(A) Missouri Emergency Rule, 10 CSR 10–2.330, Control of Gasoline Reid Vapor Pressure, effective May 1, 1997, and expires October 27, 1997.

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3. Section 52.1323 is amended by adding paragraph (l) to read as follows:

§ 52.1323 Approval status.

* * * * *

(l) The Administrator conditionally approves Missouri emergency rule 10 CSR 10–2.330 under § 52.1320(c)(98). Full approval is contingent on the state submitting the permanent rule, to the EPA, by November 30, 1997.

[FR Doc. 97–26529 Filed 10–8–97; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD 053–3020; FRL–5905–8]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; 15% Rate of Progress Plan for the Baltimore Ozone Nonattainment 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 Baltimore severe 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. This action is being taken under section 110 of the Clean Air Act.

EFFECTIVE DATE: This final rule is effective on November 10, 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 Baltimore area is classified as a severe ozone nonattainment area and is subject to the 15% plan requirement. The Baltimore ozone nonattainment area consists of the City of Baltimore, and Anne Arundel, Baltimore, Carroll, Howard, and Harford Counties.

The State of Maryland submitted the 15% plan SIP revision for the Baltimore nonattainment area on July 12, 1995. On August 5, 1997, EPA published a notice of proposed rulemaking (NPR) in the **Federal Register** proposing conditional approval of the 15% plan (62 FR 42079). EPA's rationale for granting conditional approval to the Maryland 15% plan for the Baltimore area and the details of the July 12, 1995 submittal are contained in the August 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 August 5, 1997 NPR from the Earthjustice Legal Defense Fund (ELDF). The following discussion summarizes and responds to the comments received.

Comment 1: ELDF commented that the Baltimore 15% plan must be disapproved because it failed to produce the 15% emission reduction of 73.3 tons/day identified in the plan as prescribed by section 182(b)(1)(A)(I) of the Act.

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 Baltimore nonattainment area will be 63.9 tons/day 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 revision for the 1996–1999 time period (known at the Post-1996 plan). Maryland has held a public hearing on this SIP revision, 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 document the amount of reductions needed to meet the 15% requirement, and submitted such commitment in writing on September 4, 1997.

Comment 2: EPA concluded that ''EPA cannot credit this claim'' of 6.3 tons/day from enhanced rule compliance for the Baltimore area. EPA nevertheless included this measure in the list of creditable measures, acting unlawfully and inconsistently.

Response 2: The commenter is correct. This inconsistency is the result of a typographical error. The credit claim of 6.3 tons/day (TPD) from enhanced rule compliance is not creditable toward the 15% rate-of-progress requirement for the Baltimore nonattainment area. Therefore, the total credits achieved by Maryland toward the 15% requirement in the plan is 64.2 TPD.

Comment 3: ELDF 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. ELDF states that allowing such credit violates section 182(b)(1)(C) of the Act. ELDF further commented that EPA cannot lawfully base SIP decisions on unpromulgated rules because it does not know what these final rules will say. ELDF 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. ELDF 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 3: 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.

Section 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.

Further, since the publication of the proposed conditional approval for the Baltimore nonattainment area, EPA has promulgated Maryland's state regulation for autobody refinishing (62 FR 41853, August 4, 1997). Maryland claimed 5.0 tons/day of creditable emissions reductions in the 15% plan under their state regulation, not under the federal rule.

Comment 4: 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 reformulated gasoline, 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 4: 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 5: ELDF commented that EPA allowed credit for lithographic printing and surface cleaning operations based on the assertion that these regulations would be approved by EPA in other proceedings. However, EPA does not state that these approvals have occurred and may not lawfully grant credit to measures that do not comply with section 110(a).

Response 5: The rule for lithographic printing was approved and published in the **Federal Register** on September 2, 1997 (62 FR 42199). The surface cleaning operations regulation was approved on August 4, 1997 (62 FR 41853).

Comment 6: ELDF 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 6: 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 7: ELDF 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, ELDF claimed that postponing a requirement for reasonable further progress until after the deadline for attainment would be unlawful.

Response 7: 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 8: ELDF 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. ELDF 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).

ELDF 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 8: 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 Baltimore 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 9: ELDF 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 Baltimore 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 9: EPA's proposed approval of the Baltimore 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's 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 Baltimore'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 Baltimore 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 August 5, 1997 NPR, that, on its face, the 15% plan for the Baltimore area achieves the required 15% VOC emission reduction 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 the submittal for the Baltimore area contains enough of the required structure to warrant conditional approval. EPA cannot grant full approval of the Baltimore 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 August 5, 1997 NPR listed the conditions that Maryland must meet in order to convert the conditional approval to full approval. In a September 4, 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 October 9, 1998:

1. Maryland's 15% plan calculations must reflect the EPA approved 1990 base year emissions inventory (61 FR 50715, September 27, 1996).

2. Maryland must meet the conditions listed in the October 31, 1996 conditional I/M rulemaking notice, including its commitment to 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% VOC Reductions from I/M in 1999—Supplemental Guidance,'' from Gay MacGregor and Sally Shaver dated December 23, 1996.

3. Maryland must remodel to determine affirmatively the creditable reductions from RFG and Tier I in accordance with EPA guidance.

4. Maryland must submit a SIP revision amending the 15% plan with a determination using appropriate documentation methodologies and credit calculations that the 64.2 TPD reduction, supported through creditable emission measures in the submittal, satisfies Maryland's 15% ROP requirement for the Baltimore 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 Baltimore 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 Baltimore 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 Baltimore's 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 Baltimore severe ozone nonattainment area, must be filed in the United States Court of Appeals for the appropriate circuit by December 8, 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: September 19, 1997.

A.R. Morris,

Acting 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 (c) to read as follows:

§ 52.1072 Conditional approval.

* * * * *

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

(1) Maryland's 15% plan calculations must reflect the EPA approved 1990 base year emissions inventory in § 52.1075.

(2) Maryland must meet the conditions listed in the October 31, 1996 conditional I/M rulemaking notice, including its commitment to 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% VOC Reductions from I/M in 1999—Supplemental Guidance,'' from Gay MacGregor and Sally Shaver dated December 23, 1996.

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

(4) Maryland must submit a SIP revision amending the 15% plan with a determination using appropriate documentation methodologies and credit calculations that the 64.2 TPD reduction, supported through creditable emission measures in the submittal, satisfies Maryland's 15% ROP requirement for the Baltimore area.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[I.D. 100297A]

Atlantic Tuna Fisheries; Atlantic Bluefin Tuna General Category

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS has determined that the 1997 Atlantic bluefin tuna (ABT) October–December period General category subquota will be attained by October 5, 1997. Therefore, the General category fishery for October–December will be closed effective at 11:30 p.m. on October 5, 1997. This action is being taken to prevent overharvest of the adjusted 141 metric tons (mt) subquota for the October–December period.

DATES: Effective 11:30 p.m. local time on October 5, 1997, through December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, 301–713–2347, or Pat Scida, 508–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) governing the harvest of ABT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285. Section 285.22 subdivides the U.S. quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories.

General Category Closure

NMFS is required, under § 285.20(b)(1), to monitor the catch and landing statistics and, on the basis of these statistics, to project a date when the catch of ABT will equal the quota and publish a **Federal Register** announcement to close the applicable fishery.

Implementing regulations for the Atlantic tuna fisheries at 50 CFR 285.22 provide for a subquota of 72 mt of large medium and giant ABT to be harvested from the regulatory area by vessels permitted in the General category during the period beginning October 1 and ending December 31. Due to an overharvest of 1 mt in the September period subquota, and the transfer of 70 mt from other categories (13 mt from the Reserve, 3 mt from the Incidental Longline North quota, and 54 mt from the Incidental Longline South quota) (62 FR 51608, October 2, 1997), the October-December period subquota was adjusted to 141 mt. The October–December subquota is divided into a coastwide subquota of 131 mt and a 10 mt set-aside for the traditional fall New York Bight fishery area, defined as the waters south and west of a straight line originating at a point on the southern shore of Long Island at 72°27′ W. long. (Shinnecock Inlet) and running SSE