(1) Engage in protests, public speeches, marches, sit-ins, or demonstrations promoting a point of view.

(2) Interrupt or disturb the testing and evaluating of weapon systems, or any training, formation, ceremony, class, court-martial, hearing, or other military business.

(3) Obstruct movement on any street, road, sidewalk, pathway, or other vehicle or pedestrian thoroughfare.

(4) Utter to any person abusive, insulting, profane, indecent, or otherwise provocative language that by its very utterance tends to excite a breach of the peace.

(5) Distribute or post publications, including pamphlets, newspapers, magazines, handbills, flyers, leaflets, and other printed materials, except through regularly established and approved distribution outlets and places.

(6) Circulate petitions or engage in picketing or similar demonstrations for any purpose.

(7) Engage in partisan political campaigning or electioneering.

(8) Disobey a request from Department of Defense police, other government law enforcement officials (e.g., Federal, State, or local law enforcement officials), military police, or other competent authority to disperse, move along or leave the installation.

(c) In appropriate cases, the Commander, U.S. Army Garrison, Aberdeen Proving Ground may give express written permission for protests, picketing, or any other similar demonstrations on Aberdeen Proving Ground property outside the gates adjacent to the installation borders, only if the procedures outlined below in 32 CFR 552.214 are followed.

§ 552.214 Procedures.

(a) Any person or persons desiring to protest, picket, or engage in any other similar demonstrations on Aberdeen Proving Ground must submit a written request to the Commander, U.S. Army Garrison, Aberdeen Proving Ground, ATTN: STEAP–CO, 2201 Aberdeen Boulevard, Aberdeen Proving Ground, Maryland 21005–5001. The request must be received at least 30 calendar days prior to the demonstration, and it must include the following:

(1) Name, address, and telephone number of the sponsoring person or organization. (If it is an organization, include the name of the point of contact.)

(2) Purpose of the event.

(3) Number of personnel expected to attend.

(4) Proposed date, time, location and duration of the event.

(5) Proposed means of transportation to and from APG.

(6) Proposed means of providing security, sanitary services and related ancillary services to the participants.

(b) Based on the Commander's concerns for discipline, mission accomplishment, protection of property, and the safeguarding of the health, morale, and welfare of the APG community, the Commander will determine whether to grant the request and, if granted, any limitations as to where and when it will take place.

§ 552.215 Responsibilities.

(a) Director, Law Enforcement and Security, U.S. Army Garrison, Aberdeen Proving Ground, will furnish police support as needed.

(b) Chief Counsel and Staff Judge Advocate, U.S. Army Test and Evaluation Command, will provide a legal review of the request.

§ 552.216 Violations.

(a) A person is in violation of the terms of this subpart if:

(1) That person enters or remains upon Aberdeen Proving Ground when that person is not licensed, invited, or otherwise authorized by the Commander, U.S. Army Garrison, Aberdeen Proving Ground pursuant to the terms of § 552.214; or

(2) That person enters upon or remains upon Aberdeen Proving Ground for the purpose of engaging in any activity prohibited or limited by this subpart.

(b) All persons (military personnel, Department of the Army civilian employees, civilians, and others) may be prosecuted for violating the provisions of this subpart. Military personnel may be prosecuted under the Uniform Code of Military Justice. Department of the Army civilian employees may be prosecuted under 18 U.S.C. 1382, and/or disciplined under appropriate regulations. Civilians and others may be prosecuted under 18 U.S.C. 1382.

(c) Administrative sanctions may include, but are not limited to, bar actions including suspension of access privileges, or permanent exclusion from Aberdeen Proving Ground.

Dated: June 5, 1997.

Roslyn M. Glantz,

Colonel, U.S. Army, Aberdeen Proving Ground Garrison Commander.

[FR Doc. 97–16480 Filed 6–23–97; 8:45 am]

BILLING CODE 3710–08–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA045–5022; FRL–5846–8]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; 15% Rate of Progress Plan for the Northern Virginia Portion of the Metropolitan Washington D.C. Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is granting conditional interim approval of the State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia, for the Northern Virginia portion of the Metropolitan Washington D.C. serious ozone nonattainment area, to meet the 15 percent reasonable further progress (RFP, or 15% plan) requirements of the Clean Air Act (the Act). EPA is granting conditional interim approval of the 15% plan, submitted by the Commonwealth of Virginia, because on its face the plan achieves the required 15% emission reduction, but additional documentation to verify the emission calculations is necessary for full approval. Additionally, the plan relies upon the Virginia Inspection and Maintenance (I/M) rule that received final conditional interim approval on May 15, 1997 (62 FR 26745). This action is being taken under section 110 of the Clean Air Act.

EFFECTIVE DATE: This final rule is effective on July 24, 1997.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Kristeen Gaffney, Ozone/Carbon Monoxide and Mobile Sources Section (3AT21), USEPA—Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, or by telephone at 215–566–2092 or via e-mail, at the following address: gaffney.kristeen@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(b)(1) of the Act requires ozone nonattainment areas classified as

moderate or above to develop plans to reduce volatile organic compounds (VOC) emissions by fifteen percent from 1990 baseline levels. The Metropolitan Washington, D.C. area is classified as a serious ozone nonattainment area and is subject to the 15% plan requirement. The Metropolitan Washington, D.C. ozone nonattainment area consists of the entire District of Columbia (''the District''), five counties in the Northern Virginia area and five counties in Maryland. The Northern Virginia portion of the nonattainment area consists of the localities of Arlington, Fairfax, Loudoun, Prince William and Stafford, and the cities of Alexandria, Falls Church, Manassas, Manassas Park and Fairfax.

Virginia, Maryland and the District all must demonstrate reasonable further progress for the Metropolitan Washington D.C. nonattainment area. Virginia, Maryland and the District, in conjunction with municipal planning organizations, collaborated on a coordinated 15% plan for the Metropolitan Washington D.C. nonattainment area. This was done with the assistance of the regional air quality planning committee, the Metropolitan Washington Air Quality Committee (MWAQC), and the local municipal planning organization, the Metropolitan Washington Council of Governments (MWCOG), to ensure coordination of air quality and transportation planning.

The Commonwealth of Virginia submitted the 15% plan SIP revision for the Northern Virginia portion of the Metropolitan Washington D.C. nonattainment area on May 15, 1995. On March 12, 1997, EPA published a notice of proposed rulemaking (NPR) in the **Federal Register** proposing conditional interim approval of the 15% plan (62 FR 11395). EPA's rationale for granting conditional interim approval to the Virginia 15% plan for the Metropolitan Washington D.C. nonattainment area and the details of the May 15, 1995 submittal are contained in the March 12, 1997 NPR, the accompanying technical support document and will not be restated here. There is an addendum to the technical support document dated June 9, 1997 available from the Regional Office listed in the **ADDRESSES** section of this rulemaking.

II. Public Comments and EPA Responses

EPA received two letters in response to the March 12, 1997 NPR from the Sierra Club Legal Defense Fund (SCLDF) and the New York State Department of Environmental Conservation (NYSDEC). The following discussion summarizes and responds to the comments received.

Comment 1

SCLDF commented that the Virginia 15% plan must be disapproved because it failed to produce the 15% emission reduction of 59.9 tons/day identified in the plan as prescribed by section 182(b)(1)(A)(i) of the Act. EPA's argument that it believes that Virginia's required 15% reduction ''may be lower than the 54.4 tons per day'' is flawed. Speculation is no substitute for the findings EPA must make under sections 110 and 182 of the Act in order to approve the SIP. Furthermore, EPA admits that proper documentation is lacking in the submittal. Lack of documentation and information are grounds for disapproval.

Response: Under section 110(k)(4) of the Act, EPA may conditionally approve a plan based on a commitment from the state to adopt specific enforceable measures within one year from the date of approval. EPA believes that the 15% required reduction in the Northern Virginia portion of the Metropolitan Washington D.C. nonattainment area may be lower than the 59.9 tons/day estimated in the May 15, 1995 SIP submittal based on new information supplied by the Commonwealth. Although this information has not been established through an official SIP submittal, this information is contained in Virginia's rate-of-progress SIP for the 1996–1999 time period (known as the Post 1996 plan). Virginia has held a public hearing on this SIP, which EPA provided comments on for the public record, and expects to submit it to EPA shortly. Under these circumstances—including the fact that the amount of emissions at issue is a relatively small percentage of the 15% requirement—EPA has the authority to conditionally approve Virginia's 15% SIP, on the condition that Virginia submit the requisite documentation. The Commonwealth of Virginia has agreed to meet this condition to document that the amount of reduction needed to meet the 15% requirement is less than 54.4 tons/day, and has submitted such commitment in writing.

Comment 2

The inspection and maintenance (I/M) program currently in the 15% plan and estimated to achieve 23.7 tons/day reduction was renounced by Virginia. The current Virginia I/M program under the National Highway Systems Designation Act of 1995 (NHSDA) is not properly before EPA in the 15% plan.

Response: Virginia never adopted the former I/M program that was described in the 15% plan and, instead, Virginia resubmitted a new I/M program under the NHSDA on March 27, 1996. On May 15, 1997, EPA granted conditional interim approval of Virginia's I/M program in the Virginia SIP (62 FR 26745). Although the SIP approved I/M program differs from the program referred to in Virginia's current 15% plan, EPA has determined that the two programs achieve a similar amount of VOC reduction credit. In approving the credits from I/M toward the 15% requirement, EPA is considering the SIP approved version of the I/M program. Furthermore, under the NHSDA, all states including Virginia are required to remodel the credits achieved from their I/M program 18 months following program implementation. Full approval of the Virginia 15% plan is also conditioned on this demonstration of credit through remodeling. The 24.6 tons/day reduction claimed in the May 15, 1995 15% plan submittal is, therefore, granted only conditional interim approval until the demonstration required under NHSDA is submitted by Virginia.

Comment 3

SCLDF commented that EPA cannot ignore the November 15, 1996 statutory deadline for the 15% reduction simply because the deadline is now behind us. It contends that EPA's and states' unlawful delays have prevented compliance with the November 15, 1996 deadline and that EPA cannot now jettison the statutory deadlines by substituting the ''as soon as practicable'' test; rather, SCLDF states, EPA must require compliance with an ''as soon as possible'' test and fix a compliance deadline. The commenter cited various court decisions in an effort to support its formulation of the ''as soon as possible'' test. SCLDF further added that 1999 cannot be the shortest possible timeframe for requiring compliance with I/M in Virginia because Pennsylvania has shown and EPA approved that it will achieve the needed I/M reductions by 1998.

Response: The case law cited by the commenter considers various circumstances, such as failure by EPA to promulgate rules on the statutorily mandated deadline or to take action on state failures to make SIP submissions on the statutorily mandated deadline. *See, e.g., Natural Resources Defense Council* v. *EPA*, 22 F.3d 1125 (D.C. Cir. 1994), Natural Resources Defense Council v. *Train*, 510 F.2d 692 (D.C. Cir. 1975). These cases articulate various formulations of the standards by which the courts establish new deadlines. EPA believes that its formulation of the

standard by which States must achieve the 15% reductions—''as soon as practicable''—is generally consistent with the case law.

Further, EPA believes that Virginia has demonstrated that it has met this standard. The notice of proposed rulemaking, the TSD accompanying that proposal, and an addendum to the TSD in the record establish that implementation of the I/M program is as soon as practicable. The main reason for the delays in the development and implementation of Virginia's 15% SIP relate to its enhanced I/M plan. Most recently, these enhanced I/M delays were closely associated with the enactment, in November 1995, of the NHSDA. The NHSDA afforded states the opportunity to revise their I/M plans in a manner that would be treated as meeting certain EPA requirements on an interim basis. The NHSDA provided additional time for the Commonwealth and EPA to develop and process the revised I/M plans. The Commonwealth acted expeditiously in developing and implementing a revised enhanced I/M program. However, the amount of time necessary to develop and implement the NHSDA I/M program rendered impossible achieving the 15% reduction target by the end of 1996.

Moreover, EPA has reviewed other VOC SIP measures that are at least theoretically available to Virginia, and has concluded that implementation of any such measures that might be appropriate would not accelerate the date of achieving the 15% reductions.

EPA agrees with the commenter that in this particular case a fixed deadline is appropriate. Accordingly, EPA will establish November 15, 1999, as the date by which the 15% measures must be implemented to the extent necessary to generate the required amount of reductions.

The fact that Pennsylvania has developed an I/M program that will be implemented by the end of 1998 does not mean that Virginia's implementation date of the end of 1999 is not as soon as practicable. For reasons indicated elsewhere in the record, EPA considers the biennial I/M program selected by Virginia to be as soon as practicable, notwithstanding the fact that other states may choose to implement an annual program. An annual program carries certain practicability problems that EPA has identified elsewhere in the record.

Comment 4

SCLDF commented that any further delays in implementing VOC control measures, including most prominently, enhanced I/M, must not be tolerated. For I/M, EPA's deadline must require implementation in the shortest time in which it is logistically possible to get the testing systems up and running. The NHSDA does not mention the 15% plan or authorize any delay of the achievement of the 15% emission reduction. Furthermore, missing the November 15, 1996 deadline unlawfully rewards states for failure to meet the deadline by giving them increased credits under national programs such as the Tier I Federal Motor Vehicle Control Program. SCLDF argues that such an approach unlawfully delays the achievement of clean air by allowing the states to reduce their own emission control efforts by the amount of the post-November 1996 fleet turnover benefits. Consequently, EPA must deny the post-November 1996 Tier I credit and require states to adopt emission reductions to compensate for post-1996 growth in vehicle miles traveled (VMT).

SCLDF further argues that EPA cannot delay the section 182(b)(1) requirement for states to account for growth in the 15% plans to the Post 1996 rate-of-progress plans, particularly because the Post 1996 plans involve potential NO_X substitution that is not permitted in the VOC-only 15% plans.

Response: EPA disagrees with the comment. The NHSDA was enacted by Congress in November of 1995. Section 348 of this statute provided states' renewed opportunity to satisfy the Clean Air Act requirements related to the network design for I/M programs. States were not only granted the flexibility to enact test-and-repair programs, but were provided additional time to develop those programs and to submit proposed regulations for interim SIP approval. Virginia moved rapidly to propose I/M regulations and to submit to EPA on March 27, 1996 a SIP containing those regulations, under the authority granted by the NHSDA.

Under the terms of the 15% requirement in section 182(b)(1)(A)(i) of the Act, the SIP must—''provide for [VOC] emission reductions, within 6 years after the date of enactment of the Clean Air Act Amendments of 1990, of at least 15 percent from baseline emissions, accounting for any growth in emissions after [1990].''

EPA interprets this provision to require that a specific amount of VOC reductions occur, and has issued guidance for computing this amount. The Commonwealth, complying with this guidance, has determined the amount of the required VOC reductions needed to meet the 15% goal. It is no longer possible for the Commonwealth to implement measures to achieve this level of reduction as the November 15, 1996 date provided under the 15% provisions has passed. Accordingly, EPA believes that the Commonwealth will comply with the statutory mandate as long as Virginia achieves the requisite level of reductions on an as-soon-as-practicable basis after 1996. In computing the reductions, EPA believes it acceptable for states to count reductions from federal measures, such as vehicle turnover, that occur after November 15, 1996, as long as they are measures that would be creditable had they occurred prior to that date. These measures result in VOC emission reductions as directed by Congress in the Act; therefore, these measures should count towards the achievement—however delayed—of the 15% VOC reduction goal.

EPA does not believe states are obligated as part of the 15% SIP to implement further VOC reductions to offset increases in VOC emissions due to post-1996 growth. As noted above, the 15% requirement mandates a specific level of reductions. By counting the reductions that occur through measures implemented pre- and post-1996, SIPs may achieve this level of reductions. Although section 182(b)(1)(A)(i), quoted above, mandates that the SIPs account for growth after 1990, the provision does not, by its terms, establish a mechanism for how to account for growth, or indicate whether, under the present circumstances, post-1996 growth must be accounted for. EPA believes that its current requirements for the 15% SIPs meet section 182(b)(1)(A)(i). In addition, although post-1996 VOC growth is not offset under the 15% SIPs, such growth must be offset in the Post 1996 plans required for serious and higher classified areas to achieve 9% in VOC reductions every three years after 1996 (until the attainment date). Virginia's Post 1996 plan for the Northern Virginia portion of the Metropolitan Washington D.C. area, which is nearing completion, does appear to achieve the 9% emissions reductions required between 1996 and 1999, taking into account growth in VOCs during that time. The fact that these Post 1996 SIPs may substitute NO_X reductions for VOC reductions in the 1996 to 1999 period does not undermine the integrity of the 15% SIPs. Allowing NO_X substitution is fully consistent with the health goals of the Clean Air Act.

Under EPA's approach, post-1996 growth will be accounted for in the plans that Congress intended to take account of such growth—the Post 1996 ''rate of progress'' SIPs. To shift the burden of accounting for such growth to the 15% plans, as commenters would have EPA do, would impose burdens on

states above and beyond what Congress contemplated would be imposed by the 15% requirement (which was intended to have been achieved by November 15, 1996). In the current situation, where it is clearly impossible to achieve the target level of VOC reductions (a 15% reduction taking into account growth through November 1996) by November 1996, EPA believes that its approach is a reasonable and appropriate one. It will still mean that post-1996 growth is taken into account in the SIP revisions Congress intended to take into account such growth and it means that the target level of VOC reductions will be achieved as soon as practicable. Once the Post 1996 rate of progress plans are approved and implemented, areas will have achieved the same level of progress that they were required to have achieved through the combination of the 15% and rate of progress requirements as originally intended by Congress.

Comment 5

The commenter notes a discrepancy on the bottom of page 11401 of the notice of proposed rulemaking. EPA asserted it's belief that the Virginia I/M program ''will achieve 24.6 tons/day of reductions by 1997''. This is unrealistic given that EPA states elsewhere in the notice that the Virginia I/M program is not starting up until November 1997.

Response: The commenter is correct. The notice of proposed rulemaking contained a typographical error in that the year should have read 1999 instead of 1997. This statement in the proposed rulemaking is corrected and revised to read: ''Because Virginia's revised enhanced I/M program is designed to meet EPA's high-enhanced performance standard and will achieve essentially the same number of testing cycles between start-up and November 1999 as that modeled in the original 15% plan, EPA believes that Virginia's program will achieve 24.6 tons/day of reductions by 1999.''

Comment 6

SCLDF commented that the Virginia 15% plan, which takes credit for federal control measures such as architectural and industrial maintenance coating, consumer/commercial products and autobody refinishing, should not be approved because those federal control measures have not yet been promulgated. SCLDF states that allowing such credit violates section 182(b)(1)(C) of the Act. SCLDF further commented that EPA cannot lawfully base SIP decisions on unpromulgated rules because it does not know what these final rules will say. SCLDF contends that allowing credit on as yet unpromulgated rules, even with the caveat that the states must revisit the rule later if the federal rules turn out differently than predicted, amounts to an unlawful extension of a SIP submission deadline. SCLDF stated that EPA must base its decision on the record before it at the time of its decision; not on some record that the agency hopes will exist in the future.

Response: Section 182(b)(1)(A) of the Act requires states to submit their 15% SIP revisions by November, 1993. Section 182(b)(1)(C) of the Act provides the following general rule for creditability of emissions reductions towards the 15% requirement: ''Emissions reductions are creditable toward the 15 percent required * * * to the extent they have actually occurred, as of (November, 1996), from the implementation of measures required under the applicable implementation plan, rules promulgated by the Administrator, or a permit under Title V.''

This provision further indicates that certain emissions reductions are not creditable, including reductions from certain control measures required prior to the 1990 Amendments.

This creditability provision is ambiguous. Read literally, it provides that although the 15% SIPs are required to be submitted by November 1993, emissions reductions are creditable as part of those SIPs only if ''they have actually occurred, as of (November 1996)''. This literal reading renders the provision internally inconsistent. Accordingly, EPA believes that the provision should be interpreted to provide, in effect, that emissions reductions are creditable ''to the extent they will have actually occurred, as of (November, 1996), from the implementation of (the specified measures)'' (the term ''will'' is added). This interpretation renders the provision internally consistent.

Sec. 182(b)(1)(C) of the Act explicitly includes as creditable reductions those resulting from ''rules promulgated by the Administrator''. This provision does not state the date by which those measures must be promulgated, i.e., does not indicate whether the measures must be promulgated by the time the 15% SIPs were due (November, 1993), or whether the measures may be promulgated after this due date.

Because the statute is silent on this point, EPA has discretion to develop a reasonable interpretation, under *Chevron U.S.A. Inc.* v. *NRDC,* 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984). EPA believes it reasonable to interpret section 182(b)(1)(C) of the Act to credit reductions from federal measures as long as those reductions are expected to occur by November 1996, even if the Federal measures are not promulgated by the November 1993 due date for the 15% SIPs.

EPA's interpretation is consistent with the congressionally mandated schedule for promulgating regulations for consumer and commercial products, under section 182(e) of the Act. This provision requires EPA to promulgate regulations controlling emissions from consumer and commercial products that generate emissions in nonattainment areas. Under the schedule, by November 1993—the same date that the States were required to submit the 15% SIPs—EPA was to issue a report and establish a rulemaking schedule for consumer and commercial products. Further, EPA was to promulgate regulations for the first set of consumer and commercial products by November, 1995. It is reasonable to conclude that Congress anticipated that reductions from these measures would be creditable as part of the 15% SIPs, as long as those reductions were to occur by November, 1996.

Crediting reductions from federal measures promulgated after the due date for the 15% SIPs is also sensible from an administrative standpoint. Crediting the reductions allows the states to plan accurately to meet the 15% reduction target from the appropriate level of state and federal measures. Not crediting such reductions would mean that the states would have to implement additional control requirements to reach the 15% mark; and that SIPs would result in more than a 15% level of reductions once the federal measures in question were promulgated and implemented. At that point in time, the state may seek to eliminate those additional SIP measures on grounds that they would no longer be necessary to reach the 15% level. Such constant revisions to the SIP to demonstrate 15% is a paper exercise that exhausts both the states' and EPA's time and resources.

The fact that EPA cannot determine precisely the amount of credit available for the federal measures not yet promulgated does not preclude granting the credit. The credit can be granted as long as EPA is able to develop reasonable estimates of the amount of VOC reductions from the measures EPA expects to promulgate. EPA believes that it is able to develop reasonable estimates, particularly because it has already proposed and taken comment on the measures at issue, and expects to promulgate final rules by the spring of 1998. Many other parts of the SIP, including state measures, typically

include estimates and assumptions concerning VOC amounts, rather than actual measurements. For example, EPA's document to estimate emissions, (''Compilation of Air Pollutant Emission Factors'', January 1995, AP–42), provide emission factors used to estimate emissions from various sources and source processes. AP–42 emission factors have been used, and continue to be used, by states and EPA to determine base year emission inventory figures for sources and to estimate emissions from sources where such information is needed. Estimates in the expected amount of VOC reductions are commonly made in air quality plans, even for those control measures that are already promulgated.

Moreover, the fact that EPA is occasionally delayed in its rulemaking is not an argument against granting credits from these measures. The measures are statutorily required, and states and citizens could bring suit to enforce the requirements that EPA promulgate them. If the amount of credit that EPA allows the state to claim turns out to be greater than the amount EPA determines to be appropriate when EPA promulgates the federal measures, EPA intends to take appropriate action to require correction of any shortfall in necessary emissions reductions that may occur.

The above analysis focuses on the statutory provisions that include specific dates for 15% SIP submittals (November, 1993), and implementation (November 15, 1996). These dates have expired, and EPA has developed new dates for submittal and implementation. EPA does not believe that the expiration of the statutory dates, and the development of new ones, has implications for the issue of whether reductions from federal measures promulgated after the date of 15% SIP approval may be counted toward those 15% SIPs. Although the statutory dates have passed, EPA believes that the analysis described above continues to be valid.

Comment 7

SCLDF commented that EPA proposed disapproval of the Philadelphia 15% plan in 1996 because the plan assumed credit from control strategies either not fully adopted, not creditable under the Clean Air Act, or which had not been adequately quantified. Furthermore, EPA proposed disapproval of the plan because Pennsylvania switched I/M programs yet did not revise the 15% plan to reflect the differences in the I/M program description and projected emission reductions. EPA set precedence with this rulemaking and to propose approval of the Virginia 15% plan when the same deficiencies exist is acting in an arbitrary and capricious manner of treating similar situations in such a diametrically opposite fashion.

Response: EPA's proposed approval of the Virginia 15% plan is not inconsistent with the proposed disapproval of the Philadelphia 15% plan. On July 10, 1996, EPA proposed to disapprove Pennsylvania's 15% plan for the Philadelphia area because it would not have achieved sufficient reductions to meet the requirements of section 182(b)(1) of the Act (61 FR 36320). EPA did not credit any reductions from Pennsylvania's Enhanced
iI/M Program because at the time of the July 10, 1996 rulemaking EPA had disapproved Pennsylvania's I/M submittal.[1] As discussed above, on May 15, 1997, EPA granted conditional interim approval of Virginia's I/M program in the Virginia SIP (62 FR 26745). Therefore, the factual basis for EPA's conditional interim approval of Virginia's 15% is not similar to that of the Philadelphia 15% Plan. In the July 10, 1996 proposed disapproval, EPA credited the measures in Pennsylvania's 15% Plan towards meeting the rate of progress requirements of the Act even though they were insufficiently documented to qualify for full approval. *See*, 61 FR 36322. That action is wholly consistent with EPA's conditional interim approval of the Virginia 15% plan.

Comment 8

NYSDEC commented that EPA should not be treating this as a Table 3 SIP action, because the Sierra Club Legal Defense Fund settlement regarding 15% plans in the Philadelphia, Baltimore and Washington D.C. ozone nonattainment areas has national policy implications.

Response: EPA disagrees with this comment. Delegation authority is an internal agency decision. This rulemaking action is consistent with EPA delegation policy. The authority for decision making and signature of all SIP revisions has been delegated to the Regional Administrators.

Comment 9

NYSDEC commented that EPA should propose limited approval/limited disapproval of this SIP because of its technical defects.

Response: EPA disagrees with this comment. Historically, the Agency has used both conditional approval and limited approval/disapproval actions for SIP revisions with technical deficiencies. EPA has the authority to grant conditional approvals at least when EPA has a reasonable basis to believe that the information to correct these deficiencies is available and can be implemented by the state within a 12-month period. EPA has a reasonable basis to believe that the Commonwealth of the Virginia has the ability to and will correct the deficiencies conditioned in the 15% plan. The Commonwealth has taken a revised 15% plan through the public hearing process which addresses many of the named deficiencies. Furthermore, Virginia has submitted a commitment letter agreeing to meet the conditions of the conditional approval and correct the 15% plan within 12 months of this rulemaking.

Comment 10

NYSDEC commented that EPA should have addressed the contingency measure requirements of the Clean Air Act in this rulemaking.

Response: EPA disagrees with this comment. Under section 172(b) of the Act, areas classified as nonattainment must include in their nonattainment plan provisions, contingency measures to be implemented if an area fails to make reasonable further progress or attain the standard by the applicable attainment date. In addition, section 182(c)(9) of the Act requires areas classified as serious and above to include in their nonattainment SIP contingency measures to be implemented if a reasonable further progress (RFP) milestone is not achieved.

EPA interprets the provisions of sections 172(b) and 182(c)(9), on the one hand; and section 182(b)(1)(A) [the 15% plan requirement], on the other hand, to be separate and independent provisions within the Act. Therefore, this rulemaking addresses EPA's action on the May 15, 1995 15% plan submittal only as it adheres to the requirements of Section 182(b)(1)(A) of the Act. There is no obligation to act on the contingency measure requirement in this rulemaking. Any submittal that the Commonwealth submits to EPA regarding the contingency measure requirements of section 172(b) of the Act will be handled under a separate rulemaking action.

Comment 11

NYSDEC commented that the redesign of the Virginia I/M test and repair program claims an effectiveness of 93% relative to a centralized program. This implies that the existing

[1] In a letter, dated April 13, 1995, EPA converted the August 31, 1994 conditional approval of Pennsylvania I/M submittal to a disapproval.

basic test and repair program effectiveness is greater than 50%. The effectiveness of the existing program needs to be re-evaluated and the base year inventory and 1996 target levels adjusted to reflect the revised effectiveness.

Response: EPA does not agree with the commenter that the Commonwealth should have to re-evaluate the effectiveness of the existing program. Requiring recalculation of the baseline at this point in time would effectively be requiring the states to hit a moving target, something which EPA feels Congress did not intend to happen as a result of the latitude afforded to states under the NHSDA. EPA is willing to allow states to rely on the baseline modeling previously done for the 15% plans, even though the Commonwealth's assessment of the existing program provides evidence to say that the program was more effective than previously demonstrated through modeling. EPA believes a recalculation of the I/M baseline credits would be an unreasonable burden to place on states because the information that suggests the need for recalculation did not become available until well after Virginia completed the 15% calculations and submitted the SIP to EPA for approval. See discussion below under comment 16 regarding calculation of credits for open burning.

Comment 12

NYSDEC commented that the viability of the cited 24.6 tons/day reduction from Virginia I/M is questionable. The Virginia I/M program is similar to the New York I/M program, yet the New York program is an annual one. EPA Region III has allowed Virginia to claim greater credit for their I/M program than Region II has allowed New York to do. This constitutes regional inconsistency. EPA is treating the Virginia I/M program more favorably than the New York I/M program by allowing greater credit for a more deficient program.

Response: EPA has granted conditional interim approval to Virginia's I/M program under NHSDA. Although the SIP approved I/M program differs from the program referred to in Virginia's 15% plan, EPA has determined that the two programs will ultimately achieve a similar amount of credit. As a condition of this rulemaking however, Virginia is required to remodel the credits achieved from its I/M program using the appropriate inputs which accurately reflect the newly designed program under the NHSDA. Full approval of the 15% plan is conditioned upon this demonstration of credit through remodeling. The 24.6 tons/day reduction is, therefore, only conditionally approved until the demonstration is submitted by Virginia as required under NHSDA.

Virginia has committed to complete a remodeling demonstration in accordance with EPA policy on I/M modeling. Virginia has not been allowed to deviate from EPA-accepted modeling practices, in fact the Commonwealth will be required to remodel the program as designed and implemented, using the credit deck specified for its ASM test procedure, as directed by EPA. The 15% I/M credits for both the New York program and the Virginia program are calculated with respect to not only the I/M program performance standard, but more importantly in conjunction with the amount and type of VMT for each area. EPA does not lend any credibility to New York's argument that EPA is allowing Virginia to take greater credit with modeling EPA Region II would find insufficient. The premise of New York's comment is that EPA has made a decision regarding the amount of creditable emission reductions from New York's I/M program. In fact, New York State has not yet submitted a 15% plan and EPA has not made a decision regarding the amount of creditable reduction from the New York I/M program. Once New York submits a 15% plan, EPA will evaluate the amount of credit from New York's I/M program. Furthermore, Virginia has moved forward with final regulations for an I/M program that has been granted final conditional interim approval, and which is slated to begin start-up by November 1997.

Comment 13

NYSDEC commented that EPA cannot allow credit from an I/M program outside the nonattainment area (Facquier County).

Response: EPA disagrees with this comment. As a preliminary matter, EPA originally relied on policy established in guidance documents for the preparation of 15% plans in allowing creditable reductions from the implementation of I/M in Facquier County, a county adjacent to but not part of the nonattainment area.

Specifically, Appendix F (F–10) of ''Guidance For Growth Factors, Projections, And Control of Strategies For The 15 Percent Rate-Of-Progress Plans'' [EPA–452/R–93–002, March 1993] provides examples of additional mobile source controls which will achieve creditable emissions reductions necessary to meet 15 percent requirements, net of growth. One example shown is a ''basic I/M program imposed in areas adjacent to the nonattainment area to control emissions from vehicles that commute into the nonattainment area. States should rely primarily on traffic counts to verify the commute traffic information for the nonattainment area.'' The Commonwealth of Virginia initially made such a showing using the Mobile 5.0a model to determine the amount of creditable reductions to be achieved by implementing I/M in adjacent Facquier County. Therefore, EPA proposed to approve the 0.9 tons/day reduction creditable through this measure.

However, since the proposed rulemaking was published, EPA has subsequently learned from the Commonwealth that I/M will not in fact be implemented in Facquier County, Virginia. The Commonwealth has removed this measure from the draft revised 15% plan that it has taken to public hearing. The Commonwealth is no longer claiming a 0.9 tons/day reduction from I/M in Facquier County as a creditable measure in the revised 15% plan. In response, EPA is not approving the 0.9 tons/day credits in the conditionally approved 15% plan for northern Virginia. In its commitment letter of April 4, 1997 the Commonwealth agreed to submit an amended 15% plan as a SIP revision that will demonstrate using appropriate documentation methodologies and credit calculations that the 54.5 tons/day emissions reduction, supported through creditable emissions reduction control measures, satisfies Virginia's 15% rate of progress requirement for the Metropolitan Washington D.C. nonattainment area. EPA interprets this commitment to mean that Virginia will demonstrate in the revised 15% plan submittal that the area will have achieved a 15% reduction in VOCs net of growth, not including the credit initially claimed for I/M in Facquier County.

Comment 14

NYSDEC commented that the discrepancies in the inventory and growth projections in the Virginia plan are significant and EPA should not dismiss these.

Response: EPA is not dismissing the discrepancies in the May 15, 1995 submittal. EPA noted the differences in the numbers for the mobile source category between the base year 1990 inventory and the 15% plan inventory. EPA determined that the discrepancies are insignificant and can be attributed to rounding errors in the inventory development process. Additionally, the Commonwealth is submitting revisions to the 1990 base year inventory for the Northern Virginia portion of the

Washington D.C. nonattainment area as part of the revised 15% plan that went to public hearing. These revisions to the 1990 base year inventory will be reviewed and acted upon once the submittal is made.

Regarding growth projections, EPA is conditioning approval of the plan and requiring Virginia to revise its growth estimates as a condition for full approval. Revising the plan to account for growth in point sources between 1990 and 1996 will, in fact, change the budget contained in the 15% plan and the amount of emission reductions required to offset growth. EPA has also conditioned full approval of the 15% plan on a demonstration to be provided by Virginia that point source growth be determined and offset with an equivalent amount of emission reductions.

Comment 15

NYSDEC commented that the Stage I credits in Loudoun County should not be allowed; this was a noncreditable reasonably available control technology (RACT) fix-up.

Response: The commenter is correct in this statement. Virginia claimed a total of 0.5 tons/day emission reduction from the implementation of Stage I controls in Loudoun and Stafford counties in the nonattainment area. In 1988 EPA made a SIP call to the Commonwealth of Virginia to among other requirements, require Stage I VOC controls in Loudoun County. This was, in fact, part of the RACT Fix-Ups SIP call. The Act does not allow reductions from RACT Fix-Ups to be creditable toward the 15% plans. Therefore, the 0.23 tons/day emissions reductions associated with implementing Stage I controls in Loudoun County are not creditable toward the Virginia 15% plan, and EPA is not approving these credits in the conditionally approved 15% plan for Northern Virginia. However, the remaining 0.26 tons/day associated with implementing Stage I emission controls in Stafford County are a creditable reduction in the 15% plan, because Stafford County was added to the nonattainment area in the 1991 designations and not subject to the pre-1990 RACT fix-up requirements. In its commitment letter of April 4, 1997 the Commonwealth agreed to submit an amended 15% plan as a SIP revision that will demonstrate using appropriate documentation methodologies and credit calculations that the 54.5 tons/day emissions reduction, supported through creditable emissions reduction control measures, satisfies Virginia's 15% rate of progress requirement for the Metropolitan Washington D.C. nonattainment area. EPA interprets this commitment to mean that the Commonwealth will demonstrate in the revised 15% plan submittal that the area will have achieved a 15% reduction in VOCs net of growth, notwithstanding the credit claimed for implementing Stage I controls in Loudoun County.

The Commonwealth and EPA originally believed that there were no RACT fix-ups that resulted in emission reductions in the northern Virginia area and claimed zero in the target level calculation for the area. Although the effects of this revision to the target level may be minimal and insignificant, nevertheless, Stage I reductions in Loudoun County should be deducted from the target level in accordance with EPA guidance and policy on target level calculations. EPA interprets Virginia's commitment letter to mean that Virginia will recalculate the target level for the northern Virginia area to account for these reductions from the RACT fix-up rule.

Comment 16

NYSDEC commented that the inventory data and emission factors for open burning do not support Virginia's claim of 2.6 tons/day credit.

Response: EPA does not agree with this comment. The Commonwealth of Virginia used the available data at the time to compute emission reductions from controls on open burning. Additional information regarding the emissions inventory for the open burning category can be found in Virginia's SIP submittal for the 1990 Base Year VOC Emissions Inventory for the area, which EPA approved on September 16, 1996. Using information from the inventory and the appropriate methodology at the time from EPA's Compilation of Air Pollutant Emission Factors (AP–42), Fourth Edition (1987), EPA has determined that Virginia correctly computed the amount of emission reductions resulting from the open burning control strategy. Virginia's open burning rule bans all burning of construction waste, debris waste and demolition waste.

Using information collected through permits issued for open burning, Virginia estimates that 1,824 acres are burned annually in the nonattainment area. The fuel loading factor of 70 tons/acre was taken from AP–42, Table 2.4–5, category ''forest residues—unspecified'' (the appropriate category for landclearing debris associated with construction projects). The VOC emission factor of 19 lbs/ton burned (nonmethane emissions)[2] was taken from the same table.

1824 acres/year * 1 year/365days * 70 tons/acre fuel = 349.9 tons/day burned

349.9 tons/day * 19 lbs/ton VOC * .0005 tons/1 lb = 3.32 lbs VOC/day emission

The Fourth Edition (1987) of AP–42 was the current edition when the Commonwealth prepared the 1990 base year inventory and the 15% plan. EPA's applicable guidance does not require that a base year inventory, target level calculation and, hence, other aspects of a 15% plan be revisited due to insignificant changes in emission factors that become available after submission of the plan.[3] The Commonwealth of Virginia took the 15% plan to hearing in November 1993. The commenter quotes information from the Fifth Edition of AP–42 which was released during 1995 well after preparation and submission of the 15% plan.

The 15% plan for the Northern Virginia portion of the Washington D.C. nonattainment area claimed no growth in emissions in the open burning category for the period 1990–1996. Virginia applied the default rule compliance value of 80% to the 1990 baseline daily emissions of 3.3 tons/day. The resulting estimated emissions reduction from the ban on open burning is 2.64 tons/day. EPA is approving this amount of emission reduction credit in the Virginia 15% plan because the Commonwealth used the appropriate methodology for estimating emissions and has properly adopted and implemented the open burning rule in the nonattainment area.

III. Conditional Interim Approval

EPA has evaluated Virginia's May 15, 1995 submittal for consistency with the Act, applicable EPA regulations, and EPA policy and determined, as documented in the March 12, 1997 NPR that, on its face, the 15% plan for Northern Virginia portion of the Metropolitan Washington D.C. area achieves the required 15% VOC

[2] According to AP–42, nonmethane VOC emissions from unspecified forest residues could include olefins, acetylene, aldehydes, ketones, aromatics, cycloparaffins, and other saturates. Not all VOC emissions are necessarily ozone precursors. However, in the absence of more specific information and for the purposes of emissions inventory development, all non-methane VOC emissions from open burning categories are assumed to be ozone precursors.

[3] See section 2.3 of ''Guidance on the Adjusted Base Year Emissions Inventory and the 1996 Target for 15 Percent Rate of Progress Plans'' (EPA–452/R–92–005, October 1992); and ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990; Proposed Rule'', 57 Federal Register 13498 and 13508 (April 16, 1992).

emission reduction to meet Virginia's portion of the regional multi-state plan to satisfy the requirements of section 182(b)(1) of the Act. However, there are measures included in the Virginia 15% plan, which may be creditable towards the Act requirement, but which are insufficiently documented for EPA to take action on at this time. While the amount of creditable reductions for certain control measures has not been adequately documented to qualify for Clean Air Act approval, EPA has determined that the submittal for Northern Virginia portion of the Metropolitan Washington D.C. area contains enough of the required structure to warrant conditional interim approval. EPA cannot grant full approval of the Virginia 15% rate-of-progress plan under section 110(k)(3) and Part D of the Clean Air Act. Instead, EPA is granting conditional interim approval of this SIP revision under section 110(k)(4) of the Act, because the Commonwealth must meet the specified conditions and supplement its submittal to satisfy the requirements of section 182(b)(1) of the Act regarding the 15 percent rate-of-progress plan, and because the Commonwealth must supplement its submittal and demonstrate it has achieved the required emission reductions.

The March 12, 1997 NPR listed the conditions that Virginia must meet in order to convert the conditional approval to full approval. In an April 4, 1997 letter to EPA, the Commonwealth committed to meet all the conditions listed in the NPR within 12 months of final conditional approval. The conditions from the NPR are restated here. The Commonwealth of Virginia must fulfill the following conditions by no later than June 24, 1998:

1. Virginia's 15% plan must be revised to account for growth in point sources from 1990–1996.

2. Virginia must meet the conditions listed in the November 6, 1996 proposed conditional interim Inspection and Maintenance Plan (I/M) rulemaking notice, and the I/M reductions using the following two EPA guidance memos: ''Date by which States Need to Achieve all the Reductions Needed for the 15 Percent Plan from I/M and Guidance for Recalculation,'' note from John Seitz and Margo Oge, dated August 13, 1996, and ''Modeling 15 Percent VOC Reductions from I/M in 1999—Supplemental Guidance'', memorandum from Gay MacGregor and Sally Shaver, dated December 23, 1996.

3. Virginia must remodel to determine affirmatively the creditable reductions from RFG, and Tier 1 in accordance with EPA guidance.

4. Virginia must submit a SIP revision amending the 15% plan with a demonstration using appropriate documentation methodologies and credit calculations that the 54.5 tons/day reduction, supported through creditable emission reduction measures in the submittal, satisfies Virginia's 15% ROP requirement for the Metropolitan Washington D.C. nonattainment area.

After making all the necessary corrections to establish the creditability of chosen control measures, Virginia must demonstrate that 15% emission reduction is obtained in the Northern Virginia portion of the Metropolitan Washington D.C. nonattainment area as required by section 182(b)(1) of the Act and in accordance with EPA's policies and guidance issued pursuant to section 182(b)(1).

IV. Final Action

EPA is today granting conditional interim approval of the Northern Virginia 15% plan as a revision to the Virginia SIP. EPA is granting approval to emission credits for the Virginia 15% plan on an interim basis, pending verification of Virginia's I/M program's performance, pursuant to section 348 of the NHSDA. The interim approval of the 15% plan will expire at the end of 18 months following EPA's final conditional interim rulemaking of Virginia's I/M program which was published in the **Federal Register** on May 15, 1997. The interim approval will be replaced by appropriate EPA action based on the evaluation EPA receives concerning the I/M program's performance. If the evaluation indicates a shortfall in emission reductions compared to the remodeling that the 15% plan is conditioned on, the Commonwealth will need to find additional emission credits. Failure of the Commonwealth to make up for an emission shortfall from the enhanced I/M program may subject the Commonwealth to sanctions and imposition of a Federal Implementation Plan. EPA has already approved the Virginia enhanced I/M program on a conditional interim basis. This approval of the Virginia enhanced I/M program was taken under section 110 of the Act and, although the credits provided by this program may expire, the approval of the I/M regulations does not expire. As explained above, the credits provided by the enhanced I/M program on an interim basis for the 15% plan may be adjusted based on EPA's evaluation of the enhanced I/M program's performance.

This rulemaking action is a conditional interim approval that will not convert to full approval until Virginia has met conditions 1 through 4 of this rulemaking. If the conditions are not met within 12 months of today's rulemaking, this rulemaking will convert to a disapproval. Once Virginia satisfies the conditions of the I/M rulemaking and receives final interim approval of I/M, EPA will grant final interim approval of the 15% plan, (assuming that the other conditions have been met). Conversely, if EPA disapproves the Virginia I/M program, EPA's conditional interim approval of the 15% plan would also convert to a disapproval. EPA would notify Virginia by letter that the conditions have not been met and that the conditional interim approval of the 15% plan has converted to a disapproval. Each of the conditions must be fulfilled by Virginia and submitted to EPA as an amendment to the SIP. If Virginia corrects the deficiencies within one year of conditional interim approval, and submits a revised 15% plan as a SIP revision, EPA will conduct rulemaking on that revision.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA

to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

Conditional approvals of SIP submittals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new federal requirement.

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action, pertaining to the final conditional interim approval of the 15% plan for the Northern Virginia portion of the metropolitan Washington D.C. area, must be filed in the United States Court of Appeals for the appropriate circuit by August 25, 1997. 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 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, Hydrocarbons, Ozone.

Dated: June 13, 1997.

W. Michael McCabe,

Regional Administrator, Region III.

Chapter I, title 40, of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart VV—Virginia

2. Section 52.2450 is amended by adding paragraph (e) to read as follows:

§ 52.2450 Conditional approval.

* * * * *

(e) The Commonwealth of Virginia's May 15, 1995 submittal for the 15 Percent Rate of Progress Plan (15% plan) for the Northern Virginia portion of the Metropolitan Washington D.C. ozone nonattainment area, is conditionally approved based on certain contingencies, for an interim period. The conditions for approvability are as follows:

(1) Virginia's 15% plan must be revised to account for growth in point sources from 1990–1996.

(2) Virginia must meet the conditions listed in the November 6, 1996 proposed conditional interim Inspection and Maintenance Plan (I/M) rulemaking notice, remodel the I/M reductions using the following two EPA guidance memos: ''Date by which States Need to Achieve all the Reductions Needed for the 15 Percent Plan from I/M and Guidance for Recalculation,'' note from John Seitz and Margo Oge, dated August 13, 1996, and ''Modeling 15 Percent VOC Reductions from I/M in 1999—Supplemental Guidance'', memorandum from Gay MacGregor and Sally Shaver, dated December 23, 1996.

(3) Virginia must remodel to determine affirmatively the creditable reductions from RFG, and Tier 1 in accordance with EPA guidance.

(4) Virginia must submit a SIP revision amending the 15% plan with a demonstration using appropriate documentation methodologies and credit calculations that the 54.5 tons/day reduction, supported through creditable emission reduction measures in the submittal, satisfies Virginia's 15% ROP requirement for the Metropolitan Washington D.C. nonattainment area.

[FR Doc. 97–16510 Filed 6–23–97; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–5845–1]

Maine; Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The State of Maine has applied for final authorization for revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). Maine's revisions address many of the rules that were promulgated by the Environmental Protection Agency (EPA) between July 1, 1984 and June 30, 1990. These rules are contained in Non-HSWA Clusters I through VI and HSWA Clusters I and II. The specific RCRA program revisions for which Maine is seeking authorization are listed in the table in section C of this document.