

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 regarding Pennsylvania's RACM analysis for the Philadelphia area does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone.

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

Dated: August 24, 2001.

**Judith M. Katz,**

*Acting Regional Administrator, Region III.*

[FR Doc. 01-21926 Filed 8-29-01; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[DE034/045/055-1016; FRL-7047-4]

#### Approval and Promulgation of Air Quality Implementation Plans; Delaware; Post 1996 Rate-of-Progress Plan for the Delaware Portion of the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area and Revisions Related to the Area's Attainment Plan

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Delaware. These revisions establish the three (3) percent per year emission reduction rate-of-progress (ROP) requirement for the period from 1996 through 2005 for the Delaware portion of the Philadelphia-Wilmington-Trenton severe ozone nonattainment area (the Philadelphia area), namely Kent and New Castle Counties. In conjunction with the ROP plans, themselves, EPA is also proposing to approve Delaware's contingency measures for ROP. EPA is also proposing to approve two revised enforceable commitments submitted by Delaware in response to EPA's December 16, 1999 proposed rulemaking action to approve the Philadelphia area's attainment demonstration. This proposal serves to open a comment period on these proposed revisions to the attainment demonstration plan.

**DATES:** Written comments must be received on or before October 1, 2001.

**ADDRESSES:** Written comments may be mailed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available 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; Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

**FOR FURTHER INFORMATION CONTACT:** Rose Quinto, (215) 814-2182 or by e-mail at [quinto.rose@epa.gov](mailto:quinto.rose@epa.gov). Please note that while questions may be posed via

telephone and e-mail, formal comments must be submitted, in writing, as indicated in the **ADDRESSES** section of this document.

#### SUPPLEMENTARY INFORMATION:

##### I. Clean Air Act Requirements

For severe ozone nonattainment areas, the Clean Air Act (the Act) requires states to submit a plan to the United States Environmental Protection Agency (EPA) to achieve a fifteen (15) percent net reduction by November 15, 1996 of actual anthropogenic (human-caused) volatile organic compound (VOC) emissions. In addition to the 15 percent reduction, the Act also requires states to submit SIP revisions that achieve actual VOC emission reductions of at least 3 percent per year averaged over each consecutive 3-year period beginning November 1996, until the severe area's applicable attainment date of 2005. These ROP emission reductions are based on the states' 1990 emission levels. The Act also provides for crediting of VOC emission reductions achieved in the 1990-1996 period to the Post-1996 ROP plan if they are in excess of 15 percent VOC reductions requirements, and substitution of any anthropogenic nitrogen oxides (NO<sub>x</sub>) emission reductions, net of growth, occurring in the post-1990 period for the post-1996 VOC emission reduction requirements.

The SIP revision for the 1990-1996 reductions is termed the "15 Percent ROP plan," and the plans for an average 3 percent per year reduction over each 3-year period after 1996 are collectively termed the "Post-1996 ROP plan." The Post-1996 ROP plan for a severe area with an attainment date of 2005, has 3 milestone years, 1999, 2002 and 2005. To satisfy the Post-1996 Plan requirement, States generally developed separate plans for each 3 year period and refer to those plans as the 1999 ROP plan, the 2002 ROP plan and the 2005 ROP plan.

For states within the Ozone Transport Region (OTR) with serious and above ozone nonattainment areas, a memorandum dated March 2, 1995, from Mary D. Nichols, EPA's then Assistant Administrator for Air and Radiation, provides for a two-phased approach to the Post-1996 ROPs. Briefly, in Phase I, the states are required to develop a plan for the milestone year of 1999 which includes necessary control measures to achieve a 9 percent reduction of VOC and/or NO<sub>x</sub> emissions between November 1996 and November 1999. In Phase II, the states are required to assess the regional and local control measures necessary to meet the rate-of-progress requirements through the

attainment year and to achieve attainment. Thus severe ozone nonattainment areas such as the Philadelphia area, the Phase II plan needed to identify the measures needed to demonstrate ROP through the 2005 attainment year. States were to phase-in adoption of rules and implement measures to meet ROP beginning no later than 1999.

The Philadelphia nonattainment area is comprised of seven counties in New Jersey, five counties in Pennsylvania, two counties in Delaware and one county in Maryland. These jurisdictions made a collective decision that each would be responsible for producing ROP plans for its portion of the Philadelphia area using its 1990 baseline of emissions.

Section 172(c)(9) of the Act requires moderate and above ozone nonattainment areas to adopt contingency measures to be implemented should the area fail to achieve ROP or to attain by its attainment date. In addition, section 182(c)(9) of the Act requires serious and above areas to adopt contingency measures which would be implemented if the area fails to meet any applicable milestone.

Under EPA's transportation conformity rule, like an attainment plan, an ROP plan is referred to as a control strategy SIP (62 FR 43779). A control strategy SIP identifies and establishes the motor vehicle emissions budgets (MVEBs) to which an area's transportation improvement program and long range transportation plan must conform. Conformity to a control strategy SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standard.

On December 16, 1999, we published a notice of proposed rulemaking (NPR) proposing approval of the attainment demonstration SIP revision submitted by Delaware for the Philadelphia area (64 FR 70444). Our approval was contingent upon certain actions by Delaware for the Philadelphia area. These actions were: (1) Delaware had to adopt and submit an adequate motor vehicle emissions budgets including the benefits of the Federal Tier 2/Sulfur-in-Fuel rule (required because the Philadelphia area's attainment SIP includes the benefits of EPA's Tier 2/Sulfur-in-Fuel rule); and (2) Delaware had to adopt and submit enforceable commitments to do the following:

(a) Submit measures by October 31, 2001 for additional emission reductions as required in the attainment

demonstration test as discussed in section I.C.5. of the December 16, 1999 proposed approval. For additional emission reduction measures developed through the regional process, the state must also submit an enforceable commitment for the additional measures and a backstop commitment to adopt and submit intrastate measures for the emission reductions in the event the regional process does not recommend measures that produce emission reductions.

(b) Submit a revised SIP and motor vehicle emissions budgets by October 31, 2001 if additional measures affect the motor vehicle emissions inventory.

(c) Submit a revised SIP and motor vehicle emissions budgets one year after MOBILE6 issued.

(d) Perform a mid-course review.

On December 16, 1999, EPA proposed approval of the attainment demonstrations for ten ozone nonattainment areas in the eastern United States (64 FR 70317). On July 28, 2000, we published a supplemental notice of proposed rulemaking (SNPR) on the attainment demonstration (65 FR 46383). In that SNPR, we clarified and expanded on two issues relating to the motor vehicle emissions budgets for the SIP revisions subject to all of these December 16, 1999 proposed actions. In the July 28, 2000 SNPR, we reopened the comment period to take comment on these two issues and to allow comment on any additional materials that were placed in the dockets for the proposed actions close to or after the initial comment period closed on February 14, 2000. For many of the areas, including the Philadelphia area, covered by the July 28, 2000 SNPR, additional information had been placed in the docket during or after the initial comment period concluded. In general, the SNPR identified these materials as consisting of motor vehicle emissions budgets, and revised or additional commitments or reaffirmations submitted by the States (65 FR at 46387, July 28, 2000).

On January 24, 2000 (prior to July 28, 2000 but during the original comment period), DNREC submitted revised motor vehicle emissions budgets that reflect the benefits from EPA's Tier 2/Sulfur rule and the enforceable commitments to: (1) Adopt control measures consistent with the reductions assumed in the attainment plan, and assume reductions in transported NO<sub>x</sub> consistent with EPA's NO<sub>x</sub> SIP Call; (2) adopt additional measures that can be adopted regionally such as in the OTR, or locally; and (3) conduct a mid-course review. The comment period

established by the July 28, 2000 SNPR concluded on August 28, 2000.

As stated above, on January 24, 2000, Delaware submitted an addendum to its May 22, 1998 submittal of the Phase II attainment plan for the Philadelphia area that provided revised emission budgets for the on-road mobile source portion of the plan which reflect the benefits of the National Low Emission Vehicle program (NLEV), Heavy-Duty Diesel Engine (HDDE) rule, Reformulated Gasoline (RFG II) and the Tier 2/Low Sulfur rule. On May 31, 2000, EPA determined the attainment budgets to be adequate for transportation conformity purposes. That determination became effective on June 23, 2000 (65 FR 36440, June 8, 2000). As stated earlier, the submittal of January 24, 2000 also included the enforceable commitments.

As stated earlier, the attainment date for the Philadelphia area severe ozone nonattainment area is 2005. This rulemaking addresses the SIP revisions submitted by DNREC to satisfy the Post-1996 ROP requirements of the Act for the Delaware portion of the Philadelphia area, namely Kent and New Castle Counties. In this rulemaking, EPA is proposing to approve Delaware's plans demonstrating ROP through the 2005 attainment year. Also as part of this rulemaking, EPA is proposing to approve the contingency measures that were submitted with the Delaware ROP plans. EPA is also proposing to approve the two revised enforceable commitments that Delaware submitted in response to our December 16, 1999 proposed rulemaking.

## II. Delaware State Implementation Plan Submittals

### A. Rate-of-Progress Plans

All the aforementioned rate-of-progress emission reductions are to be from the state's 1990 emission levels. Delaware's 1990 Base Year Ozone Emission Inventory, which is an inventory of the 1990 actual VOC, NO<sub>x</sub>, and CO emissions from all sources in Delaware (stationary, on-road mobile, off-road mobile, area and biogenic), was submitted to EPA as a SIP revision on May 27, 1994, and was approved on January 24, 1996 (61 FR 1838). Delaware's actual 1990 VOC and NO<sub>x</sub> emissions are 196.52 tons per day (tpd) and 162.82 tpd, respectively. Since the ozone NAAQS attainment date for the Philadelphia area is 2005, Delaware is required to submit a 15 Percent ROP plan, and ROP plans for the three post-1996 milestone years, i.e., 1999, 2002, and 2005 for Kent and New Castle Counties. Delaware's 15 Percent ROP

was submitted to EPA as a SIP revision in February 17, 1995. In this plan, Delaware showed that, by implementing necessary control measures, the required 15 percent VOC emission reduction could be successfully met by 1996. EPA fully approved Delaware's 15 Percent ROP on October 12, 1999 (64 FR 55139).

Delaware's 1999 ROP plan, the first post-1996 SIP revision developed according to the Phase I requirements set forth in the Nichols' memorandum, was submitted to EPA on December 29, 1997. On June 17, 1999, Delaware submitted amendments to the 1999 ROP plan. The Phase I plan contained the first 9 percent ROP demonstration for the 1999 milestone year, and enforceable commitments to address the first phase of the attainment plan. On May 22, 1998, Delaware submitted the Phase II attainment demonstration document for the Philadelphia area. EPA asked Delaware to submit additional technical information for the Phase II plan. Delaware submitted the Phase II supplement on October 8, 1998. In the May 22, 1998 submittal, Delaware made a commitment to submit a SIP revision to EPA before the end of 2000 to address the emission reductions for the post-1999 rate of progress milestone years up to the 2005 attainment date for the one hour ozone standard (*i.e.*, 2002, 2005). Delaware submitted its 2002 ROP plan on February 3, 2000 and amendments to that plan on December 20, 2000. Delaware submitted its 2005 ROP plan on December 20, 2000.

#### *B. Amendments to the Attainment Demonstration*

On December 20, 2000, Delaware submitted amendments to the enforceable commitments it previously had submitted as required by our December 16, 1999 proposed action. These amendments involve commitments made by Delaware to: (1) Submit by October 31, 2001, additional measures for additional emission reductions, and (2) revise the SIP and the motor vehicle emission budgets within a year of the release of MOBILE6. The commitments submitted on December 20, 2000 have been placed in

docket for the attainment demonstration SIP. We are proposing to approve these revised enforceable commitments, which were submitted on December 20, 2000, as part of Delaware's attainment demonstration SIP for the Philadelphia area. We are soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional Office listed in the ADDRESSES section of this document.

### **III. EPA Evaluation of Delaware's Post 1996 ROP Submittals**

#### *A. Demonstrating Rate of Progress*

##### **Target Levels of VOC and NO<sub>x</sub> Emissions**

The first step in demonstrating ROP is to determine the target level of allowable emissions for each ROP milestone year. The target level of emissions represents the maximum amount of emissions that can be emitted in a nonattainment area in the given ROP milestone year, which in this case is 1999, 2002 or 2005. The Act allows states to substitute NO<sub>x</sub> emission reductions for VOC emission reductions in Post-1996 ROP plans. The required ROP is demonstrated when the sum of all creditable VOC and NO<sub>x</sub> emission reductions equal at least 3 percent per year grouped in three year periods (*i.e.*, 1996–1999), or for a total of 9 percent. If a state wishes to substitute NO<sub>x</sub> for VOC emission reductions, then a target level of emissions demonstrating a representative combined 9 percent emission reduction in VOC and NO<sub>x</sub> emissions must be developed for that milestone year. The six steps involved in calculating the target level of emissions for the milestone years are described below.

(1) Develop the 1990 base year inventory for VOC and NO<sub>x</sub>.

(2) Develop the 1990 baseline inventory. The baseline inventory is calculated by removing from the 1990 base year inventory: biogenic emissions, any emissions from the sources located outside of the nonattainment area, and

the non-reactive perchloroethylene (PERC) emissions (for VOC inventory only). In addition, the 1990 baseline inventory for Delaware's portion the Philadelphia area has been amended due to switching from the MOBILE5a model to the MOBILE5b model.

(3) Develop the 1990 adjusted base year inventory. The 1990 adjusted baseline inventory excludes VOC and NO<sub>x</sub> emissions reductions achieved by the Federal Motor Vehicle Program (FMVCP) and Reid Vapor Pressure (RVP) regulations promulgated prior to the enactment of the Act (Section 182 (b)(1)(D)).

(4) Calculate the fleet turnover correction term for the three year period. The fleet turnover correction is the difference between the FMVCP/RVP emission reductions calculated in step 3 and the previous milestone year's FMVCP/RVP emission reductions.

(5) Calculate the required VOC and NO<sub>x</sub> emission reduction to demonstrate ROP for each consecutive three year milestone interval (multiply the adjusted base year inventory by 0.09).

(6) Calculate the target levels of VOC and NO<sub>x</sub> emissions in each milestone years. The target levels in each milestone years are calculated by subtracting the required emission reductions (see step 5) and the fleet turnover corrections (see step 4) from the previous milestone year. One exception is the calculation of NO<sub>x</sub> emission target for the 1999 milestone year. Because 1999 is the first milestone year with respect to NO<sub>x</sub> emission reduction, the target calculation does not subtract the fleet turnover correction (EPA Guidance on the Post-1996 Rate of Progress Plan and Attainment Demonstration, February 1994).

Because Delaware used MOBILE5b in estimating the on-road mobile source emissions, the VOC and/or NO<sub>x</sub> target levels for 1996, 1999 and 2002 have also been recalculated to account for the use of MOBILE5b. The calculations and results are summarized in Table 1. The VOC and NO<sub>x</sub> emissions are in tons per day (tpd) in the peak ozone season (June 1 through August 31).

TABLE 1.—TARGET LEVELS OF VOC AND NO<sub>x</sub> EMISSIONS (IN TPD) IN EACH MILESTONE YEAR

Description	Emissions	
	VOC	NO <sub>x</sub>
1996 Target Level—VOC .....	115.79	.....
1990 Baseline Adjusted for 1999—NO <sub>x</sub> .....	.....	158.97
For the 1999 Milestone Year:		
Emission Reduction for Rate of Progress .....	2.08	11.84
Fleet Turnover Correction for 1996–1999 .....	1.90	0.00
Target Level for 1999 .....	111.81	147.13

TABLE 1.—TARGET LEVELS OF VOC AND NO<sub>x</sub> EMISSIONS (IN TPD) IN EACH MILESTONE YEAR—Continued

Description	Emissions	
	VOC	NO <sub>x</sub>
For the 2002 Milestone Year:		
Emission Reduction for Rate of Progress .....	11.16	0.98
Fleet Turnover Correction for 1999–2002 .....	1.2	0.43
Target Level for 2002 .....	99.45	145.72
For the 2005 Milestone Year:		
Emission Reduction for Rate of Progress .....	3.04	10.63
Fleet Turnover Correction for 2003–2005 .....	0.63	0.16
Target Level for 2005 .....	95.78	134.93

## Growth Projections (1990–2005)

Section 182(c)(2) of the Act requires Delaware's two severe ozone nonattainment counties (Kent and New Castle Counties) to achieve a 3 percent per year emissions reduction averaged over each consecutive 3-year period after 1996, plus offsetting emission growth, until 2005, the year of attainment for the Philadelphia area. To determine the total amount of VOC and NO<sub>x</sub> emissions reductions for 1999,

2002 and 2005 ROP, the emissions levels for the milestone years must be estimated. For this purpose, the growth factors are developed for various source categories of emissions based on economic indicators. The 1990 baseline emissions multiplied by these growth factors, and the resulting inventory is called the Current Control Projection Inventory. The current control projections are estimates of VOC and NO<sub>x</sub> emissions that will occur in each

milestone year, if no new emission control measures are implemented between 1990 and 2005. The differences between the milestone year current control projections and the milestone year target level of emissions are the total VOC and/or NO<sub>x</sub> emissions that Delaware must plan to reduce in order to meet the VOC and/or NO<sub>x</sub> reduction requirements for that milestone year. The required reductions are summarized in Table 2.

TABLE 2.—REQUIRED VOC AND NO<sub>x</sub> EMISSION REDUCTION FOR EACH MILESTONE YEAR IN TPD

Description	1999		2002		2005	
	VOC	NO <sub>x</sub>	VOC	NO <sub>x</sub>	VOC	NO <sub>x</sub>
Projected Uncontrolled Emissions .....	153.73	184.04	159.00	186.87	164.08	195.47
Target Level .....	111.81	147.13	99.45	145.71	95.78	134.93
Emissions Reductions Required .....	41.92	36.91	59.55	41.15	68.30	60.54

The methodologies used by Delaware to project emissions growth and EPA's evaluation are discussed in more detail in a Technical Support Document (TSD) prepared in support of this proposed rulemaking. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. We believe that the methodology employed in Delaware's ROP plans for selecting growth factors and applying them to the 1990 base year emissions inventory to estimate emissions growth in point, area, on-road mobile and off-road mobile sources is approvable.

## Evaluation of Emission Control Measures

The ROP plan is to demonstrate how the state will reduce emissions 3 percent per year, grouped in three year intervals, through the area's attainment year. In general, reductions toward ROP requirements are creditable provided the control measures occurred after 1990 and are real, permanent, quantifiable, federally enforceable and they occurred by the applicable ROP milestone year. A detailed evaluation of each of the control measures implemented by Delaware can be found in the TSD prepared for this rulemaking. Table 3 below provides a summary of the control measures used by Delaware to achieve ROP in Kent and New Castle

Counties. All control measures in the ROP demonstration have been adopted and fully implemented by the State of Delaware or are Federal measures being implemented nationally. All state control measures have been fully approved by EPA into the Delaware SIP and are permanent and enforceable. The mobile source control programs include the total amount of reductions associated with vehicle inspection and maintenance, Tier 1 motor vehicle emission standards, reformulated gasoline, the National Low Emissions Vehicle (NLEV) program, highway heavy duty diesel engine standards, and Tier 2 emission standards and low sulfur fuel standards. EPA's MOBILE5b emissions model was used to generate mobile source emission reductions.

TABLE 3.—SUMMARY OF VOC AND NO<sub>x</sub> EMISSION CONTROL MEASURES AND EMISSION REDUCTIONS FOR EACH MILESTONE YEAR IN TONS PER DAY

Control Measures	1999 Reductions		2002 Reductions		2005 Reductions	
	VOC	NO <sub>x</sub>	VOC	NO <sub>x</sub>	VOC	NO <sub>x</sub>
<b>Point and Area Source Controls</b>						
VOC RACT .....	7.63	.....	7.74	.....	8.52	.....
Non-CTG RACT .....	0.37	.....	0.38	.....	0.38	.....
NO <sub>x</sub> RACT .....	.....	2.24	.....	2.32	.....	2.39
OTR Regional NO <sub>x</sub> MOU .....	.....	28.91	.....	27.22	.....	.....
Federal NO <sub>x</sub> SIP Call Regional Control ..	.....	.....	.....	.....	.....	32.93
Federal Benzene Waste Rule .....	1.72	.....	1.32	.....	1.32	.....
Sanitary Landfills .....	0.25	.....	0.35	.....	0.44	.....
Irreversible Process Changes .....	1.93	.....	1.96	.....	2.01	.....
Open Burning .....	7.67	1.53	7.83	1.56	7.81	1.59
Consumer Products .....	.....	.....	0.59	.....	0.59	.....
Architectural Coatings .....	.....	.....	1.34	.....	1.38	.....
<b>Off-Road Mobile Source Controls</b>						
Reformulated Fuel .....	0.52	.....	0.03	.....	0.03	.....
Small Spark Ignition Engines .....	1.78	-0.08	4.07	0.05	4.99	0.06
Compression Ignition Engines .....	0.00	1.12	0.73	2.82	1.07	4.38
Marine Engines .....	0.01	.....	1.02	-0.06	2.04	-0.11
Locomotives .....	.....	.....	.....	0.52	0.00	0.77
<b>On-Road Mobile Source Controls</b>						
FMVCP and RVP .....	18.12	2.14	19.93	2.53	.....	.....
Tier 1 Vehicle Emission Standards .....	1.42	3.41	4.28	5.95	.....	.....
Enhanced I/M .....	5.64	0.99	1.21	1.23	.....	.....
Reformulated Fuel .....	2.48	-0.17	5.88	-0.19	.....	.....
LEV Program .....	.....	.....	0.41	0.85	.....	.....
Heavy Duty Diesel Engines	.....	.....	.....	.....	.....	.....
NLEV Program	.....	.....	.....	.....	.....	.....
Tier 2 Emission Standards/Low Sulfur Fuel .....	.....	.....	.....	.....	0.70	3.61
Total On-Road Mobile source reductions .....	27.66	6.37	36.01	10.37	37.71	19.21
Total Reductions from All Controls ...	49.54	40.08	63.37	44.80	68.30	61.22

**Milestone Year 1999:** The control measures that Delaware plans to implement in order to meet the average 3 percent per year rate of progress for the milestone year 1999 are listed in Table 3 above. The VOC and NO<sub>x</sub> emissions reductions for the nonattainment area are 49.54 and 40.08 tons per peak ozone season day (tpd), respectively. The VOC and NO<sub>x</sub> reductions that are required by Delaware in order to meet the average 3 percent rate-of-progress requirement are 41.92 and 36.91 tons per peak ozone season day, respectively (refer to Table 2 above). Therefore, the control measures listed in Table 3 are adequate to meet the 3 percent per rate of progress requirement for the milestone year 1999.

**Milestone Year 2002:** The control measures that Delaware plans to implement to meet the average 3 percent per year rate of progress requirement,

plus offsetting the emission growth for the 1999–2002 period are listed in Table 3 above. The VOC and NO<sub>x</sub> emissions reductions for the attainment area are 63.37 and 44.80 tpd, respectively. The VOC and NO<sub>x</sub> reductions that are required by Delaware in order to meet the average 3 percent rate of progress requirement are 59.55 and 41.15 tpd, respectively (refer to Table 2 above). Therefore, the control measures in Table 3 are adequate to meet the average 3 percent per year rate of progress requirement, plus offsetting the emission growth for the 2000–2002 period.

**Milestone Year 2005:** The control measures that Delaware plans to implement to meet the average 3 percent per year rate of progress requirement, plus offsetting the emission growth for the 2003–2005 period are listed in Table 3 above. The VOC and NO<sub>x</sub> emissions reductions for the attainment area are

68.30 and 61.22 tpd, respectively. The VOC and NO<sub>x</sub> reductions that are required by Delaware in order to meet the average 3 percent rate-of-progress requirement are 68.30 and 60.54 tpd, respectively (refer to Table 2 above). Therefore, the control measures in Table 3 are adequate to meet the average 3 percent per year rate of progress requirement, plus offsetting the emission growth for the 2003–2005 period.

#### Summary of Delaware's Post-1996 ROP Demonstration

Delaware's ROP demonstration is summarized in Table 4 below. The table shows that the projected control strategy inventories are less than or equal to the target level established for each milestone year. Therefore the ROP plans demonstrate that emissions have been reduced by a minimum of 9 percent, net of growth, for each milestone year.

TABLE 4.—DELAWARE POST 1996 ROP DEMONSTRATION IN TPD

	1999 VOC	1999 NO <sub>x</sub>	2002 VOC	2002 NO <sub>x</sub>	2005 VOC	2005 NO <sub>x</sub>
Projected Uncontrolled Emissions (Table 2) .....	153.73	184.04	159.00	186.87	164.08	195.47
Reductions From Creditable Emission Control Measures (Table 3) .....	49.54	40.08	63.37	44.80	68.30	61.22
Emissions Level Obtained (Uncontrolled Emissions minus Emission reductions) .....	104.19	143.96	95.63	142.07	95.78	134.25
Projected Target Levels (Table 1) .....	111.81	147.13	99.45	145.72	95.78	134.93
Surplus Emission Reductions (Target Levels Minus Emissions Obtained) .....	7.62	3.17	3.82	3.65	0.00	0.68

### B. Motor Vehicle Emissions Budgets (MVEBs)

Under EPA's transportation conformity rule, a ROP plan is referred to as a control strategy SIP (62 FR 43779). A control strategy SIP identifies

and establishes the MVEBs to which an area's transportation improvement program and long range transportation plan must conform. Conformity to a control strategy SIP means that transportation activities will not produce new air quality violations,

worsen existing violations, or delay timely attainment of the national ambient air quality standard. The budgets for the Delaware ozone nonattainment area are shown in Table 5 below.

TABLE 5.—MOTOR VEHICLE EMISSION BUDGETS FOR DELAWARE ROP PLANS IN TPD

Milestone Year	VOC		NO <sub>x</sub>	
	Kent County	New Castle County	Kent County	New Castle County
1999 .....	7.55	22.49	11.17	29.41
2002 .....	6.30	18.44	9.81	27.29
2005 .....	4.84	14.76	7.90	22.92

The 1999 on-road motor vehicle emission budgets were determined adequate for transportation conformity determinations in a April 29, 1999 letter from EPA Region III to DNREC (64 FR 31217, June 10, 1999). Both the 2002 and 2005 budgets were determined adequate for transportation conformity determinations on April 5, 2001. That determination became effective May 2, 2001 (66 FR 19769, April 7, 2001). By proposing approval of Delaware's Post-1996 ROP plans, EPA is also proposing to approve these motor vehicle emission budgets established in the Post-1996 ROP plan SIPs.

### C. Contingency Measures

Section 172(c)(9) of the Act requires moderate and above ozone nonattainment areas to adopt contingency measures that would be implemented should the area fail to achieve ROP or to attain by its attainment date. In addition, section 182(c)(9) of the Act requires serious and above areas to adopt contingency measures which would be implemented if the area fails to meet any applicable milestone. EPA issued a guidance, "Early Implementation of Contingency Measures for Ozone and Carbon Monoxide Nonattainment Areas, August 13, 1993," that allows states to implement their contingency measures

early. However, contingency measures that are implemented early cannot also be used to meet ROP. EPA does not believe it is logical to penalize areas that are taking extra steps to implement contingency measures early, nor should states be required to backfill for the early activation of contingency measures.

In its ROP plans, Delaware outlines its approach for using already implemented control measures for contingency purposes. The EPA encourages the early implementation of required control measures and of contingency measures as a means of guarding against failure to meet a milestone or to attain. Delaware's plans show an adequate amount of emission reductions have occurred beyond those required for ROP, and therefore, any surplus emission reductions can be considered as early implementation of contingency measures. Surplus emission reductions associated with control measures that are not required in the nonattainment area by the Act can be used for contingency purposes. Delaware has adopted several measures which are available for consideration as the early implementation of contingency measures, including implementing an annual inspection schedule for the Stage II Vapor Recovery Systems, open burning control in New Castle County,

a combination of controls on various sources in the peak ozone season, as well as through improvement of rule effectiveness for the regional NO<sub>x</sub> emission control rule. Therefore, EPA believes the requirements of the Act with regard to providing contingency measures should the area fail to achieve ROP, have been satisfied for the Delaware ozone nonattainment area.

### IV. Proposed Action

EPA is proposing to approve the Post-1996 ROP plans for milestone years 1999, 2002 and 2005 for the Delaware portion of the Philadelphia-Wilmington-Trenton severe ozone nonattainment area submitted on December 29, 1997, June 17, 1999, February 3, 2000, and December 20, 2000. EPA is also proposing to approve the contingency plans for failure to meet ROP in the Delaware portion of the Philadelphia severe ozone nonattainment area (Kent and New Castle Counties), submitted in conjunction with the ROP demonstrations. EPA is also proposing to approve the revised enforceable commitments made to the attainment plan for the Philadelphia area submitted by DNREC on December 20, 2000 to adopt additional measures to strengthen the attainment demonstration, and to revise the plan and its motor vehicle emissions budgets using MOBILE6

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

## V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not

economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order.

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

## List of Subjects in 40 CFR Part 52

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

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

Dated: August 24, 2001.

**Donald S. Welsh,**

*Regional Administrator, Region III.*

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

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

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

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

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

**ACTION:** Proposed rule.

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

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

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

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

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

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

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

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

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