

7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589-2965. The Bridge Administration Branch of the Eighth Coast Guard District maintains the public docket for this temporary deviation.

**FOR FURTHER INFORMATION CONTACT:** David Frank, Bridge Administration Branch, telephone (504) 589-2965.

**SUPPLEMENTARY INFORMATION:** The Burlington Northern Railway Company has requested a temporary deviation in order to repair and replace broken bolts on the lift span of the bridge across Berwick Bay, mile 17.5, at Morgan City, St. Mary Parish, Louisiana. This maintenance is essential for the continued safe operation of the railroad bridge. This temporary deviation will allow the bridge to remain in the closed-to-navigation position from 8 a.m. until noon on Tuesday, November 29, 2005 and Wednesday, November 30, 2005.

The vertical lift span bridge has a vertical clearance of 4 feet above National Geodetic Vertical Datum (NGVD) in the closed-to-navigation position and 73 feet above NGVD in the open-to-navigation position. Navigation at the site of the bridge consists of tugs with tows transporting petroleum products, chemicals and construction equipment, commercial fishing vessels, oil industry related work boats and crew boats and some recreational craft. Since the lift span of the bridge will only be closed to navigation four hours per day for two days, ample time will be allowed for commercial and recreational vessels to schedule transits. Accordingly, it has been determined that this closure will not have a significant effect on vessel traffic. The bridge normally remains in the open-to-navigation position until a train enters the signal block, requiring it to close. An average number of openings for the passage of vessels is, therefore, not available. During the repair period, the bridge may open for emergencies; however, delays should be expected to remove all equipment from the bridge. The Intracoastal Waterway—Morgan City to Port Allen Landside Route is an alternate route for vessels with less than a 12-foot draft.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: November 7, 2005.

**Marcus Redford,**

*Bridge Administrator.*

[FR Doc. 05-22646 Filed 11-15-05; 8:45 am]

**BILLING CODE 4910-15-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[RME NO. R03-OAR-2004-MD-0010; FRL-7997-5]

#### Approval and Promulgation of Air Quality Implementation Plans; Maryland; Metropolitan Washington, DC 1-Hour Ozone Attainment Plan, Lifting of Earlier Rules Resulting in Removal of Sanctions and Federal Implementation Clocks

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maryland. This SIP revision is Maryland's attainment plan for the Metropolitan Washington, DC severe 1-hour ozone nonattainment area (the Washington area). EPA previously disapproved in part a 1-hour ozone attainment plan for the Maryland portion of the Washington area and issued a protective finding. This approval lifts the protective finding. EPA is also now determining that Maryland has submitted all required elements of a severe-area 1-hour ozone attainment demonstration and is thus stopping the sanctions and FIP clocks that were started through a finding that the State of Maryland had failed to submit one of the required elements of a severe-area 1-hour attainment plan. The intended effect of this action is to approve Maryland's 1-hour ozone attainment plan for the Washington area and determine that Maryland now has a fully-approved 1-hour attainment plan and thus to turn off the sanctions and FIP clocks started based on a finding that one element of the plan was missing and to lift the protective finding that was issued when EPA disapproved Maryland's earlier plan in part. These final actions are being taken under the Clean Air Act (CAA or the Act).

**DATES:** This final rule is effective on December 16, 2005.

**ADDRESSES:** EPA has established a docket for this action under Regional Material in EDocket (RME) ID Number R03-OAR-2004-MD-0010. All documents in the docket are listed in

the RME index at <http://www.docket.epa.gov/rmepub/>. Once in the system, select "quick search," then key in the appropriate RME identification number. Although listed in the electronic docket, some information is not publicly available, *i.e.*, confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

**FOR FURTHER INFORMATION CONTACT:** Christopher Cripps, (215) 814-2179, or by e-mail at [cripps.christopher@epa.gov](mailto:cripps.christopher@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document the terms "we," "our," and "its" refer to the EPA.

### I. Background

On July 15, 2005 (70 FR 40946), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. The NPR proposed approval of Maryland's attainment plan for the Metropolitan Washington, DC severe 1-hour ozone nonattainment area (the Washington area). Concurrently, EPA proposed to rescind its earlier final rule which disapproved and granted a protective finding for Maryland's 1-hour ozone attainment plan for the Washington area. In that July 15, 2005 notice of proposed rulemaking, EPA also proposed to rescind its earlier rule finding that the State of Maryland failed to submit one required element of a severe 1-hour ozone attainment plan, namely that for a penalty fee program required under sections 182(d)(3) and 185 of the Act.

### II. Public Comments and EPA Responses

#### A. Overview

EPA received comments dated August 15, 2005 opposing our proposed action to approve Maryland's 1-hour ozone attainment plan for the Washington, DC area in the absence of an approved SIP revision for a section 185 penalty fee program covering the Maryland portion of the Washington area.

One comment was that promulgation of the 8-hour ozone standard did not grant EPA the authority to waive the section 185 penalty fee program for the Washington area. In support of this comment, the commenter incorporates the reasons stated in portions of comment letters the commenter had previously submitted on EPA's proposed rules for implementation of the 8-hour ozone NAAQS and on EPA's proposed action on two issues raised in a petition for reconsideration of EPA's rule to implement the 8-hour ozone NAAQS. Specifically, the August 15, 2005 comments enclosed a copy of:

(1) "Proposal to Implement the 8-Hour Ozone National Ambient Air Quality Standard, 68 FR 32802 (June 2, 2003), EPA Docket No. OAR 2003-0079, Comments of: Clean Air Task Force, American Lung Association, Conservation Law Foundation, Earthjustice, Environmental Defense, Natural Resources Defense Council, Southern Alliance For Clean Energy, Southern Environmental Law Center, and U.S. Public Interest Research Group," dated August 1, 2003, that was docketed as item number OAR 2003-0079-0215 in EPA Docket No. OAR 2003-0079; and,

(2) A March 21, 2005 comment letter regarding "Notice of proposed rulemaking responding in part to reconsideration petition on ozone implementation rule, 70 FR 5593 (Feb. 3, 2005), docket no. OAR-2003-0079," that was docketed as item number OAR-2003-0079-0753 in EPA Docket No. OAR-2003-0079.

A copy of each of these items has been placed in the docket for this action. The commenter specifically incorporates by reference parts I and III of the June 2, 2003 comments (identified in the August 15, 2005 document as being submitted to EPA on August 3, 2003); and parts 1 and 2 of the March 21, 2005 letter).

The second comment asserts that EPA should defer final action on the Maryland attainment plan for the Washington area until after the resolution of litigation commenced by the commenter over EPA's rules to implement the 8-hour ozone NAAQS which relate to revocation of the 1-hour ozone NAAQS and waiver of the section 185 penalty fee program requirement.

#### *B. Comments Regarding Section 185 Penalty Fee Program Under the 8-Hour Implementation Rule*

*Comment and Response:* The commenter incorporated by reference portions of comment letters previously submitted on EPA's proposed rules for implementation of the 8-hour ozone NAAQS (Phase 1 Rule) and EPA's proposed action reconsidering certain aspects of the final Phase 1 8-hour ozone NAAQS implementation rule

(Reconsideration Rule). The issues raised in these comments concern EPA's authority and policy bases for determining that States would no longer be required to submit SIP meeting the section 185 fee provision for purposes of the 1-hour ozone NAAQS once that standard no longer applied (i.e., for most areas of the country as of June 15, 2005). EPA responded to these comments in those two rulemaking actions. EPA took final action in the Phase 1 Rule and in the Reconsideration Rule determining that it had authority to determine that the section 185 fee SIP is no longer required in areas where the 1-hour standard had applied. Thus, the comments cited by the commenter are not relevant to this rulemaking where EPA is merely applying that final rule. However, to the extent those comments and responses might have some relevance to the present rulemaking on the Maryland SIP, we incorporate by reference our responses found in the following documents:

(1) The "Final Rule To Implement the 8-Hour requirements—Phase 1," 69 FR 23951, April 30, 2004, particularly 69 FR at 23984–23988.

(2) "Implementation of the 8-Hour Ozone National Ambient Air Quality Standard—Phase 1: Reconsideration," 70 FR 30592, May 26, 2005, particularly 70 FR at 30593–30595.

(3) "Final Rule to Implement the 8-hour National Ambient Air Quality Standard for Ozone (Phase 1) Response to Comments Document" dated April 15, 2004, particularly pages 81 through 106 (inclusive), and, pages 141 through 144 (inclusive).<sup>3</sup>

#### *C. Comments Advocating a Delay of Final Action Until Resolution of Pending Litigation*

*Comment:* EPA received a comment stating that if EPA did not accept the commenter's arguments for not approving this rule, then EPA should at least defer its final action until the litigation challenging EPA's rules implementing the 8-hour ozone standard is resolved, because EPA's stated basis for rescinding the Maryland SIP disapproval and sanctions clock relies on the national rules. This comment asserts that delay in implementing the section 185 penalty fee requirements would "undermine" air quality in the Washington area and that there is no harm in requiring Maryland to move forward in the interim with adoption of SIP provisions to implement the section 185 penalty fee provisions. The comment notes that the District and Virginia have already

adopted and submitted SIP revisions for the section 185 penalty fee program and received EPA's approval of these SIP revisions.

*Response:* EPA disagrees that we should defer action on the Maryland SIP until the litigation on the Phase 1 and Reconsideration Rules is resolved and that such a deferral would not result in any harm. Such litigation could take a year or more until the court issues a decision. In the interim, the State would face sanctions and a FIP if it failed to adopt and submit the section 185 fees SIP. Thus, harm could result from the imposition of sanctions. Additionally, the State or EPA would also be required to devote resources to developing a section 185 fees SIP or FIP.

*Section 185 Penalty Fee and Air Quality:* EPA disagrees with the commenter's assertion that approving the Maryland attainment plan without a section 185 penalty fee provision would "undermine the air quality" in the Washington area. The section 185 fee obligation is not a control measure that results in reductions of ozone precursor emissions. As we previously noted, in response to the comments submitted on our rulemaking disapproving Maryland's attainment plan, but granting a protective finding for transportation conformity purposes, the section 185 fee program is not a control measure. *See*, 70 FR 25719 at 25721–25722, May 13, 2005. Section 185 of the Act simply requires that the SIP contain a provision that major stationary sources within a severe or extreme nonattainment area pay "a fee to the state as a penalty" for failure of that area to attain the ozone NAAQS by the area's attainment date. This penalty fee is based on the tons of volatile organic compounds or nitrogen oxides emitted above a source-specific trigger level during the "attainment year." It first comes due for emissions during the calendar year beginning after the attainment date and must be paid annually until the area is redesignated to attainment of the ozone NAAQS. 42 U.S.C. 7511d(a)–(c); 7511a(f)(1). Thus, if a severe area, with an attainment date of November 15, 2005, fails to attain by that date, the first penalty assessment will be assessed in calendar year 2006 for emissions that exceed 80% of the source's 2005 baseline emissions.

A penalty fee that is based on emissions could have some incidental effect on emissions if sources decrease their emissions to reduce the amount of the per ton monetary penalty. However, the penalty fee does not ensure that any actual emissions reduction will ever occur, since every source can pay a penalty rather than achieve actual

<sup>3</sup> A copy of this document is available in the docket (both paper and electronic) for this action and previously was docketed as items numbers OAR-2003-0079-0715 and OAR-2003-0079-0716 in EPA Docket No. OAR-2003-0079.

emissions reductions. The provision's plain language evinces an intent to penalize emissions in excess of a threshold by way of a fee; it does not have as a stated purpose the goal of emissions reductions.

In addition, we note that it is unlikely that the section 185 penalty fee would take effect for the Washington, DC severe 1-hour ozone nonattainment. The Act is clear that the section 185 penalty fees apply only if a severe or extreme area fails to attain the ozone NAAQS by the applicable attainment date. If the 1-hour ozone standard were still intact, and if the Washington area were to attain the 1-hour ozone NAAQS by its attainment date of November 15, 2005, then the requirement that sources pay the section 185 penalty fees would never be triggered. A determination that the Washington area has attained or not attained the standard by its attainment date must be based on air quality monitoring data for the 2003 through 2005 (inclusive ozone seasons). The form of the 1-hour ozone standard is such that to show attainment a monitor must have no more than an average of one expected exceedance over a three year period. 40 CFR 50.9. The procedure for determining the number of expected exceedances is set forth in Appendix H to 40. EPA has reviewed the available air quality data for the Washington area. No monitor was violating the 1-hour ozone standard in 2003 and 2004. Additionally, we note our review of the air quality data for the 2005 ozone season (which has not yet been quality-assured by the States and for which the quality-assurance certification is not required until July 1, 2006), indicates there have been no reported exceedances of the 1-hour ozone NAAQS in the Washington area through September 30, 2005. Thus, it seems likely that, had the 1-hour ozone standard not been revoked, the Washington area would attain the 1-hour NAAQS by the area's 1-hour ozone attainment deadline, and that the section 185 fees will not apply for purposes of the 1-hour NAAQS in the area.

*EPA's Delay Could Result in Irreparable Harm:* We disagree with the commenter that requiring Maryland to adopt the section 185 fees program will not result in irreparable harm.

If we do not find that Maryland has fully met its obligations with respect to the 1-hour attainment demonstration obligation, the Maryland portion of the Washington area will be subject to the 2:1 offset sanction of 40 CFR 52.31 on December 21, 2005 pursuant to our finding that the State failed to submit a section 185 penalty fee program. See 69

FR 29236 (May 21, 2004). The highway sanctions of 40 CFR 52.31 would commence on June 21, 2006. The briefing schedule in the *South Coast Air Quality Management Dist v. EPA*, No. 04-1200 (and consolidated cases) (D.C. Cir., filed 6-29-04) challenge to the 8-hour implementation rules currently does not call for EPA to submit its brief until January 26, 2006, and final briefs by May 26, 2006, *i.e.*, after the offset sanctions have commenced and less than a month before the highway sanctions will commence. Therefore, the State would either be subject to sanctions for some period of time, or would need to devote resources to adopting the section 185 fees program. Thus, the State and its citizens would be harmed—either from the sanctions or from the need to devote limited state resources to adopting the program.

### III. Final Action

EPA is approving Maryland's attainment plan for the Metropolitan Washington, DC severe 1-hour ozone nonattainment area. Concurrently, EPA is determining that Maryland has submitted all required elements of a severe-area 1-hour ozone attainment demonstration and is thus stopping the sanctions and FIP clocks that were started through a finding that the State of Maryland had failed to submit one of the required elements of a severe-area 1-hour attainment plan. See May 13, 2005 (70 FR 25719). Additionally, since the State now has a fully approved 1-hour ozone attainment demonstration SIP, we are lifting the protective finding that was issued with our earlier disapproval of Maryland's 1-hour ozone attainment demonstration. See May 13, 2005 (70 FR 25719).

### IV. Statutory and Executive Order Reviews

#### A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility

Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement

Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit 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 United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

*C. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 17, 2006.

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 approving Maryland's attainment plan for the Metropolitan Washington, DC severe 1-hour ozone nonattainment area and rescinding earlier final rules starting sanctions clocks from 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, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: November 8, 2005. Donald S. Welsh,  
**Regional Administrator,**  
*Region III.*

■ 40 CFR part 52 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 *et seq.*

**Subpart V—Maryland**

■ 2. In § 52.1070, the table in paragraph (e) is amended by adding the entry for 1-hour Ozone Attainment Plan at the end of the table to read as follows:

**§ 52.1070 Identification of plan.**

\* \* \* \* \*  
(e) \* \* \*

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
1-hour Ozone Attainment Plan	Washington DC 1-hour ozone nonattainment area.	9/2/2003 2/24/2004	11/16/05 [Insert page number where the document begins].	

**§ 52.1073 [Amended]**

■ 3. Section 52.1073 is amended by removing and reserving paragraphs (f) and (g).

[FR Doc. 05-22700 Filed 11-15-05; 8:45 am]  
BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52 and 81**

[R05-OAR-2005-IN-0008; FRL-7997-8]

**Determination of Attainment, Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Indiana; Redesignation of Delaware County to Attainment of the 8-Hour Ozone Standard**

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

**ACTION:** Direct final rule.

**SUMMARY:** On August 25, 2005, the State of Indiana, through the Indiana Department of Environmental Management (IDEM), submitted: a request for EPA approval of a redesignation of Delaware County to attainment of the 8-hour ozone National Ambient Air Quality Standard (NAAQS); and a request for EPA approval of an Indiana State Implementation Plan (SIP) revision

containing a 10-year ozone maintenance plan for Delaware County. EPA is approving the State's requests.

EPA's approval of the redesignation request is based on the determination that Delaware County and the State of Indiana have met the criteria for redesignation to attainment specified in the Clean Air Act (CAA), including the determination that Delaware County has attained the 8-hour ozone standard. In conjunction with the approval of the redesignation request for Delaware County, EPA is approving the State's plan to maintain the attainment of the 8-hour ozone NAAQS through 2015 in this area as a revision to the Indiana SIP. EPA is also approving the 2015 Volatile Organic Compounds (VOC) and Nitrogen Oxides (NO<sub>x</sub>) Motor Vehicle Emissions Budgets (MVEBs) for this area, as defined in the ozone maintenance plan, for purposes of transportation conformity.

**DATES:** This rule is effective on January 3, 2006, unless EPA receives adverse written comments by December 16, 2005. If EPA receives adverse comments, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Submit comments, identified by Regional Material in EDocket (RME) ID No. R05-OAR-2005-IN-0008, by one of the following methods:

*Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

*Agency Web site:* <http://docket.epa.gov/rmepub/>. Regional RME, EPA's electronic public docket and comments system, is EPA's preferred method for receiving comments. Once in the system, select "quick search," then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

*E-mail:* [mooney.john@epa.gov](mailto:mooney.john@epa.gov).

*Fax:* (312) 886-5824.

*Mail:* You may send written comments to: John M. Mooney, Chief, Criteria Pollutant Section, (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

*Hand delivery:* Deliver your comments to: John M. Mooney, Chief, Criteria Pollutant Section, (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 AM to 4:30 PM excluding Federal holidays.