



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2024-0162; FRL-11869-01-R3]

Air Plan Approval; District of Columbia, Maryland, and Virginia; Update of the Motor Vehicle Emissions Budgets for the Washington-MD-VA 2008 8-Hour Ozone National Ambient Air Quality Standard Maintenance Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve state implementation plan (SIP) revisions submitted by the District of Columbia (the District), State of Maryland (MD), and Commonwealth of Virginia (VA). The revisions update the motor vehicle emissions budgets (MVEBs) and the onroad and nonroad (except for marine, airport, and railroad) mobile emissions for volatile organic compounds (VOC) and nitrogen oxides (NO_x) for the years 2025 and 2030. EPA proposes to approve the updated MVEBs and updates to the applicable onroad and nonroad mobile emissions for VOC and NO_x for the years 2025 and 2030. EPA is also approving the allocation of a portion of the safety margins for VOC and NO_x in the ozone maintenance plan to the 2025 and 2030 MVEBs. The MVEBs will be available for transportation conformity purposes, in accordance with the requirements of the Clean Air Act (CAA).

DATES: Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R03-OAR-2024-0162 at www.regulations.gov, or via email to Goold.Megan@epa.gov. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit www.epa.gov/dockets/commenting-epa-dockets.

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SUPPLEMENTARY INFORMATION: On November 14, 2023, September 6, 2023, and October 11, 2023, the District, Maryland, and Virginia, respectively, formally submitted requests to update the 2008 8-Hour Ozone national ambient air quality standard (NAAQS) maintenance plan for the Washington DC-MD-VA 2008 8-Hour Ozone NAAQS Maintenance Area (hereafter “the Washington Area” or “the Area”). These revisions

update the Area's maintenance plan to include revised onroad and nonroad MVEBs for VOCs and NOx that reflect the updated EPA Motor Vehicle Emission Simulator (MOVES3.04) model and increased onroad vehicle emission rates.

I. Background

On April 15, 2019 (84 FR 15108), EPA approved Maryland and Virginia's requests to redesignate to attainment their portions of the Washington Area from marginal nonattainment to attainment of the 2008 8-Hour Ozone NAAQS, as well as the VOC and NOx MVEBs for the years 2014, 2025, and 2030 for the entire Area. On July 16, 2019 (84 FR 33855), EPA approved the District's request to redesignate to attainment its portion of the Washington Area from marginal nonattainment to attainment of the 2008 8-Hour Ozone NAAQS.

Motor vehicle budgets are the projected levels of controlled emissions from the transportation sector (mobile sources) that are estimated in the SIP to provide for maintenance of the ozone standard. The transportation conformity rule (40 CFR part 93, subpart A) allows States to update existing SIP-approved MVEBs from older emissions models (e.g., MOVES2014 or MOVES2010), if it is determined that it is appropriate to update the MVEBs with a new emissions model for future conformity determinations (in this case MOVES3.04).

The current SIP-approved MVEBs for the Area were developed using the Highway Mobile Source Emission Factor Model (MOVES2014a) to generate onroad estimates and projections. On January 7, 2021 (86 FR 1106), EPA published an updated MOVES3 model, which became mandatory for use in transportation conformity analyses effective January 10, 2023.

II. Summary of SIP Revision and EPA Analysis

A. Requirements for Revising Maintenance Plans

EPA's MOVES3 guidance document describes how and when to use the latest version of the MOVES emissions model for SIP development, transportation conformity determinations, general conformity determinations, and other purposes.¹ The Area submitted a SIP revision that included an update to the MVEBs for VOCs and NO_x, that were initially developed using the MOVES2014a model, for the years 2025 and 2030. The revised MVEBs for the onroad MVEBs were developed using the MOVES3.04 emissions model and followed the requirements described in EPA's MOVES3 Technical Guidance.

If a state revises an existing SIP with MOVES3, it must show that the SIP continues to meet applicable requirements with the new level of motor vehicle emissions calculated by the new model. EPA's MOVES3 Policy Guidance provides the following description on how to meet the applicable requirements for existing SIPs that are revised with MOVES3, including ideas for how to streamline these revisions whenever possible: 1) use of latest planning assumptions: the motor vehicle emissions inventories for base year, milestone year and attainment/maintenance year will need to be recalculated with the latest available planning assumptions; 2) states will need to consider and evaluate whether growth and control strategy assumptions for non-motor vehicle sources (i.e., stationary, area, and nonroad mobile sources) are still accurate at the time that the MOVES3 SIP revision is developed to ensure the revised emissions inventories are consistent with the relevant applicable requirement (e.g., reasonable further progress, attainment, or maintenance); and 3) if these assumptions have not changed, the state can explain this and re-submit the original SIP with the revised motor vehicle emissions inventories and budgets to meet the remaining

¹ EPA's MOVES3 Technical Guidance: Using MOVES to Prepare Emission Inventories for State Implementation Plans and Transportation Conformity is located in the EPA's guidance portal at www.epa.gov/state-and-local-transportation/policy-and-technical-guidance-state-and-local-transportation.

applicable requirements as described in the guidance document.²

Areas may be able to revise their motor vehicle emissions inventories and budgets using MOVES3 without revising the entire SIP or completing additional modeling if: 1) the SIP meets applicable requirements when the previous motor vehicle emissions inventories are replaced with MOVES3 inventories; and 2) the state can document that the growth and control strategy assumptions for non-motor vehicle sources continue to be valid and any minor updates do not change the overall conclusions of the SIP.³

The Area did not meet both required criteria for nonroad model source emissions. Consequently, the SIP revision included information addressing the recommendations described in the MOVES3 Policy Guidance. The SIP revision includes the following: 1) a demonstration that the 2008 8-Hour Ozone NAAQS maintenance plan continues to meet applicable requirements with the revised motor vehicle emissions inventories, as calculated by the MOVES3.0.4 model; 2) a review of the point, nonpoint (area), and marine, airport, and railroad (MAR) source missions inventories for the interim and maintenance years to determine if growth and control strategy assumptions have changed; and 3) an assessment to confirm that excess emissions exist and the quantification of these excess emissions for use in the safety margin applied to the MVEBs.

B. Retaining the 2014 Attainment Year Inventories

The Area's maintenance demonstration must show that emissions of VOC and NO_x do not increase in future years beyond the actual estimated emissions in the 2014 attainment year in order to maintain compliance with the 2008 8-Hour Ozone NAAQS. The SIP

² EPA's MOVES3 Policy Guidance (pp. 9 -10) located in the EPA's guidance portal at www.epa.gov/sites/default/files/2020-11/documents/420b20044_0.pdf.

³ *Id.*

revision describes the revisions to the interim year and the outyear inventories, which reflect changes in the onroad and nonroad mobile sectors. The Area's comparative analysis of the two models showed that NOx onroad emissions estimates generated using MOVES3.0.4 were higher than those generated by MOVES2014b for years 2021, 2023, 2025, 2030, 2040, and 2045 by 1%, 4%, 9%, 26%, 52%, and 54%, respectively. The same analysis showed VOC onroad emissions generated using MOVES3.0.4 were lower than those generated by MOVES2014b for years 2021, 2023, 2025, 2030, 2040, and 2045 by 17%, 17%, 18%, 14%, 8%, and 7%, respectively. The negligible increase in onroad NOx emissions when comparing MOVES2014b to MOVES3.04 for the year 2021 (1%), resulted in the Area only updating 2025 and 2030 onroad emissions while retaining the attainment year 2014 onroad emissions developed using MOVES2014a.

The Area also compared the nonroad mobile emissions using MOVES3.0.4 and MOVES2014a. This comparative analysis showed that the MOVES3.0.4 nonroad model emissions were much lower compared to MOVES2014a nonroad model emissions for 2025 and 2030. Tables 1 and 2 in this document, show that even with the estimated lower 2014 MOVES3.0.4 nonroad model emissions, total VOC and NOx emissions from all four sectors (point, nonpoint, nonroad, and onroad) remained higher in 2014 compared to total emissions in 2025 and 2030. The fact that the revised total emissions from all four sectors in 2014 was still higher when compared to the revised total emissions in 2025 and 2030, provides the reasoning for the Area not having to update the 2014 nonroad model emissions using MOVES3.0.4.⁴ This is one of the most important criteria for approval of a maintenance plan, as maintenance is demonstrated when the emissions in the final year of the maintenance plan

⁴ Tables 1 and 2 of this document, show a comparative analysis of the emissions inventories for the years 2014, 2025, and 2030 in the 2017 and revised maintenance plans using both MOVES3.0.4 and MOVES2014a. The total inventories from all sources together for 2014 are higher compared to the total inventories for 2025 and 2030 in the revised maintenance plan.

are less than the emissions in the baseline attainment year. In the current SIP-approved inventories, the attainment year is 2014 and the maintenance year is 2030.

Table 1: 2008 8-Hour Ozone NAAQS VOC Emissions Inventories for the Area in tons per day

Year	Point	Nonpoint	MAR*	Nonroad MOVES2014a	Nonroad MOVES3.0.4	Onroad MOVES2014a	Onroad MOVES3.0.4	2017 Plan Total	Revised Maintenance Plan Total
2014	8.95	139.29	2.37	47.48	39.72 ⁵	61.25	61.25 ⁶	259.34	251.58
2025	10.08	153.70	2.55	44.88	37.55	33.18	27.92	244.39	231.80
Δ(2014–2025)	-1.13	-14.41	-0.18	2.60	2.17	28.07	33.33	14.95	19.78
2030	10.66	160.31	2.64	47.15	37.61	24.06	21.75	244.81	232.97
Δ(2014–2030)	-1.71	-21.01	-0.27	0.33	2.11	37.19	39.50	14.53	18.61

*MAR sources are marine, airport, and railroad.

⁵ MOVES3.0.4 nonroad model emissions for 2014 were derived by reducing MOVES2014a nonroad model emissions for VOC and NOx in the 2017 plan by 16.3% and 35.1% respectively in that year.

⁶ The comparative analysis showed that while NOx emission generated by both models are expected to be essentially the same for 2014, VOC emission is expected to be much lower for MOVES3.0.4 compared to MOVES2014b in that year. In this case, both VOC and NOx emissions generated by MOVES3.0.4 are assumed to be the same as MOVES2014a for 2014.

Table 2: 2008 8-Hour Ozone NAAQS NOx Emissions Inventories for the Area in tons per day

Year	Point	Nonpoint	MAR*	Nonroad MOVES2014a	Nonroad MOVES3.0.4	Onroad MOVES2014a	Onroad MOVES3.0.4	2017 Plan Total	Revised Maintenance Plan Total
2014	79.2	9.62	19.21	51.99	33.74 ⁴	136.84	136.84 ⁵	296.8	278.63
	2							8	
2025	80.4	9.85	21.41	29.62	19.23	40.68	46.52	181.9	177.41
	0							6	
$\Delta(2014-2025)$	-1.18	-0.23	-2.19	22.36	14.51	96.16	90.32	114.9	101.22
								2	
2030	82.8	9.96	22.36	27.80	16.94	27.39	34.26	170.3	166.39
	7							8	
$\Delta(2014-2030)$	-3.65	-0.34	-3.14	24.19	16.80	109.45	102.58	126.5	112.24
								1	

C. Inventories for Point Sources

EPA requires areas to demonstrate how the area will remain in compliance with the 8-Hour Ozone NAAQS for the 10-year period following the effective date of redesignation. One method that areas use to demonstrate that the area will maintain the 8-Hour Ozone NAAQS is to identify the level of ozone precursor emissions in the area which is sufficient to attain the NAAQS (attainment year 2014 inventory) and to show that future emissions of ozone precursors will not exceed the attainment levels. The comparison of emissions inventories includes ozone precursors from all source categories, not only point sources.

The District, the State of Maryland, and the Commonwealth of Virginia, separately reviewed their point source emission inventories, growth assumptions, and control assumptions, as well as emissions inventory data from more current actual inventories. The Area retained the 2025 and 2030 emissions inventories for point and nonpoint sources based on analyses of more current emissions inventory data as well as the latest growth rates for economic indicators.

The District's analysis of the point source emissions inventory for the 2014 attainment year for VOC and NO_x was based on the 2014 National Emissions Inventory (NEI). The 2014 inventory was used as the basis for the projection year inventories of the 2025 interim year inventory and the 2030 outyear/maintenance year inventory. Table 3 in this document, summarizes the 2014, 2025, and 2030 emission estimates for the District's point sources as well as the reported VOC and NO_x emissions for 2020 and 2021 Title V sources. The data show that the 2020 and 2021 emission estimates are below the 2014 attainment year emission estimates used in the maintenance plan. In addition, emission projections for 2025 and 2030 are above the actual estimates for 2020 and 2021. Based on these data, updates to the point source inventories the District used in the 2017 plan are not necessary to ensure continued maintenance of the 2008 8-Hour Ozone NAAQS.

Table 3: District of Columbia Point Source Inventory in tons per day

Data Description	NO _x	VOC
2014 attainment year emissions	1.22	0.45
2025 projected interim year emissions	1.22	0.45
2030 projected outyear emissions	1.22	0.45
2020 actual reported emissions	1.02	0.24
2021 actual reported emissions	1.03	0.24

The State of Maryland’s analysis of the point source emissions inventory for the 2014 attainment year for VOC and NO_x was based on the 2014 NEI and partially based on the 2014 Clean Air Markets Division (CAMD) data. The 2014 inventory was used as the basis for the projection year inventories of the 2025 interim year inventory and the 2030 outyear/maintenance year inventory. Table 4 in this document, shows that the 2017 and 2020 actual emission estimates are well beneath the 2025 and 2030 projected future year emission estimates used in the maintenance plan. Therefore, when comparing the actual point source emissions to the grown future year point source emissions that demonstrate maintenance of the standard, the actual point source emissions provide a buffer for other source categories such as onroad mobile, nonroad mobile and nonpoint emissions sources. Based on these data, updates to the point source inventories for the State of Maryland used in the 2017 plan are not necessary to ensure continued maintenance of the 2008 8-Hour Ozone NAAQS.

Table 4: Maryland Point Source Inventory in tons per day⁷

Data Description	NOx	VOC
2014 attainment year emissions	47.81	5.27
2025 projected interim year emissions	53.04	6.48
2030 projected outyear emissions	55.18	7.02
2017 actual reported emissions	49.72	2.52
2020 actual reported emissions	48.18	2.71

The Commonwealth of Virginia’s analysis of the point source emissions inventory for the 2014 attainment year for VOC and NOx was based on the 2014 NEI and partially based on 2014 Community Emissions Data Systems (CEDS) data. The Commonwealth of Virginia provided data for the electric generating units (EGUs) at the only EGU in the Northern Virginia area that operated in 2014, Possum Point Power Station. The data provided estimates of the Possum Point Power Station’s projected emissions in 2025 and 2030. In addition, the Commonwealth of Virginia provided data for all non-EGU point sources in the Northern Virginia area. For all non-EGU point sources except data centers, Virginia used a "no growth" scenario in the 2017 plan, assuming that future-year point-source emissions would be equivalent to the 2014 emissions estimates. Emissions from data centers

⁷ Maryland’s point source emission typically consists of three different components – Electric Generating Units (EGUs), Non-Electric Generating Units (NEGUs), and Quasi-Point Sources. The data in Table 4 in this document, does not reflect the total point source emission inventory in Tables 1 and 2 in this document, because it includes total VOC and NOx emissions from EGUs and Non-EGUs only (excludes quasi-point sources).

in Northern Virginia were grown based on the estimated employment growth rate derived from the Council of Governments (COG) Cooperative Forecasts for each county in which each data center is located.

The 2014, 2025, and 2030 emission estimates for point sources, as well as the reported VOC and NOx emissions for 2019, 2020, and 2021 for sources required to provide emission statements are summarized in Table 5 in this document. The data show that the 2021 emission estimates are well beneath the attainment year 2014 emission estimates used in the 2017 plan. The data also show that emission projections for 2025 and 2030 are above the actual estimates for 2021. In addition, the data show that there is generally a downward trend in actual emissions estimates from 2014, 2019, 2020, and 2021. Based on these data, updates to the point source inventories for Northern Virginia in the 2017 plan are not necessary to ensure continued maintenance of the 2008 8-Hour Ozone NAAQS.

Table 5: Virginia Point Source Inventory in tons per day

Data Description	NOx	VOC
2014 attainment year emissions	15.83	1.99
2025 projected interim year emissions	11.78	1.90
2030 projected outyear emissions	12.11	1.94
2019 actual reported emissions	13.00	1.60
2020 actual reported emissions	11.21	1.37
2021 actual reported emissions	7.93	1.29

D. Nonpoint & MAR Source Emission Growth and Control Assumptions

The Area compared growth factors used to project nonpoint and MAR emissions from 2014 to 2025 and 2030 in the 2017 plan with current estimates from its' Cooperative Forecasts Round 9.2 and the Constrained Element of the Long-Range Transportation Plan (CE LRTP).⁸ The comparative analysis of the data in Table 6 in this document, shows relatively minor changes to the nonpoint and MAR emissions growth factors. The data shows a slight increase in population growth factors for 2025 and 2030 and the household growth factor for 2030 (approximately 1%).⁹ Employment, households (for 2025), and vehicle miles traveled (VMT) or lane-miles, either remain at the same level or decrease (approximately 1% to 2%). Based on the data, EPA agrees that the comparative analysis demonstrates that the emission estimates and projections from nonpoint and MAR sources in the 2017 plan continue to be valid and continue to demonstrate that the area's air quality will remain compliant with the 2008 ozone NAAQS.

⁸ The CE LRTP, which was updated in both 2020 and 2022, is also known as Visualize 2045, and is the source for vehicle miles traveled (VMT) estimates and lane-miles estimates.

⁹ Although emission sources from population growth factors contribute about 60% and 26% of total VOC and NOx emissions, respectively, in the 2017 plan, a 1% increase in population growth factors, together with some amount of decrease in other growth factors, should ensure that the overall change in nonpoint and MAR source emissions in 2025 and 2030 would be relatively insignificant.

Table 6: Comparison of Growth Factors in tons per day

Growth Factor Description	2017 Plan	Current Factor	Current Factor Source
Employment (2025/2014)	1.14	1.14	COG Cooperative Forecasts 9.2 (Final)
Employment (2030/2014)	1.21	1.21	COG Cooperative Forecasts 9.2 (Final)
Population (2025/2014)	1.12	1.13	COG Cooperative Forecasts 9.2 (Final)
Population (2030/2014)	1.17	1.18	COG Cooperative Forecasts 9.2 (Final)
Household (2025/2014)	1.14	1.13	COG Cooperative Forecasts 9.2 (Final)
Household (2030/2014)	1.19	1.20	COG Cooperative Forecasts 9.2 (Final)
VMT (2025/2014)	1.12	1.12	2020 & 2022 Amendments to Visualize 2045 (CLRP)
VMT (2030/2014)	1.17	1.16	2020 & 2022 Amendments to Visualize 2045 (CLRP)
Lane-Miles (2025/2014)	1.06	1.04	2020 & 2022 Amendments to Visualize 2045 (CLRP)
Lane-Miles (2030/2014)	1.06	1.06	2020 & 2022 Amendments to Visualize 2045 (CLRP)

E. Onroad and Nonroad Mobile Model Sources

The Area updated the projection inventories for NOx and VOC for the interim year 2025 and the outyear 2030. The current SIP-approved NOx and VOC inventories for onroad and nonroad (except for MAR) mobile sources for 2014, 2025 and 2030 were developed using the MOVES2014a model in the 2017 plan. EPA's MOVES3.0.4 model incorporates the latest emissions data and allows users to model the benefits from new regulations promulgated since MOVES2014a. In particular, the MOVES3.0.4 model contains nonroad equipment population growth rates and diesel Tier 4 emission rates that have been updated since MOVES2014a. As a result, MOVES3.0.4 generates different nonroad and onroad mobile emissions estimates than MOVES2014a. For this reason, the Area is updating its 2025 and 2030 onroad and nonroad (except for MAR) mobile emissions in this revised plan using the MOVES3.0.4 model. The Area did not update the inventories for the attainment year 2014 as discussed in detail in section II.B. in this document.

Based on the onroad mobile emissions trend shown in this SIP revision and the most recent air quality conformity analysis for the Area, onroad mobile source emissions are decreasing due to the implementation of the National Low Emission Vehicle Program (NLEV), the Heavy-Duty Engine and Vehicle Standards (HDDV), Tier 3, and Safer Affordable Fuel Efficient (SAFE) Vehicles and Corporate Average Fuel Economy (CAFE) rules, Stage II, and Maryland's LEV/ZEV (Low Emission Vehicle/Zero Emission Vehicle) programs. These emission reductions occur even as VMT estimates continue to grow. This trend and onroad mobile source emission reductions ensures continued maintenance of the 2008 8-Hour Ozone NAAQS.

F. Motor Vehicle Emissions Budgets and Safety Margins

The Area's maintenance plan includes NOx and VOC MVEBs for 2025 and 2030, an

interim year and an outyear of the maintenance period, respectively. The budgets were developed as part of an interagency consultation process which includes Federal, state, and local agencies. The budgets were clearly identified and precisely quantified. This process was consistent with the aforementioned requirements of 40 CFR part 93. These budgets, when considered together with all other emissions sources, are consistent with maintenance of the 2008 ozone NAAQS.

This rulemaking revises the budgets for mobile sources in the Washington Area. The maintenance plan is designed to provide for future growth while still maintaining the 2008 ozone NAAQS. Growth in industries, population, and traffic is offset by reductions from cleaner cars and other emission reduction programs. Through the maintenance plan, the state and local agencies can manage and maintain clean air quality while providing for growth.

The Area updated the 2025 and 2030 MVEBs, for NO_x and VOC, using MOVES3.0.4 and updated planning assumptions. These MVEBs will ensure that transportation emissions conform with each state's SIP. Table 7 in this document, presents the revised MVEBs for 2025 and 2030 along with the retained 2014 MVEBs from the 2017 plan (using MOVES2014a). The Area added safety margins for the projected onroad mobile VOC and NO_x emissions when developing the MVEBs for 2025 and 2030. A "safety margin," as defined in the transportation conformity rule (40 CFR part 93, subpart A), is the amount by which the total projected emissions from all sources of a given pollutant are less than the total emissions that would satisfy the applicable requirement for reasonable further progress, attainment, or maintenance. The attainment level of emissions is the level of emissions during one of the years (2014) in which the Area met the NAAQS.

The 2017 plan demonstrated that the Area attained the 2008 8-Hour Ozone NAAQS and could therefore emit up to the attainment year 2014 emission level. Table 7 in this document, gives detailed information on the safety margin for the Area. Table 7 in this

document, shows the differences in total emissions for VOC and NOx from all sources between the attainment year 2014 and the intermediate year 2025 and the attainment year 2014 and the final maintenance year 2030. The differences between the projected emissions in the years 2025 and 2030 and the actual emissions in the year 2014 are referred to as the “safety margin” or the amount of excess emission reductions.¹⁰ All or a portion of these safety margins can be allotted to onroad mobile source inventories to develop MVEBs. The Area allotted only portions of the total available safety margins for VOC and NOx when developing the revised MVEBs for 2025 and 2030.

¹⁰ The differences in emissions provide estimates of the total available safety margins in tons per day (tpd) for VOC for 2025 (27.7 tpd) and 2030 (44.9 tpd) and for NOx for 2025 (101.1 tpd) and 2030 (130.4 tpd).

Table 7: Revised Onroad Motor Vehicle Emissions Budgets using MOVES3.0.4

Year	VOC Onroad Emissions (tpd)	NOX Onroad Emissions (tpd)
2014 Attainment Year	61.25	136.84
2025 Predicted Emissions without Safety Margin	27.92	46.52
2025 Safety Margin	5.58	9.30
2025 Interim Budget with Safety Margin	33.50	55.82
2030 Predicted Emissions without Safety Margin	21.75	34.26
2030 Safety Margin	4.35	6.85
2030 Final Budget with Safety Margin	26.10	41.11

The Area has requested a partial allocation of the safety margin to the onroad mobile emissions inventory projections for VOC and NOx in 2025 and 2030. The allocation will add 5.58 tpd of VOC and 9.30 tpd of NOx from the safety margins to the 2025 emission inventories, and 4.35 tpd of VOC and 6.85 tpd of NOx from the safety margins to the 2030 emission inventories. Tables 8 and 9 in this document, show that the 2025 and the 2030 projected emissions, even with this allocation, will be below the 2014 attainment year emissions for both VOC and NOx, respectively.

*Table 8: The Area Revised Maintenance Plan VOC Emissions, 2014 to 2030,
Including MVEBs with Safety Margins (tpd)*

Source Category	2014 w/o safety margins	2014 with safety margins	2025 w/o safety margins	2025 with safety margins	2030 w/o safety margins	2030 with safety margins
Point	7.71	7.71	8.83	8.83	9.41	9.41
Nonpoint	139.29	139.29	153.70	153.70	160.31	160.31
MAR	2.37	2.37	2.55	2.55	2.64	2.64
Nonroad	47.48	47.48	37.55	37.55	37.61	37.61
On-road MVEBs	61.25	61.25	27.92	33.50	21.75	26.10
Quasi-Point	1.24	1.24	1.24	1.24	1.24	1.24
Total	259.34	259.34	231.80	237.37	232.97	237.31
Change from 2014	n/a	n/a	27.54	21.97	26.37	22.03

*Table 9: The Area Revised Maintenance Plan NOx Emissions, 2014 to 2030,
Including MVEBs with Safety Margins (tpd)*

Source Category	2014 w/o safety margins	2014 with safety margins	2025 w/o safety margins	2025 with safety margins	2030 w/o safety margins	2030 with safety margins
Point	64.85	64.85	66.03	66.03	68.50	68.50
Nonpoint	9.62	9.62	9.85	9.85	9.96	9.96
MAR	19.21	19.21	21.41	21.41	22.36	22.36
Nonroad	51.99	51.99	19.23	19.23	16.94	16.94
On-road MVEBs	136.84	136.84	46.52	55.82	34.26	41.11
Quasi-Point	14.37	14.37	14.37	14.37	14.37	14.37
Total	296.88	296.88	177.41	186.71	166.40	173.24
Change from 2014	n/a	n/a	119.47	110.17	130.48	123.64

The Area has demonstrated that it will continue to maintain the 2008 8-Hour Ozone NAAQS, even after updating the onroad emissions estimates using the MOVES3.0.4 model. For this reason, EPA finds that the updated MVEBs and the allocation of the safety margins to the 2025 and 2030 budgets for the Area, meet the requirements of the transportation conformity regulations at 40 CFR part 93 and are approvable.

III. Proposed Action

EPA is proposing to approve the Washington Area's SIP revision updating the MVEBs and the onroad and nonroad (except for marine, airport, and railroad) mobile emissions for VOC and NO_x for the years 2025 and 2030. Additionally, EPA is proposing to approve the allocation of a portion of the safety margins for VOC and NO_x in the ozone maintenance plan to the 2025 and 2030 budgets. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. 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. 10.1198, 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 that: (1) are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent, and

substantial danger to the public health or environment; or (4) are required by law.

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

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

Therefore, the 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 the 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, the EPA may at any time invoke its authority under the CAA,

including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks

subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act;

This action does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because this action is not approved to apply in Indian country located in the Commonwealth of Virginia, State of Maryland, or District of Columbia, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” The EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The District of Columbia, State of Maryland, and Commonwealth of Virginia did not

evaluate environmental justice considerations as part of the SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

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

Adam Ortiz,

Regional Administrator,

Region III.

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