Authority: 42 U.S.C. 7401–7671q.

Subpart U—Maine

2. Section 52.1020 is amended by adding paragraph (c)(44) to read as follows:

§ 52.1020 Identification of plan.

* * * * *

(c) * * *

(44) Revisions to the State Implementation Plan submitted by the Maine Department of Environmental Protection on October 11, 1996.

(i) Incorporation by reference.

(A) Letter from the Maine Department of Environmental Protection dated October 11, 1996 submitting a revision to the Maine State Implementation Plan.

(B) Chapter 141 of the Maine Department of Environmental Protection Air Regulation entitled, ''Conformity of General Federal Actions,'' effective in the State of Maine on September 28, 1996.

3. In § 52.1031 Table 52.1031 is amended by adding a new entry for state citation Chapter 141: General Conformity Rule to read as follows:

§ 52.1031 EPA-approved Maine regulations.

* * * * *

TABLE 52.1031.—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date adopted by State	Date approved by EPA	Federal Register citation	52.1020	
*	*	*	*	*	*	*
141	Conformity of General Federal Actions.	9/11/96	September 23, 1997.	62 FR 49611	(c)(44)	''Chapter 141: Conformity of General Federal Actions''.
*	*	*	*	*	*	*

[FR Doc. 97–25230 Filed 9–22–97; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD 039–3019; FRL–5896–1]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is granting conditional approval of the State Implementation Plan (SIP) revision submitted by the State of Maryland, for the Maryland 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 approval of the 15% plan, submitted by the State of Maryland, 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 Maryland's inspection and maintenance (I/M) program that received final conditional approval on July 31, 1997 (62 FR 40938). This action is being taken under section 110 of the Clean Air Act.

EFFECTIVE DATE: This final rule is effective on October 23, 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 Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland 21224.

FOR FURTHER INFORMATION CONTACT: Carolyn M. Donahue, Ozone/Carbon Monoxide and Mobile Sources Section (3AT21), USEPA—Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, or by telephone at (215) 566–2095 or via e-mail, at the following address: donahue.carolyn@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 15% 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 Maryland portion consists of Calvert, Charles, Frederick, Montgomery and Prince George's Counties.

Virginia, Maryland, and the District all must demonstrate reasonable further progress for the Metropolitan Washington, D.C. nonattainment area. These three jurisdictions, in conjunction with municipal planning organizations, collaborated on a coordinated 15% plan for the 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 State of Maryland submitted the 15% plan SIP revision for the Maryland portion of the Metropolitan Washington, D.C. nonattainment area on July 12, 1995. On June 5, 1997, EPA published a notice of proposed rulemaking (NPR) in the **Federal Register** proposing conditional approval of the 15% plan (62 FR 30821). EPA's rationale for granting conditional approval to this Maryland 15% plan, and the details of the July 12, 1995 submittal are contained in the June 5, 1997 NPR and the accompanying technical support document and will not be restated here.

II. Public Comments and EPA Responses

EPA received a letter in response to the June 5, 1997 NPR from the Sierra Club Legal Defense Fund (SCLDF). The

following discussion summarizes and responds to the comments received.

Comment 1

SCLDF commented that the Maryland 15% plan must be disapproved because it failed to produce the 15% emission reduction of 60.7 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 Maryland's required 15% reduction ''may be lower than the 56.4 tons per day'' is flawed. EPA took no action on 6.3 tons of additional measures.

Response 1

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 Maryland portion of the Metropolitan Washington, D.C. nonattainment area may be lower than the 60.7 tons/day estimated in the July 12, 1995 SIP submittal based on new information supplied by the State. Although this information has not been established through an official SIP submittal, this information is contained in Maryland's rate-of-progress SIP for the 1996–1999 time period (known as the Post-1996 plan). Maryland 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 Maryland's 15% SIP, on the condition that Maryland submit the requisite documentation. The State of Maryland has agreed to meet this condition to document that the amount of reduction needed to meet the 15% requirement is less than 56.4 tons/day, and submitted such commitment in writing on July 3, 1997.

Comment 2

SCLDF commented that the Maryland 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 2

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 is 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 3

EPA has improperly suggested that SIPs can be approved if the state has failed to demonstrate approvability. In this regard, EPA has not been able to verify Maryland's emission reduction credit claims for Tier I or Stage II vapor recovery, but has nonetheless stated that it has no reason to dispute the credit claimed by Maryland and is therefore approving the 15% plan. An absence of statutorily required documentation requires disapproval.

Response 3

EPA believes Maryland has demonstrated that it has appropriately modeled its mobile source program benefits, through proper use of EPA's MOBILE emissions factor estimation model, combined with state vehicle miles of travel estimates. It is not practical to submit the hundreds or even thousands of modeling input and output runs needed to evaluate the mobile source-related portions of the 15% rate-of-progress SIP. Maryland instead submitted to EPA a list of the variables and assumptions utilized in its MOBILE modeling analysis, along with sample model input and output scenarios.

While the SIP does not contain sufficient data to reconstruct the analysis and, therefore, to independently verify the State's claims, EPA believes the State's methodology is sound. However, EPA has deferred the specific results of that methodology, in part, to the State.

Comment 4

SCLDF commented that it is unlawful for EPA to allow substantial credit from an I/M program that is not before the agency. The 15% plan before EPA was submitted on July 12, 1995, and thus does not incorporate Maryland's current I/M plan which was submitted in March 1996. Also, it is unlawful to allow postponements under the National Highway System Designation Act (NHSDA) for an area that did not submit an NHSDA-type program.

Response 4

Maryland's March 1996 I/M submittal was an amendment to the I/M program submitted to EPA on July 11, 1995. The March I/M submittal does not supercede the July 1995 program; thus Maryland's current I/M program is before EPA. EPA granted conditional approval of Maryland's I/M program on July 31, 1997. If the rules submitted from Maryland to EPA are valid, they do not have to be submitted in a particular order.

EPA believes that test-only I/M programs like the one in Maryland should be treated in the same manner as NHSDA state programs (test and repair programs) with regard to 15% plan requirements. In a letter from Mary Nichols to MDE Secretary Jane Nishida dated January 30, 1996, EPA stated this position is justified in light of administrative and statutory changes in the I/M requirements and the extent to which states relied on I/M programs in their 15% submittals. EPA's approach would have the effect of keeping a level playing field by assuring that Maryland would not be penalized for adopting a test-only program.

Comment 5

SCLDF commented that EPA cannot postpone the deadline for achieving the required 15% reduction any further than the current deadline of November 15, 1999. It contends that, without conceding the legality of a 3-year postponement of the statutory deadline of November 15, 1996 allowed by EPA, any longer postponement would be unlawful. Once a compliance date has expired, compliance must occur in the shortest time possible. The commenter cited various court decisions in an effort to demonstrate that a postponement longer than three years would not adhere to the strict standard of compliance. Also, SCLDF claimed that postponing a requirement for reasonable further progress until after the deadline for attainment would be unlawful.

Response 5

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 Maryland has demonstrated that it has met this standard. The notice of proposed rulemaking and the TSD accompanying that proposal 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 Maryland'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 State and EPA to develop and process the revised I/M plans. In the January 1996 letter to Secretary Nishida from Mary Nichols,

EPA states it will credit Maryland's test-only enhanced I/M program for purposes of the 15% requirement. This approach enables states with test-only programs to enhance those programs starting in 1997 while applying credit for those programs to satisfy the 1996 15% VOC reduction plan requirements. Maryland acted expeditiously in developing and implementing a revised enhanced I/M program. However, the amount of time necessary to develop and implement the I/M program rendered impossible achieving the 15% reduction target by the end of 1996. The addendum to the TSD showing the chronology of Maryland's I/M program development demonstrates the necessity of the extension.

Moreover, EPA has reviewed other VOC SIP measures that are at least theoretically available to Maryland, and has concluded that implementation of any such measures that might be appropriate would not accelerate the date of achieving the 15% reductions. For reasons indicated elsewhere in the record, EPA considers the biennial I/M program selected by Maryland to be as soon as practicable, notwithstanding the fact that other states may choose to implement an annual program.

Comment 6

SCLDF commented that any further delays in achieving the mandate 15% reduction from VOC control measures, including most prominently, enhanced I/M, must not be tolerated. 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 6

EPA disagrees with this 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. Maryland moved rapidly to propose I/M regulations and to submit to EPA on March 27, 1996 an amendment to the I/M SIP containing those regulations. EPA granted conditional approval of the Maryland I/M program on July 31, 1997 (62 FR 40938).

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. Maryland, 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 Maryland 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 Maryland will comply with the statutory mandate as long as it 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). Maryland's Post-1996 plan for the Maryland 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 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 Maryland 15% plan when the same deficiencies exist is acting in an arbitrary and capricious manner of treating similar situations in such a diametrically opposed fashion.

Response 7

EPA's proposed approval of the Maryland 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 I/M program because at the time of the July 10, 1996 rulemaking EPA had disapproved Pennsylvania's I/M submittal. In a letter dated April 13, 1995, EPA converted the August 31, 1994 conditional approval of Pennsylvania I/M submittal to a disapproval. As discussed above, on July 31, 1997, EPA granted conditional approval of Maryland's I/M program in the Maryland SIP (62 FR 40938). Therefore, the factual basis for EPA's conditional approval of Maryland's 15% plan 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 approval of the Maryland 15% plan.

III. Conditional Approval

EPA has evaluated Maryland's July 12, 1995 submittal for consistency with the Act, applicable EPA regulations, and EPA policy and has determined, as documented in the June 5, 1997 NPR, that, on its face, the 15% plan for the Maryland portion of the Metropolitan Washington, D.C. nonattainment area achieves the required 15% VOC emission reduction to meet Maryland'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 Maryland 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 Maryland's submittal contains enough of the required structure to warrant conditional approval. EPA cannot grant full approval of the Maryland 15% rate-of-progress plan under section 110(k)(3) and Part D of the Clean Air Act. Instead, EPA is granting conditional approval of this SIP revision under section 110(k)(4) of the Act, because the State must meet the specified conditions and supplement its submittal to satisfy the requirements of section 182(b)(1) of the Act regarding the 15% rate-of-progress plan, and because the State must supplement its submittal and demonstrate it has achieved the required emission reductions.

The June 5, 1997 NPR listed the conditions that Maryland must meet in order to convert the conditional approval to full approval. In a July 3, 1997 letter to EPA, the State 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 State of Maryland must fulfill the following conditions by no later than September 23, 1998:

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

2. Maryland must meet the conditions listed in the October 31, 1996 proposed conditional 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. Maryland must remodel to determine affirmatively the creditable reductions from RFG, and Tier 1 in accordance with EPA guidance.

4. Maryland must submit a SIP revision amending the 15% plan with a demonstration using appropriate documentation methodologies and credit calculations that the 56.4 tons/day reduction, supported through creditable emission reduction measures in the submittal, satisfies Maryland'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, Maryland must demonstrate that 15% emission reduction is obtained in the Maryland 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 approval of the Maryland 15% plan as a revision to the Maryland SIP. This rulemaking action will not convert to full approval until Maryland 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 Maryland satisfies the conditions of the I/M rulemaking and receives final approval of I/M, EPA will grant final approval of the 15% plan (assuming that the other conditions have been met). Conversely, if EPA disapproves the Maryland I/M program, EPA's conditional approval of the 15% plan would also convert to a disapproval. EPA would notify Maryland by letter that the conditions have not been met and that the conditional approval of the 15% plan has converted to a disapproval. Each of the conditions must be fulfilled by Maryland and submitted to EPA as an amendment to the SIP. If Maryland corrects the deficiencies within one year of conditional approval, and submits a revised 15% plan as a SIP revision, EPA will conduct rulemaking on that revision.

Further, EPA makes this conditional approval of the 15% plan contingent upon Maryland maintaining a mandatory I/M program. EPA will not credit any reductions toward the 15% ROP requirement from a voluntary enhanced I/M program. Any changes to I/M which would render the program voluntary or discontinued would cause a shortfall of credits in the 15% reduction goal. Therefore, this action will convert automatically to a disapproval should the State make the enhanced I/M program a voluntary measure.

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 Maryland portion of the Metropolitan Washington D.C. serious ozone nonattainment area, must be filed in the United States Court of Appeals for the appropriate circuit by November 24, 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, Incorporation by reference, Ozone.

Dated: September 12, 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 V—Maryland

2. Section 52.1072 is amended by adding paragraph (b) to read as follows:

§ 52.1072 Conditional approval.

* * * * *

(b) The State of Maryland's July 12, 1995 submittal for the 15 Percent Rate of Progress Plan (15% plan) for the Maryland portion of the Metropolitan Washington, DC ozone nonattainment area, is conditionally approved based on certain contingencies. The conditions for approvability are as follows:

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

(2) Maryland must meet the conditions listed in the October 31, 1996 proposed conditional 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) Maryland must remodel to determine affirmatively the creditable reductions from RFG, and Tier 1 in accordance with EPA guidance.

(4) Maryland must submit a SIP revision amending the 15% plan with a demonstration using appropriate documentation methodologies and credit calculations that the 56.4 tons/day reduction, supported through creditable emission reduction measures in the submittal, satisfies Maryland's 15% ROP requirement for the

Metropolitan Washington, DC nonattainment area.

[FR Doc. 97–25228 Filed 9–22–97; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. NY24–2–172b, FRL–5892–5]

Approval and Promulgation of Implementation Plans; Reasonably Available Control Technology for Oxides of Nitrogen for Specific Sources in the State of New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is announcing approval of three (3) revisions to the State Implementation Plan (SIP) for ozone submitted by the State of New York. These revisions consist of source-specific reasonably available control technology (RACT) determinations for controlling oxides of nitrogen (NO_X) from these sources in New York. The intended effect of this action is to approve the source-specific RACT determinations made by New York in accordance with State provisions. This action is being taken in accordance with section 110 of the Clean Air Act (the Act).

DATES: This rule is effective on November 24, 1997 unless adverse or critical comments are received by October 23, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: All comments should be addressed to: Ronald J. Borsellino, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, New York, New York 10007–1866.

Copies of the State submittals are available at the following addresses for inspection during normal business hours:

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

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

Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Ted Gardella or Rick Ruvo, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION:

A. Background

The air quality planning requirements for the reduction of NO_X emissions through RACT are set out in section 182(f) of the Act. Section 182(f) requirements are described by EPA in a **Federal Register**, ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,'' published November 25, 1992 (57 FR 55620). The November 25, 1992 **Federal Register** should be referred to for detailed information on the NO_X requirements. Additional guidance memoranda which have been released subsequent to the NO_X Supplement should also be referred to.

The EPA has defined RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 FR 53762, September 17, 1979).

Section 182(f) of the Act requires states within ozone nonattainment areas classified moderate or above or areas within the ozone transport region to apply the same requirements to major stationary sources of NO_X ''major'' as defined in section 302 and section 182(c), (d), and (e)) as are applied to major stationary sources of volatile organic compounds (VOCs). For more information on what constitutes a major source, see section 2 of the NO_X Supplement to the General Preamble.

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC emissions (not covered by a pre-enactment control technique guidelines (CTG) document or a post-enactment CTG document) by November 15, 1992. There were no NO_X CTGs issued before enactment and EPA has not issued a CTG document for any NO_X sources since enactment. States, in their RACT rules, are expected to require final installation of the actual NO_X controls by May 31, 1995 from those sources for which installation by that date is practicable.

States within the Northeast ozone transport region established by section 184(a) should have revised their SIPs to include the RACT measures by November 15, 1992. Because major sources in states in an ozone transport region are generally subject to at least the same level of control as sources in moderate ozone nonattainment areas, EPA believes that the schedule for implementing these RACT rules in the ozone transport region should be consistent with the requirements of section 182(b)(2) which requires the state to provide for implementation of the actual NO_X controls as expeditiously as practicable but no later than May 31, 1995. Based on sections 182(f)and 184(a) and (b), New York is required to apply the NO_X RACT requirements Statewide.

B. New York's NO_X RACT Regulations

New York held public hearings in April 1993 on 6 NYCRR subpart 227–2, the State's NO_X RACT plan entitled ''Reasonably Available Control Technology For Oxides of Nitrogen (NO_X RACT)—Stationary Combustion Installations.'' Following the public hearings and the comment period, the plan was adopted and signed on January 19, 1994. On January 20, 1994, the plan was submitted to EPA as a revision to the SIP and EPA found it to be administratively and technically complete on April 15, 1994. Proposed EPA action on the January 20, 1994 submittal is expected to be published in the **Federal Register** soon.

C. Case-by-Case RACT Determinations

Provisions within subpart 227–2 establish a procedure for a case-by-case determination of what represents RACT for an item of equipment or source operation. This procedure is applicable in two situations: (1) If the major NO_X facility contains any source operation or item of equipment of a category not specifically regulated in subpart 227–2, or (2) if the owner or operator of a source operation or item of equipment of a category that is regulated in subpart 227–2 seeks approval of an alternative maximum allowable emission limit.

Subpart 227–2 requires the owners and/or operators of the affected facility to submit either a RACT proposal if they are not covered by specific emission limitations or a request for an alternative maximum allowable emission limit if they are covered by specific emission limitations. For each situation, the owners/operators must include a technical and economic feasibility analysis of the possible alternative control measures. RACT determinations for an alternative maximum allowable emission limit must consider alternative control strategies (i.e., system wide averaging and fuel switching) in addition to considering control technologies (e.g., low NO_X burners). In either case, subpart 227–2 provides for New York to