	<a href="http://www.cleanaircounts.org/lowvocpaints.shtml">http://www.cleanaircounts.org/lowvocpaints.shtml</a>

Type of Measure	Pollutants/ Precursors Addressed	Co-benefits	Description	Additional Information/Contact
Regional Wind Power Purchase	NOx PM	Reduces SO2 and mercury emissions, potential reduction in greenhouse gas emissions, reduces dependence on foreign oil	Local governments commit to purchasing a specific number of kilowatt-hours of power per ozone season decreasing power generation from coal, oil and/or gas-fired sources	National Wind Technology Center: <a href="http://www.nrel.gov/wind/">http://www.nrel.gov/wind/</a>
Hazardous Waste Recycling Day	VOCs	Reduces exposure to toxic materials and mercury	Collection day for neighborhood hazardous waste items such as paint, mercury thermometers, solvents so that items will be properly handled.	<a href="http://www.earth911.org/master.asp">http://www.earth911.org/master.asp</a> Cleveland CleanAir Campaign: <a href="http://www.ohiolung.org/ccacc.htm">http://www.ohiolung.org/ccacc.htm</a>
Stage II - Reductions for gasoline stations, underground storage tanks, and other similar sources	VOCs	Reduces BTEX, MBTE and air toxic emissions, reduced fuel usage, fewer leaks and required cleanups of soil and groundwater	Actions to reduce emissions at gasoline stations and underground storage tanks through activities such as training, Get a grip - don't drip campaigns, don't top off your gas tank, maintenance inspections, add-on pollution controls, in-station diagnostics, and leak free drop fittings.	<a href="http://www.epa.gov/donttopoff/">http://www.epa.gov/donttopoff/</a>
Greenscaping	VOCs NOx CO	Reduces material use, pesticide, fertilizer and water use; yields energy savings by reduced mower use. Reduces greenhouse gas emissions.	Cost-efficient and environmentally friendly solutions using natural landscaping which requires less mowing, weeding or core aeration and significantly less water	<a href="http://www.epa.gov/greenskapes/">http://www.epa.gov/greenskapes/</a> <a href="http://www.cleanaircounts.org/naturallandscaping.shtml">http://www.cleanaircounts.org/naturallandscaping.shtml</a>

Type of Measure	Pollutants/ Precursors Addressed	Co-benefits	Description	Additional Information/Contact
Wood stove Change-out program	PM VOC	Reduces PAH emissions, improves indoor air quality	Encourage the replacement of highly polluting pre-1990 wood stoves with EPA certified or gas stoves	<a href="http://www.epa.gov/woodstoves/">http://www.epa.gov/woodstoves/</a>
“Burn-it-Smart”	PM	Reduces PAH emissions	Workshops put on in communities to educate local residents on issues related to wood stoves such as health effects, fire safety, proper burning techniques and stove selection	
School siting criteria	Ozone PM	Reduces air toxics, decreased reliance on motorized transportation; increased opportunities for physical exercise; transportation savings for school districts; reduced on-board pollutant exposure; reduced emissions from idling school buses. High schools: less need for parking and lower accident rate for students who would otherwise drive to school.	The EPA has issued guidance that encourages school districts to adopt alternative school siting criteria that allows/encourages the siting of new schools in or near where students live as opposed to greenfields sites on the outskirts of the urban area. Closer in schools enable students to walk or bike to school rather than drive or be driven. Guidance also encourages retrofit of existing buildings in urban areas to create more school space as an alternative to building new space from the ground up.	<a href="Http://www.epa.gov/schools/">Http://www.epa.gov/schools/</a>

Type of Measure	Pollutants/ Precursors Addressed	Co-benefits	Description	Additional Information/Contact
Smart Growth	VOCs NOx PM	Reduced air toxics and greenhouse gas emissions, increased opportunity for physical exercise, thereby reducing medical costs associated with obesity-related chronic illnesses such as high blood pressure, heart disease and diabetes. Increased mobility for all segments of the population and increased fuel savings. Works synergistically with land use and transportation measures: school siting, greenscaping, sidewalks, BWC, transit incentives, streetscape improvements.	Dense, mixed use development combined with pedestrian/bike amenities and streetscape design to enable/encourage walking, biking and transit as viable alternatives to the single occupancy vehicle.	<a href="http://www.epa.gov/smartgrowth/">http://www.epa.gov/smartgrowth/</a> <a href="http://www.cdc.gov/nccdphp/dnpa/aces.htm">http://www.cdc.gov/nccdphp/dnpa/aces.htm</a> <a href="http://www.epa.gov/otaq/transp/traqsusd.htm">http://www.epa.gov/otaq/transp/traqsusd.htm</a>
Walking school bus	Ozone PM air toxics	Increases opportunities for physical exercise for parents and children. Decreased fuel consumption; on-board exposure to CO and PM; greenhouse gas emissions and emissions from idling school buses near schools. Also transportation savings for school districts.	In neighborhoods that are within walking distance of their assigned school, parents rotate the responsibility of walking groups of students to school in lieu of transporting by bus or by car.	<a href="http://www.walkingschoolbus.org/">http://www.walkingschoolbus.org/</a>

## APPENDIX D

### HOW TO CALCULATE THE MAXIMUM EMISSIONS REDUCTIONS ALLOWED FOR BUNDLED MEASURES IN A SIP

*The following example is for illustrative purposes only*

Let's assume that an area's base year emissions level (e.g., in the year 1990 for the 1-hour ozone plans) is 1,200 tons per day and that modeling shows that the area would attain the NAAQS if emissions were reduced to 400 tons per day. Also assume that, taking into account the benefits of regulations adopted before the plan is prepared, the projected emissions level in the attainment year is 700 tons per day, including the benefits of all Federal mobile source regulations issued before the plan's adoption date. In this example, the increment necessary for attainment would be 300 tons per day (700 - 400 tons per day).

Applying the six percent limit on the use of voluntary and emerging stationary source measures, the State's attainment demonstration may include up to 18 tons per day from these measures (6% of 300 tons per day). Applying the three percent limit on the use of voluntary mobile source measures, the State's attainment demonstration may include up to 9 tons per day from these measures (3% of 300 tons per day). The result is a total of 27 tons per day from all voluntary and emerging measures (18 tons per day from all voluntary and emerging stationary source measures and 9 tons per day from all voluntary mobile source measures). The individual 18 and 9 ton limits apply whether or not the measures are bundled.

Applying the nine percent limit on the total of all emissions reductions that may be included as bundled measures in a SIP, the State's attainment demonstration may include up to 27 tons per day from bundled measures (9% of 300 tons per day). The 27 ton limit applies to the total of all bundled measures, which may include voluntary and emerging stationary source measures, voluntary mobile source measures and small scale traditional measures. If two or more bundles of measures were proposed, the emissions reductions from all bundles should not exceed the 27 tons.

## **APPENDIX E**

### **BUNDLED MEASURES SIP EXAMPLE**

The following December 23, 2004 and May 12, 2005 Federal Register Notices, titled “Approval and Promulgation of Air Quality Implementation Plans; Maryland and Virginia; Non-Regulatory Voluntary Emission Reduction Program Measures,” provide an example of bundled SIP measures.

Quality Division, 51 N Street, NE., Washington, DC 20002.

**FOR FURTHER INFORMATION CONTACT:** Ellen Wentworth, (215) 814-2034, or by e-mail at [wentworth.ellen@epa.gov](mailto:wentworth.ellen@epa.gov).

**SUPPLEMENTARY INFORMATION:** For further information, please see the information provided in the direct final action, District of Columbia's Approval of VOC Emission Standards for Mobile Equipment Repair and Refinishing in the Metropolitan Washington, DC ozone nonattainment area, that is located in the "Rules and Regulations" section of this Federal Register publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule, and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: December 14, 2004.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 04-28088 Filed 12-22-04; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[R03-OAR-2004-MD-0001; R03-OAR-2004-VA-0005; FRL-7852-8]

#### Approval and Promulgation of Air Quality Implementation Plans; Maryland and Virginia; Non-Regulatory Voluntary Emission Reduction Program Measures

**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 and by the Commonwealth of Virginia. These revisions establish a number of non-regulatory measures for which Maryland and Virginia seek SIP credit in rate-of-progress and attainment planning for the Metropolitan Washington DC 1-hour ozone nonattainment area (the Washington area). The intended effect of this action is to propose approval of SIP revisions submitted by Maryland and Virginia which establish certain non-regulatory measures. The non-regulatory measures include use of low-or-no-VOC content paints by certain state and local government agencies, auxiliary power units on locomotives, sale of reformulated consumer products in the

Northern Virginia area, accelerated retirement of portable fuel containers by certain state and local government agencies, and renewable energy measures (wind-power purchases by certain local government agencies). This action is being taken under section 110 of the Clean Air Act (CAA or the Act).

**DATES:** Written comments must be received on or before January 24, 2005.

**ADDRESSES:** Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03-OAR-2004-MD-0001 and R03-OAR-2004-VA-0005 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](mailto:morris.makeba@epa.gov).

D. Mail: R03-OAR-2004-MD-0001/R03-OAR-2004-VA-0005, 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-MD-0001 and/or R03-OAR-2004-VA-0005. 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](http://www.regulations.gov) or e-mail. The EPA RME and the Federal [regulations.gov](http://www.regulations.gov) websites 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](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 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 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.

**FOR FURTHER INFORMATION CONTACT:** Christopher Cripps, (215) 814-2179, or by e-mail at [cripps.christopher@epa.gov](mailto:cripps.christopher@epa.gov).

**SUPPLEMENTARY INFORMATION:** On February 19, 2004 and February 25, 2004, respectively, the Maryland Department of the Environment (MDE) and the Virginia Department of Environmental Quality (VA DEQ) both submitted revisions to their SIPs. These SIP revisions included, among other things, amendments to the 1990 base year emissions inventory for the Metropolitan Washington DC 1-hour ozone nonattainment area (the Washington area), a rate-of-progress (ROP) plan for 1999 through 2005, an attainment demonstration, a contingency measure plan, enforceable commitments to conduct a mid-course review, a demonstration that the SIP contains sufficient transportation control measures to offset, as necessary, growth in vehicle miles traveled (VMT), a suite of transportation control measures and a suite of non-regulatory voluntary emission reduction measures.

This proposed rule pertains only to the suite of non-regulatory voluntary measures. The other portions of these SIP revisions are the subjects of will be addressed in separate rulemaking actions.

### I. Background

#### A. What Are Non-Regulatory Voluntary Emission Reduction Program Measures and EPA's Voluntary Emission Reduction Program Measure Policies?

Many areas of the country that are designated as nonattainment are finding it increasingly difficult to find ways to achieve additional emission reductions needed to attain the National Ambient Air Quality Standards (NAAQS). Many areas have already applied reasonably available control technology (RACT) and other controls to stationary sources and are still not attaining the NAAQS. In some cases, areas have chosen to control sources well beyond RACT levels, but still cannot attain the standards. In some cases, areas may need or may choose to implement additional measures more rapidly than can be done by completing the full regulatory adoption process. These areas need to find additional innovative emission reduction approaches. One way to accomplish this is through voluntary emission reduction program measures. Voluntary emission reduction program measures are an alternative to traditional "command and control" approaches, and have the potential to encourage new, untried and cost-effective approaches to reduce emissions.

A voluntary emission reduction program measure is an action by a source that will reduce emissions of a criteria pollutant or a precursor to a criteria pollutant that the State could claim as an emission reduction in its SIP for purposes of demonstrating attainment, ROP towards attainment, reasonable further progress (RFP) toward attainment or maintenance of the NAAQS, but that is not directly enforceable against the source. Examples of a voluntary emission reduction program measure could include retail operations agreeing not to sell high emitting VOC products during the ozone season, or programs designed to educate consumers or sources about the effects of their actions on the environment. Under EPA's guidance, voluntary emission reduction program measures can be approved if the State retains enforceable responsibility for the reduction and meets certain other obligations.

EPA has issued guidance and policy for incorporating voluntary emission

reduction program measures into SIPs. The first such guidance was a October 27, 1997 memorandum from Richard D. Wilson, Acting Assistant Administrator for Air and Radiation, entitled "Guidance on Incorporating Voluntary Mobile Source Emission Reduction Programs in State Implementation Plans (SIPs)," which was reissued in section 16.4 "Guidance on Voluntary Emission Reduction Programs" of "Improving Air Quality with Economic Incentive Programs," United States Environmental Protection Agency, Office of Air and Radiation, EPA-452/R-01-001, January 2001. The second was a January 19, 2001 Memorandum from John Seitz, Director, Office of Air Quality Planning and Standards entitled "Incorporating Voluntary Stationary Source Emission Reduction Programs Into State Implementation Plans—Final Policy," which was reissued in section 16.4 "Guidance on Voluntary Emission Reduction Programs" of "Improving Air Quality with Economic Incentive Programs," United States Environmental Protection Agency, Office of Air and Radiation, EPA-452/R-01-001, January 2001.

Additional policy and guidance was the August 5, 2004 cover memorandum from Brian McLean, Director, Office of Atmospheric Programs, and from Stephen D. Page, Director, Office of Air Quality Planning and Standards, entitled "Guidance on SIP Credits for Emission Reductions from Electric-sector Energy Efficiency and Renewable Energy Measures" that issued the August 2004 document "Guidance on State Implementation Plan (SIP) Credits for Emission Reductions from Electric-sector Energy Efficiency and Renewable Energy Measures."

Voluntary emission reduction program measures cannot replace existing measures in the SIP and must be surplus to *technology-based requirements* of the Act, which include but which are not necessarily limited to, RACT, BACT, LAER, NSPS or NESHAP limits, or rules such as those for reducing VOC emissions promulgated pursuant to section 183 of the Act, or those assumed in a permit (such as offsets), or those needed to demonstrate conformity with the SIP pursuant to 40 CFR part 93 and section 176 of the Act.

EPA believes the authority for voluntary emission reduction program measures derives from various provisions of the Act including: sections 110 and 172 regarding emission reductions needed to achieve attainment of the NAAQS; section 182 regarding economic incentive provisions; and, in the case of mobile source measures,

section 108 regarding transportation control measures (TCMs).

While the policies do not require that reduction actions be enforceable against individual sources, they place clear responsibility on a State to ensure that the emission reductions take place. State responsibility includes a commitment to evaluate the effectiveness of each measure and, in the event the voluntary emission reduction program measures does not achieve the projected emission reductions, to remedy any SIP shortfall by providing enforceable emission reductions from other sources or by showing that the emission reductions are not needed to achieve attainment, maintenance, or RFP/ROP requirements.

#### B. What Are Voluntary Mobile Source Emission Reduction Programs?

Voluntary emission reduction program measures for mobile sources are measures that complement existing regulatory programs through voluntary, non-regulatory changes in local transportation activities or changes in-use vehicle fleet and engine fleet composition. EPA believes that the Act allows SIP credit for new approaches to reducing mobile source emissions, where supported by enforceable commitments to monitor and assess implementation and backfill any emissions reductions shortfall in a timely fashion. This flexible approach is consistent with section 110 of the CAA. Economic incentive provisions are also available in sections 182 and 108 of the Act. Credits generated through VMEP can be counted toward attainment and maintenance of the NAAQS. Due to the innovative nature of such a program, EPA will allow up to 3 percent of the total future year emissions reductions required to attain the appropriate NAAQS, to be claimed under the VMEP policy.<sup>1</sup>

#### C. What Are Voluntary Stationary Source Emission Reduction Programs?

The stationary source policy covers what are commonly referred to as "area" sources which are too small and/or too numerous to be individually included in a stationary source emissions inventory. This category could include facilities that directly emit applicable

<sup>1</sup> See the October 27, 1997 memorandum from Richard D. Wilson, Acting Assistant Administrator for Air and Radiation, entitled "Guidance on Incorporating Voluntary Mobile Source Emission Reduction Programs in State Implementation Plans (SIPs)," which was reissued in section 16.4 "Guidance on Voluntary Emission Reduction Programs" of "Improving Air Quality with Economic Incentive Programs," United States Environmental Protection Agency, Office of Air and Radiation, EPA-452/R-01-001, January 2001.

criteria pollutants or their precursors, such as very small printers or bakeries. It could also include products sold by wholesale or retail operations that may emit criteria pollutants or their precursors and individual consumers that may use products which emit criteria pollutants or their precursors.

**D. What Are Electric-Sector Energy Efficiency and Renewable Energy Measures?**

Another category of voluntary emission reduction program measures are those electric-sector energy efficiency and renewable energy projects, initiatives or measures that will result in quantifiable reductions in emissions at existing fossil fuel-fired electric generating units and will improve air quality in a nonattainment area.

Some examples of specific energy efficiency or renewable energy projects could include, but are not necessarily

limited to supply-side measures, which include new and innovative initiatives to increase the efficiency or decrease the emissions from electricity generation, such as renewable energy projects like wind powered generation.

**E. What Qualifies for SIP Credit?**

The basic framework for ensuring SIP credit for voluntary emission reduction program measures is spelled out in the various guidance discussed in previous paragraphs. Generally, to obtain credit for voluntary emission reduction program measures, a State submits a SIP revision that:

- (1) Identifies and describes the measure(s);
- (2) Contains projections of emission reductions attributable to the program, along with any relevant technical support documentation;
- (3) Commits to evaluation and reporting on program implementation and results; and

(4) Commits to the timely remedy of any credit shortfall should the measure(s) not achieve the anticipated emission reductions.

More specifically, the guidance suggests the following key points be considered for approval of credits. The credits should be quantifiable, surplus, enforceable, permanent, and adequately supported. In addition, the measure(s) must be consistent with attainment of the standard and with the ROP requirements and not interfere with other CAA requirements.

**II. Summary of SIP Revisions Submitted by Maryland and Virginia**

**A. What Voluntary Emission Reduction Program Measures Did the States Submit?**

The States submitted program descriptions that projected emission reductions attributable to each specific measure. Those estimates are provided in Table 1.

TABLE 1.—LIST OF VOLUNTARY EMISSION REDUCTION PROGRAM MEASURES

Measure	State	VOC reduction (tons/day)	NO <sub>x</sub> reduction (tons/day)	Voluntary emission reduction program measures policy
Gas Can (portable fuel containers) Replacement Program.	VA, MD ....	0.01 .....	0.00 .....	Stationary Source.
Sale of Reformulated Consumer Products .....	VA .....	3.00 .....	0.00 .....	Stationary Source.
Low-VOC Paints Program .....	VA, MD ....	0.17 .....	0.00 .....	Stationary Source.
Auxiliary Power Units on Locomotives .....	VA .....	0.01 .....	0.13 .....	Mobile Sources.
Montgomery County Regional Wind Power Purchase.	MD .....	0.00 .....	0.05 .....	Renewable Energy.
Arlington County Regional Wind Power Purchase ..	VA .....	0.00 .....	0.005 .....	Renewable Energy.
Remote Sensing Device Program .....	VA .....	No Credit .....	No Credit .....	Mobile Sources.
Alternative Fueled Vehicle (AFV) Purchase Program.	VA .....	No Credit .....	No Credit .....	Mobile Sources.
Diesel Bus Retrofit Program .....	VA .....	No Credit .....	No Credit .....	Mobile Sources.

A more detailed analysis of all these voluntary emission reduction program measures can be found in the Technical Support Document (TSD) for this proposed action. That TSD is included in both the hard copy and E-docket for this rulemaking. For each voluntary emission reduction program measure for which the States claimed emission reduction credit, the measure was found to be quantifiable. The reductions are surplus by not being substitutes for mandatory, required emission reductions. The commitment to monitor, assess and timely remedy any shortfall from implementation of the measures is enforceable and the State held accountable. The reductions will continue at least for as long as the time period in which they are used by this SIP demonstration, so they are considered permanent. Each measure is adequately supported by personnel and

program resources for implementation. The States commit to evaluating each program's measures to validate estimated credits and to remedy any shortfall in a timely manner.

**B. What Limitations Apply to the Magnitude of Emissions Reductions That Can Be Attributable to Voluntary Emission Reduction Program Measures?**

For a variety of reasons, such as the innovation involved in voluntary emission reduction program measures, inexperience in quantifying them, and the inability to enforce these measures against individual sources, EPA believes that at this time it is appropriate to limit the amount of emission reductions allowed from voluntary emission reduction program measures. Initially, we set an appropriate limit for stationary source voluntary emission reduction program measures and for

mobile source voluntary emission reduction program measures each at 3 percent of needed reductions for ROP, RFP, or attainment demonstration purposes. (This is not 3 percent of an area's total emission inventory, but 3 percent of the reductions needed to achieve the air quality goal such as ROP or attainment.)

The amounts of emission reductions claimed from voluntary emission reduction program measures in the Maryland and Virginia SIP revisions are far less than 3 percent of the reduction needs. For these voluntary emission reduction program measures, the States claim no more than 0.2 tons per day (TPD) of NO<sub>x</sub> and 3.2 TPD for VOC reductions. To meet the 2002 and 2005 ROP goals, the plan documents needed reductions of over 170 TPD of VOC and over 250 TPD of NO<sub>x</sub>. To demonstrate attainment, the plan documents needed

reductions of well over 170 TPD of VOC and over 250 TPD of NO<sub>x</sub>. The reductions from voluntary emission reduction program measures represent less than 0.1 percent (0.2/250) of the needed NO<sub>x</sub> reductions and less than 2 percent (3.2/170) of the needed VOC reductions.

*C. What Action Is EPA Proposing for the Voluntary Emission Reduction Program Measures?*

We propose to approve the voluntary emission reduction program measures listed in Table 1 of this document as revisions to the Maryland and Virginia SIPs. All of these measures can be expected to have some beneficial effect

on air quality by reducing emissions. Additionally, for those voluntary emission reduction program measures for which the States quantified reductions EPA is proposing to approve emission reduction credit towards ROP and/or the attainment demonstration for the Washington area in the amounts shown in Table 2.

TABLE 2.—EMISSION REDUCTIONS CREDITABLE FROM VOLUNTARY EMISSION REDUCTION PROGRAM MEASURES FOR THE METROPOLITAN WASHINGTON, DC AREA

Measure	State	VOC TPD	NO <sub>x</sub> TPD	Implementation date
Gas Can Replacement Program				
Maryland National Capital Parks & Planning Commission, Prince George's County.	MD .....	0.0027	.....	4/2005
Montgomery County .....	.....	0.00088	.....	12/2004
Prince George's County .....	.....	0.00231	.....	1/2004
Maryland totals .....	.....	0.00589	0.00	
Fairfax County .....	VA .....	0.00277	.....	5/2005
City of Fairfax .....	.....	0.00138	.....	7/2004
City of Fairfax Contractors .....	.....	0.00060	.....	7/2004
Prince William County .....	.....	0.0009	.....	5/2005
Arlington County .....	.....	0.0021	.....	5/2005
Virginia totals .....	0.005657	.....	0.00	.....
Total Area-wide Reduction—Gas Can Replacement Program .....	.....	0.01	0.00	
Sale of Reformulated Consumer Products .....	VA .....	3.00	0.00	1/2005
Low-VOC Paints Program				
Prince George's County .....	MD .....	0.002	.....	5/2005
Maryland National Capital Parks & Planning Commission, Prince George's County.	.....	0.006	.....	12/2003
MDOT Traffic Marking Coatings .....	.....	0.149	.....	12/2003
Maryland totals .....	.....	0.157	0.00	
Virginia totals—Fairfax County .....	VA .....	0.017	.....	4/2004
Total Area-wide Reduction—Low-VOC Paints Program .....	.....	0.174	0.00	
Montgomery County Regional Wind Power Purchase .....	MD .....	0.00	0.05	12/2004
Auxiliary Power Units on Locomotives .....	VA .....	0.01	0.13	3/2004
Arlington County Regional Wind Power Purchase .....	VA .....	0.00	0.005	5/2005

EPA approval of these voluntary emission reduction program measures for which credit is sought will obligate the States to monitor and remedy any shortfalls in reductions in accordance with their commitments to do so.

Under applicable EPA guidance and policy, for those non-regulatory voluntary measures for which States request approval but claim no reduction credits prospectively, the States may subsequently amend their SIPs with revisions documenting any emission reduction credits actually achieved. EPA would evaluate such revisions in accordance with applicable statute and regulations applicable to

implementation of the standard for which reduction credit is sought.

For those non-regulatory voluntary measures for which the Commonwealth of Virginia's February 25, 2004 SIP submittal did not quantify or request any emission reductions (*i.e.*, the Remote Sensing Device Program, the Alternative Fueled Vehicle (AFV) Purchase Program, and the Diesel Bus Retrofit Program), EPA is not proposing to approve reduction credit towards the ROP plan and attainment demonstration at this time. However approval of these measures into the Virginia SIP will still obligate the Commonwealth to monitor their effectiveness. The

Commonwealth's commitment included a description of how verification that the number of vehicles to be retrofitted or to be purchased were actually retrofitted and purchased. A "shortfall" would then be measured not in terms of emission reductions but in terms of vehicles not retrofitted or not purchased, or, may be measured by revising the SIP to quantify the shortfall in terms of emission reductions.

EPA believes approval of these measures will strengthen the SIP even where no credit is sought at this time. Some of these measures may also have other air quality benefits beyond attainment of the 1-hour and 8-hour

ozone NAAQS such as reduction of fine particulate matter. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

### III. Proposed Action

#### A. Maryland

EPA's review of this material indicates that Maryland's February 19, 2004 SIP submittal of non-regulatory voluntary emission reduction program measures for the Washington area meet the applicable requirements of EPA guidance and policy for approval. EPA is proposing to approve the following voluntary emission reduction program measures into the Maryland SIP: Montgomery County Regional Wind Power Purchase, Low-VOC Paints Program and Gas Can Replacement Program. Specifically, EPA is proposing to approve those measures found in section 7.6 entitled "Voluntary Bundle" of the document entitled "Plan to Improve Air Quality in the Washington, DC-MD-VA Region, State Implementation Plan (SIP) 'Severe Area SIP' Demonstrating Rate of Progress for 2002 and 2005; Revision to 1990 Base Year Emissions; and Severe Area Attainment Demonstration for the Washington DC-MD-VA Nonattainment Area" (dated February 19, 2004) and Appendix J to this plan. This February 19, 2004 document and its Appendix J were submitted to EPA by Maryland on February 19, 2004. EPA is also proposing to credit the Maryland SIP with the emission reductions for these measures shown in Table 2 of this document for the Washington area.

#### B. Virginia

EPA's review of this material indicates that Virginia's February 25, 2004 SIP submittal of non-regulatory voluntary emission reduction program measures for the Washington area meet the applicable requirements of EPA guidance and policy for approval. EPA is proposing to approve the following voluntary emission reduction program measures into the Virginia SIP: Low-VOC Paints Program, Sale of Reformulated Consumer Products, Gas Can Replacement Program, Remote Sensing Device Program, Arlington County Regional Wind Power Purchase, Auxiliary Power Units on Locomotives, Alternative Fueled Vehicle (AFV) Purchase Program and Diesel Bus Retrofit Program. Specifically, EPA is proposing to approve those measures found in section 7.6 entitled "Voluntary Bundle" of the document entitled "Plan to Improve Air Quality in the

Washington, DC-MD-VA Region, State Implementation Plan (SIP) 'Severe Area SIP' Demonstrating Rate of Progress for 2002 and 2005; Revision to 1990 Base Year Emissions; and Severe Area Attainment Demonstration for the Washington DC-MD-VA Nonattainment Area" (dated February 19, 2004) and Appendix J to this plan. This February 19, 2004 document and its Appendix J were submitted to EPA by Virginia on February 25, 2004. EPA is also proposing to credit the Virginia SIP with the emission reductions shown in Table 2 of this document for the Washington area.

### IV. 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 (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (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 Maryland and Virginia voluntary emission reduction program measures 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, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: December 14, 2004.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 04-28090 Filed 12-22-04; 8:45 am]

BILLING CODE 6560-50-P

## EPA-APPROVED REGULATIONS IN THE MARYLAND SIP—Continued

Code of Maryland Administrative Regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100
26.11.33.04 .....	General Standard—VOC Content Limits .....	3/29/04	5/12/05 [Insert page number where the document begins].	
26.11.33.05 .....	VOC Content Limits .....	3/29/04	5/12/05 [Insert page number where the document begins].	
26.11.33.06 .....	Most Restrictive VOC Limit .....	3/29/04	5/12/05 [Insert page number where the document begins].	
26.11.33.07 .....	Painting Restrictions .....	3/29/04	5/12/05 [Insert page number where the document begins].	
26.11.33.08 .....	Thinning .....	3/29/04	5/12/05 [Insert page number where the document begins].	
26.11.33.09 .....	Rust Preventive Coatings .....	3/29/04	5/12/05 [Insert page number where the document begins].	
26.11.33.10 .....	Coatings Not Listed in Regulation .05 .....	3/29/04	5/12/05 [Insert page number where the document begins].	
26.11.33.11 .....	Lacquers .....	3/29/04	5/12/05 [Insert page number where the document begins].	
26.11.33.12 .....	Container Labeling Requirements .....	3/29/04	5/12/05 [Insert page number where the document begins].	
26.11.33.13 .....	Reporting Requirements .....	3/29/04	5/12/05 [Insert page number where the document begins].	
26.11.33.14 .....	Compliance Provisions and Test Methods .....	3/29/04	5/12/05 [Insert page number where the document begins].	

\* \* \* \* \*

[FR Doc. 05-9314 Filed 5-11-05; 8:45 am]  
BILLING CODE 6560-60-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[R03-OAR-2004-MD-0001; R03-OAR-2004-VA-0005; FRL-7909-9]

### Approval and Promulgation of Air Quality Implementation Plans; Maryland and Virginia; Non-Regulatory Voluntary Emission Reduction Program Measures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

**SUMMARY:** EPA is approving State Implementation Plan (SIP) revisions submitted by the State of Maryland and by the Commonwealth of Virginia. These revisions establish a number of non-regulatory measures for which Maryland and Virginia seek SIP credit

in rate-of-progress and attainment planning for the Metropolitan Washington, DC 1-hour ozone nonattainment area (the Washington area). The intended effect of this action is to approve SIP revisions submitted by Maryland and Virginia which establish certain non-regulatory measures. The non-regulatory measures include use of low-or-no-volatile organic compound (VOC) content paints by certain State and local government agencies; auxiliary power units on locomotives; sale of reformulated consumer products in the Northern Virginia area; accelerated retirement of portable fuel containers by certain State and local government agencies; and, renewable energy measures (wind-power purchases by certain local government agencies).

**DATES:** This final rule is effective on June 13, 2005.

**ADDRESSES:** EPA has established a docket for each of the SIP revisions subject to this action under Regional Material in EDocket (RME) ID Numbers

R03-OAR-2004-MD-0001 and R03-OAR-2004-VA-0005. All documents in the docket are listed in the RME index at <http://www.docket.epa.gov/rmepub/>. Once in the system, select "quick search," then key in the appropriate RME identification number. Although listed in the electronic docket, some information is not publicly available, *i.e.*, confidential business information (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 for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230; and the Virginia

Department of Environmental Quality,  
629 East Main Street, Richmond,  
Virginia 23219.

**FOR FURTHER INFORMATION CONTACT:**  
Christopher Cripps, (215) 814-2179, or  
by e-mail at [cripps.christopher@epa.gov](mailto:cripps.christopher@epa.gov).  
**SUPPLEMENTARY INFORMATION:**

### I. Background

On December 23, 2004 (69 FR 76889), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland and for the Commonwealth of Virginia. The NPR proposed approval of

non-regulatory measures that include use of low-or-no-VOC content paints by certain State and local government agencies; auxiliary power units on locomotives; sale of reformulated consumer products in the Northern Virginia area; accelerated retirement of portable fuel containers by certain State and local government agencies; and, renewable energy measures (wind-power purchases by certain local government agencies). On February 19, 2004 and February 25, 2004, respectively, the Maryland Department

of the Environment (MDE) and the Virginia Department of Environmental Quality (VA DEQ) each submitted the formal revisions to their SIPs.

### II. Summary of SIP Revision

The States submitted program descriptions that projected VOC and nitrogen oxides (NO<sub>x</sub>) tons per day (TPD) emission reductions attributable to each specific measure. Those estimates are provided in Table 1.

TABLE 1.—EMISSION REDUCTIONS CREDITABLE FROM VOLUNTARY EMISSION REDUCTION PROGRAM MEASURES FOR THE METROPOLITAN WASHINGTON DC AREA

Measure	State	VOC TPD	NO <sub>x</sub> TPD	Implementation date
<b>Gas Can Replacement Program:</b>				
Maryland National Capital Parks & Planning Commission, Prince George's County .....	MD .....	0.0027	.....	4/2005
Montgomery County .....	.....	0.00088	.....	12/2004
Prince George's County .....	.....	0.00231	.....	1/2004
<b>Maryland totals .....</b>	.....	<b>0.00589</b>	<b>0.00</b>	.....
<b>Virginia:</b>				
Fairfax County .....	VA .....	0.00277	.....	5/2005
City of Fairfax .....	.....	0.00138	.....	7/2004
City of Fairfax Contractors .....	.....	0.00060	.....	7/2004
Prince William County .....	.....	0.00090	.....	5/2005
Arlington County .....	.....	0.00210	.....	5/2005
<b>Virginia totals .....</b>	.....	<b>0.00565</b>	<b>0.00</b>	.....
<b>Total Maryland and Virginia Area-wide Reductions—Gas Can Replacement Program (Rounded).</b>	.....	<b>0.01</b>	<b>0.00</b>	.....
<b>Sale of Reformulated Consumer Products .....</b>	<b>VA .....</b>	<b>3.00</b>	<b>0.00</b>	<b>1/2005</b>
<b>Low-VOC Paints Program:</b>				
Prince George's County .....	MD .....	0.002	.....	5/2005
Maryland National Capital Parks & Planning Commission, Prince George's County .....	.....	0.006	.....	12/2003
MDOT Traffic Marking Coatings .....	.....	0.149	.....	12/2003
<b>Maryland totals .....</b>	.....	<b>0.157</b>	<b>0.00</b>	.....
<b>Virginia totals—Fairfax County .....</b>	<b>VA .....</b>	<b>0.017</b>	.....	<b>4/2004</b>
<b>Total Maryland and Virginia Area-wide Reduction—Low-VOC Paints Program (Rounded) ....</b>	.....	<b>0.17</b>	<b>0.00</b>	.....
Montgomery County Regional Wind Power Purchase .....	MD .....	0.00	0.05	12/2004
Auxiliary Power Units on Locomotives .....	VA .....	0.01	0.13	3/2004
Arlington County Regional Wind Power Purchase .....	VA .....	0.00	0.00	5/2005

A more detailed analysis of all these voluntary emission reduction program measures can be found in the Technical Support Document (TSD) for this action. That TSD is included in both the hard copy and E-docket for this rulemaking.

### 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 section 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 Clean Air Act, 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 Clean Air Act is likewise unaffected by this, or any, state audit privilege or immunity law.

Other specific requirements of the bundle of voluntary emission reduction program measures and the rationale for EPA's proposed action are explained in the NPR and will not be restated here.

#### IV. Public Comment

We received four sets of comments via letter and/or electronically during the public comment period. None of the comments were adverse to our proposed approval.

Three of the letters strongly supported the proposed approval of the nonregulatory measures in the Maryland and Virginia SIP revisions. Two of these letters observed that there is nothing voluntary about the State commitments in these SIP revisions even though these measures are titled "voluntary measures" by EPA. EPA agrees that the observation made in the comments is correct and reiterates EPA's policy regarding such measures. EPA's "voluntary measures" policies are to cover those emissions reduction strategies that are undertaken but are not made enforceable against the source through a traditional regulatory process or those strategies which are new or innovative. However, EPA ensures that the measures are enforceable against the state by requiring the state to commit to monitor the implementation and effectiveness of the measure and, where a reduction credit is sought by the SIP, to make-up any shortfall in emissions reductions.

The fourth letter was not opposed or adverse to the proposed action but rather asserted that there was a typographical error with regards to the emission reduction credit claimed by the Commonwealth of Virginia for the Arlington County wind power purchase measure. The comment letter asserts that the SIP sought no reduction credit from the measure. EPA has reexamined the SIP revision submitted by Virginia and agrees that EPA mistakenly proposed to credit the Arlington County wind power purchase measure with emission reduction credit. On page 7-78 of section 7.6 entitled "Voluntary Bundle" of the document entitled "Plan to Improve Air Quality in the Washington, DC-MD-VA Region, State Implementation Plan (SIP) "Severe Area SIP" Demonstrating Rate of Progress for 2002 and 2005; Revision to 1990 Base Year Emissions; and Severe Area Attainment Demonstration for the Washington DC-MD-VA Nonattainment Area" (dated February 19, 2004) in Virginia's February 25, 2004 SIP revision plainly states that "credits will not be awarded for purchases in Virginia jurisdictions."

Table 1 of this document reflects this change from Table 2 of the NPR.

#### V. Final Action

##### A. State of Maryland

EPA's review of this material indicates that Maryland's February 19, 2004 SIP submittal of non-regulatory voluntary emission reduction program measures for the Washington area meet the applicable requirements of EPA guidance and policy for approval. EPA is approving the following voluntary emission reduction program measures into the Maryland SIP: Montgomery County Regional Wind Power Purchase, Low-VOC Paints Program, and Gas Can Replacement Program. Specifically, EPA is approving those measures found in section 7.6 entitled "Voluntary Bundle" of the document entitled "Plan to Improve Air Quality in the Washington, DC-MD-VA Region, State Implementation Plan (SIP) "Severe Area SIP" Demonstrating Rate of Progress for 2002 and 2005; Revision to 1990 Base Year Emissions; and Severe Area Attainment Demonstration for the Washington DC-MD-VA Nonattainment Area" (dated February 19, 2004) and Appendix J to this plan. This February 19, 2004 document and its Appendix J were submitted to EPA by Maryland on February 19, 2004. EPA is crediting the Maryland SIP with the emission reductions for these measures shown in Table 2 of this document for the Washington area.

##### B. Commonwealth of Virginia

EPA's review of this material indicates that Virginia's February 25, 2004 SIP submittal of non-regulatory voluntary emission reduction program measures for the Washington area meet the applicable requirements of EPA guidance and policy for approval. EPA is approving the following voluntary emission reduction program measures into the Virginia SIP: Low-VOC Paints Program, Sale of Reformulated Consumer Products, Gas Can Replacement Program, Remote Sensing Device Program, Arlington County Regional Wind Power Purchase, Auxiliary Power Units on Locomotives, Alternative Fueled Vehicle (AFV) Purchase Program, and Diesel Bus Retrofit Program. Specifically, EPA is approving those measures found in section 7.6 entitled "Voluntary Bundle" of the document entitled "Plan to Improve Air Quality in the Washington, DC-MD-VA Region, State Implementation Plan (SIP) "Severe Area SIP" Demonstrating Rate of Progress for 2002 and 2005; Revision to 1990 Base Year Emissions; and Severe Area

Attainment Demonstration for the Washington DC-MD-VA Nonattainment Area" (dated February 19, 2004) and Appendix J to this plan. This February 19, 2004 document and its Appendix J were submitted to EPA by Virginia on February 25, 2004. EPA is crediting the Virginia SIP with the emission reductions shown in Table 2 of this document for the Washington area.

**VI. Statutory and Executive Order Reviews**

**A. General Requirements**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this 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 approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves 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 rule also does not have tribal implications because it will 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). This action also does not have federalism implications because it does not 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). This action merely approves 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 rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (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. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**B. Submission to Congress and the Comptroller General**

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate,

the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

**C. Petitions for Judicial Review**

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 11, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to approve Maryland and Virginia voluntary emission reduction program measures may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

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

Dated: May 2, 2005.

Donald S. Welsh,  
Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

**PART 52—[AMENDED]**

■ 1. The authority citation for part 52 continues to read as follows:

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

**Subpart V—Maryland**

■ 2. In §52.1070, the table in paragraph (e) is amended by adding the entry for the Non-Regulatory Voluntary Emission Reduction Program at the end of the table to read as follows:

**§ 52.1070 Identification of plan.**

\* \* \* \* \*  
(e) \* \* \*

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
Non-Regulatory Voluntary Emission Reduction Program.	Washington, DC severe 1-hour ozone nonattainment area.	2/19/04	5/12/05 [Insert page number where the document begins].	The nonregulatory measures found in section 7.6 and Appendix J of the plan.

**Subpart VV—Virginia**

the Non-Regulatory Voluntary Emission Reduction Program at the end of the table to read as follows:

§ 52.2420 Identification of plan.

- 3. In § 52.2420, the table in paragraph (e) is amended by adding the entry for

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
Non-Regulatory Voluntary Emission Reduction Program.	Washington, DC severe 1-hour ozone nonattainment area.	2/25/2004	5/12/05 [Insert page number where the document begins].	The nonregulatory measures found in section 7.6 and Appendix J of the plan.

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BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[WA-01-003; FRL-7906-3]

#### Approval and Promulgation of State Implementation Plans; State of Washington; Spokane Carbon Monoxide Attainment Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

**SUMMARY:** The EPA is approving State Implementation Plan (SIP) revisions submitted to EPA by the State of Washington that consist of A Plan for Attaining Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) in the Spokane Serious CO Nonattainment Area and changes to the Washington State Inspection and Maintenance Program.

The EPA is also approving certain source-specific SIP revisions relating to Kaiser Aluminum and Chemical Corporation of Spokane.

**DATES:** This final rule is effective on June 13, 2005.

**ADDRESSES:** EPA has established a docket for this action under Docket I.D. No. WA-01-003. Publicly available docket materials are available in hard copy at the Office of Air, Waste, and Toxics, Environmental Protection Agency, 1200 Sixth Ave., Seattle, Washington 98101. This Docket Facility is open from 8:30 a.m.—4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (206) 553-4273.

**FOR FURTHER INFORMATION CONTACT:** Connie Robinson, Office of Air, Waste and Toxics (OAWT-107), EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101; telephone number: (206) 553-1086; fax number: 206-553-

0110; e-mail address: [robinson.connie@epa.gov](mailto:robinson.connie@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, wherever "we," "us," or "our" is used, we mean the EPA. Information is organized as follows:

#### I. Background Information

On March 8, 2005, EPA published in the *Federal Register*, a proposal to approve the Spokane, Washington CO serious Attainment Plan, revisions to the Washington State Inspection and Maintenance (I/M) Program, and certain source-specific SIP revisions relating to Kaiser Aluminum and Chemical Corporation. See 70 FR 11179.

#### II. Public Comments on the Proposed Action

EPA provided a 30-day review and comment period and solicited comments on our proposal published in the March 8, 2005, *Federal Register*. No comments were received on the proposed rulemaking. EPA is now taking final action on the SIP revisions consistent with the published proposal.

#### III. Final Action

In this action, the EPA is approving revisions to the Washington State Implementation Plan. Specifically, we are approving the following elements of the Spokane CO Attainment Plan, submitted on September 20, 2001 and November 22, 2004:

- A. Procedural requirements, under section 110(a)(2) of the Act;
- B. Base year emission inventory, under sections 172(c)(3) and 187(a)(1) and periodic inventories under 187(a)(5) of the Act;
- C. Attainment demonstration, under section 187(a)(7) of the Act;
- D. The TCM program under 187(b)(2)182(d)(1) and 108(f)(1)(A) of the Act;
- E. VMT forecasts under section 187(a)(2)(A) of the Act;
- F. Contingency measures under section 187(a)(3) of the Act;

G. The conformity budget under section 176(c)(2)(A) of the Act and § 93.118 of the transportation conformity rule (40 CFR part 93, subpart A).

H. Administrative Order No. DE 01AQIS-3285 and Order No. DE 01AQIS-3285, Amendment #1 relating to Kaiser Aluminum and Chemical Corporation, Mead Works.

We are also approving a SIP revision submitted on September 26, 2001, to two sections of Washington Administrative Code (WAC) 173-422, Motor Vehicle Emission Inspection, to provide an inspection schedule for motor vehicles between 5 and 25 years old.

A Technical Support Document on file at the EPA Region 10 office contains a detailed analysis and rationale in support of the Spokane Serious Area Carbon Monoxide Plan and the WAC revisions.

#### IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this 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 approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves 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