adopts as a final rule an interim final rule that is already in effect. Accordingly, we have concluded under 5 U.S.C. 553 that there is good cause for dispensing with a delayed effective date because such procedure is impracticable, unnecessary, and contrary to the public interest.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This final rule would have no such effect on State, local, or tribal governments, or the private sector.

Executive Order 12866

The Office of management and Budget has reviewed this document under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Paperwork Reduction Act

The Secretary hereby certifies that this final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

List of Subjects in 38 CFR Part 20

Administrative practice and procedure, Claims, Veterans.

Approved: February 2, 2004.

Anthony J. Principi,

Secretary of Veterans Affairs.

■ For the reasons set out in the preamble, the interim final rule amending 38 CFR part 20 which was published at 66 FR 38158 on July 23, 2001 is adopted as a final rule with the the following change:

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

■ 1. The authority citation for part 20 continues to read as follows:

Authority: 38 U.S.C. 501(a) and as noted in specific sections.

■ 2. In § 20.901, the authority citation at the end of paragraph (a) is revised to read as follows:

§ 20.901. Rule 901. Medical opinions and opinions of the General Counsel.

* * * * *

(**Authority:** 38 U.S.C. 5103A(d), 7109)

[FR Doc. 04–8564 Filed 4–14–04; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DC052–7007, MD143–3102, VA129–5065; FRL–7645–1]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia, Maryland, Virginia; Post 1996 Rate-of-Progress Plans and One-Hour Ozone Attainment Demonstrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of stay.

SUMMARY: The EPA is taking immediate final action to indefinitely stay, pending completion of judicial review, a conditional approval promulgated on April 17, 2003. On February 3, 2004, the United States Court of Appeals filed an opinion that vacated and remanded the April 17, 2003 final action insofar as it granted conditional approval, and denied a petition for review of other parts of the April 17, 2003 final rule. The Petitioner filed a timely petition for rehearing on an issue not related to the vacatur of the conditional approval. The intended effect of this action is to stay any potential application of the April 17, 2003 conditional approval until the date that the litigation concludes.

EFFECTIVE DATE: Effective April 15, 2004. 40 CFR 52.473, 52.1072(e) and 52.2450(b) are stayed indefinitely.

ADDRESSES: Copies of the documents relevant to this action are available 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.

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

SUPPLEMENTARY INFORMATION:

I. What Is the Background for This Action?

On April 17, 2003 (68 FR 19106), EPA published a final rulemaking granting three conditional approvals of Metropolitan Washington, DC severe ozone nonattainment area (DC Area) State Implementation Plan (SIP) revisions submitted by the District of Columbia, the State of Maryland and the Commonwealth of Virginia (the States).[1] The April 17, 2003 final action conditionally approved those SIP revisions identified in Table 1 of the final rule contingent on each of the States submitting a revised SIP by April 17, 2004 to satisfy certain specifically enumerated conditions. These conditions were codified at 40 CFR 52.473 in the case of the District of Columbia; 40 CFR 52.1072(e) in the case of Maryland; and 40 CFR 52.2450(b) in the case of Virginia. *See* 68 FR at 19131–19133. In the final action EPA noted that if a State should fail to meet any condition for approval by April 17, 2004, that State's conditional approval would be treated as a disapproval pursuant to CAA section 110(k). *See* 68 FR 19106, April 17, 2003, as corrected by 68 FR 264958, May 16, 2003. Conversely, if the States were to fulfill the conditions by April 17, 2004, EPA would initiate rulemaking to convert the conditional approval to a full approval of the SIP.

The Sierra Club filed petitions for review of the April 17, 2003, final rule with the United States Courts of Appeals for the Fourth Circuit and District of Columbia Circuit. The cases were consolidated in the United States Court of Appeal for the District of Columbia Circuit (the Court). On February 3, 2004, the Court filed an opinion that vacated and remanded EPA's conditional approval action insofar as it granted conditional approval based on what the Court found to be defective commitment letters. The Court also denied the petition for review in all other respects. *See Sierra Club* v. *EPA,* 356 F.3d 296 (D.C. Cir. 2004).

On March 19, 2004, the Sierra Club filed a "Petition for Panel Rehearing'' requesting the Court to reconsider one issue addressed in a footnote of the opinion. This issue is not related to vacatur of the conditional approval, and if the Court were to reverse its initial decision in EPA's favor, that reversal would not in any way affect the vacatur of the conditional approval.

II. What Is the Effect of the Petition for Rehearing?

If no petition for rehearing had been filed, the Federal Rules of Appellate Procedure direct the Court to have issued its "mandate'' by March 26, 2004.

[1] Under Section 302(d) of the Clean Air Act the term "State'' includes the District of Columbia.

The ''mandate'' is nothing more than ''a certified copy of the judgment, a copy of the court's opinion, if any, and any direction about costs.'' Fed. R. App. P. 41(a). The filing of the petition for rehearing automatically stayed the issuance of the mandate. Fed. R. App. P. 41(d)(1). Because the mandate has not been issued, the Court retains jurisdiction over this matter until the petition for rehearing is either (1) denied, or (2) granted and ultimately resolved on the merits. The vacatur of the conditional approval will not be remanded to EPA until such time as the Court officially relinquishes its jurisdiction by issuing the mandate. Until this matter is officially remanded to EPA, we cannot remove the conditional approval from 40 CFR 52.473, 40 CFR 52.1072(e) and 40 CFR 52.2450(b).

Until such time as the rulemaking is officially remanded to EPA pursuant to the February 3, 2004 decision and EPA removes the conditional approval from the States' SIPs, there is a technical argument that EPA could ignore the Court's February 3, 2004 decision and either promulgate a rulemaking to convert the conditional approval to a full approval if the States fulfill their commitments, or, if the States fail to fulfill their commitments, treat the SIP as a disapproval pursuant to section 110(k)(4) of the Clean Air Act.

In light of the court's opinion vacating the conditional approval, which will not be disturbed by any action on the petition for rehearing, EPA does not believe that it should take action to either convert these SIPs to fully approved status, or to treat them as being disapproved pending issuance of the mandate. Either action by EPA would be inconsistent with the Court's filed opinion, which determined that EPA's conditional approval was not authorized by the Clean Air Act. Further, neither EPA nor the Petitioner have taken any action to seek reversal of the Court's decision vacating the conditional approval.

III. Basis for Exception From Notice and Comment Rulemaking

Under section 553(b)(3)(B) of the Administrative Procedures Act (APA), 5 U.S.C. 553(b)(3)(B), when an Agency finds good cause to exist, it may issue a rule without first providing notice and comment.

The Court filed its opinion vacating the conditional approval on February 3, 2004. The Petitioner filed its petition for rehearing on March 19, 2004, staying the mandate that would have issued by March 26, 2004, less than a month before the conditional approval compliance deadline of April 17, 2004. It is impractical for EPA, in less than one month, to do notice and comment rulemaking clarifying that it will not be taking an action inconsistent with the Court's February 3, 2004 opinion. Further, EPA concludes that it would not be in the public interest to allow any action to proceed in conflict with the opinion of the court issued on February 3, 2004. Therefore, EPA believes that it has good cause to issue this stay without notice and comment.

IV. Basis for Issuing Stay

Pursuant to section 705 of the APA, 5 U.S.C. 705, ''when an agency finds that justice so requires, it may postpone the effective date of actions taken by it, pending judicial review.'' Neither the Petitioner nor EPA have asked the Court to reverse the vacatur of the conditional approval. The judicial review of EPA's final rulemaking for now remains pending for reasons entirely unrelated to the Court's decision to vacate the conditional approval. EPA believes that it is in the interest of justice for the Agency to clarify that it intends to take no action inconsistent with the Court's February 3, 2004 opinion simply because this matter cannot be officially remanded to the Agency at the present time. This stay clarifies that EPA will neither treat as disapproved nor take an action to convert to full approval any of the three States' SIPs that were subject to the vacated conditional approval during the pendency of the petition for rehearing, regardless of any SIP submissions that the States may or may not make in compliance with the conditional approval that has been vacated by the Court.

V. Effective Date of Stay

This action shall be effective on publication pursuant to section 553(d) of the APA, 5 U.S.C. 553(d). Although APA section 553(d) specifies that a rulemaking ordinarily must be published 30 days prior to its effective date, APA section 553(d)(1) allows for an exception, among other reasons, if the rulemaking relieves a restriction or ''as otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d)(1). Staying the conditional approval, and hence the April 17, 2004 date for submittal of the SIP revisions relieves restriction imposed on the States of submitting SIP revisions, and relieves EPA of the statutory restriction to take action on any already-submitted SIP revisions, both of which could be contrary to the Court's holding in *Sierra Club* v. *EPA*, 356 F.3d 296 (DC Cir. 2004). EPA believes that it would not be appropriate for any actions to be taken inconsistent with a filed U.S. Court of Appeals decision even if the court's mandate has not issued because of a petition for rehearing on an unrelated matter. Further, clarifying that neither EPA nor the States will have to take an action on or after April 17, 2004 that would be inconsistent with the filed opinion of the Court is additional good cause as explained above with respect to good cause for taking action without prior proposal justifying that the stay should be effective on publication. *See* 5 U.S.C. 553(d)(3).

VI. Final Action

EPA is staying 40 CFR 52.473, 40 CFR 52.1072(e) and 40 CFR 52.2450(b) as follows:

Effective April 15, 2004, 40 CFR 52.473 is stayed indefinitely. In a future action published in the **Federal Register** EPA will lift this stay and/or vacate the conditional approval after the issuance of the mandate by the U.S. Court of Appeals for the District of Columbia Circuit in a manner consistent with any order the Court may issue in *Sierra Club* v. *EPA* (No. 03–1084, DC Cir.).

Effective April 15, 2004, 40 CFR 52.1072(e) is stayed indefinitely. In a future action published in the **Federal Register** EPA will lift this stay and/or vacate the conditional approval after the issuance of the mandate by the U.S. Court of Appeals for the District of Columbia Circuit in a manner consistent with any order the Court may issue in *Sierra Club* v. *EPA* (No. 03–1084, DC Cir.).

Effective April 15, 2004, 40 CFR 52.2450(b) is stayed indefinitely. In a future action published in the **Federal Register** EPA will lift this stay and/or vacate the conditional approval after the issuance of the mandate by the U.S. Court of Appeals for the District of Columbia Circuit in a manner consistent with any order the Court may issue in *Sierra Club* v. *EPA* (No. 03–1084, DC Cir.).

VII. 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 stays the applicability of a currently promulgated

rule. 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 stays the applicability of a currently promulgated rule and does not impose any additional enforceable duty beyond that already required, 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 stays the applicability of a currently promulgated rule implementing a Federal standard, 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. However, section 808 provides that any rule for which the issuing agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rule) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). As stated previously, the EPA has made such a good cause finding, including the reasons therefore, and established an effective date of April 15, 2004. The 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 June 14, 2004. 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 indefinitely staying the April 17, 2003 conditional approval of the District of Columbia's, Maryland's and Virginia's SIP revisions for the D.C. Area 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: April 2, 2004.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 04–8096 Filed 4–14–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD161–3110a; FRL–7648–3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Revisions to the 2005 ROP Plan for the Cecil County Portion of the Philadelphia-Wilmington-Trenton 1-Hour Ozone Nonattainment Area to Reflect the Use of MOBILE6

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving State Implementation Plan (SIP) revisions submitted by the State of Maryland. These revisions amend the 2005 rate-of-progress (ROP) plan in the Maryland SIP for the Cecil County portion of the Philadelphia-Wilmington-Trenton nonattainment severe 1-hour ozone nonattainment area. The intent of these revisions is to update the Cecil County 2005 ROP plan's mobile emissions inventories and motor vehicle emissions budgets (MVEBs) to reflect the use of MOBILE6 and to amend the contingency measures associated with that plan. These revisions are being approved in accordance with the Clean Air Act (the Act).

DATES: This rule is effective on June 1, 2004, without further notice, unless EPA receives adverse written comment by May 17, 2004. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by MD161–3110 by one of the following methods:

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

B. E-mail: *Budney.Larry@epa.gov*

C. Mail: Larry Budney, Mailcode 3AP23, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.