EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES—Continued

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
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Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
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Documents Incorporated by Reference.	Northern Virginia VOC Emissions Control Area designated in 9 VAC 5–20–206.	3/24/04	5/12/05 [Insert page number where the document begins].	9 VAC 5–20–21, Sections E.1.a.(7)., E.4.a.(12) through a.(17), E.10., E.11., E.13.a.(1), and E.13.a.(2).
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD166–3112; FRL–7910–2]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Control of Volatile Organic Compound Emissions From AIM Coatings

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 revision pertains to the control of volatile organic compounds (VOC) emissions from architectural and industrial maintenance (AIM) coatings. EPA is approving this SIP revision in accordance with the Clean Air Act (CAA or Act).

DATES: *Effective Date:* This final rule is effective on June 13, 2005.

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, and the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On May 25, 2004 (69 FR 29674), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. The NPR proposed approval of a Maryland regulation pertaining to the control of VOC from AIM coatings. The formal SIP revision was submitted by the Maryland Department of the Environment (MDE) on March 19, 2004. Other specific requirements of Maryland's SIP revision for AIM coatings and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. On June 24, 2004, EPA received adverse comments on its May 25, 2004 proposed rulemaking. A summary of the comments submitted and EPA's responses are provided in Section II of this document.

EPA is aware that concerns have been raised about the achievability of VOC content limits of some of the product categories under the Maryland AIM coatings rule. Although we are approving this rule today, the Agency is concerned that if the rule's limits make it impossible for manufacturers to produce coatings that are desirable to consumers, there is a possibility that users may misuse the products by adding additional solvent, thereby circumventing the rule's intended VOC emission reductions. We intend to work with Maryland and manufacturers to explore ways to ensure that the rule achieves the intended VOC emission reductions, and we intend to address this issue in evaluating the amount of VOC emission reduction credit attributable to the rule.

II. Public Comments and EPA Responses

A. The National Paint and Coatings Association (NPCA) is one of commenters on EPA's May 25, 2004 NPR proposing approval of Maryland's AIM coatings rule. The NPCA has submitted to EPA, by reference, the same comments it previously submitted to MDE on Maryland's proposed version of its AIM coatings rule during the State's adoption process. The NPCA also commented that it endorses and incorporates by reference the comments submitted by the Sherwin Williams Company (SWC) to EPA on the May 25, 2004 NPR proposing approval of Maryland's AIM coatings rule. The following summarizes the comments presented to Maryland by the NPCA during the State's adoption of its AIM rule and EPA's response to those comments as they pertain to its May 25, 2004 NPR proposing approval of Maryland's AIM coatings rule:

1. *Comment:* The NPCA has developed an alternative proposal to the Maryland AIM coatings rule (Ozone Transport Commission (OTC) model rule). The NPCA believes that its proposal should be considered by MDE as a viable alternative to the OTC model rule.

2. *Comment:* The NPCA suggests revising the Maryland AIM coatings rule to include an averaging program, modeled after the California Air Resources Board (CARB) program, and administered on a regional basis.

3. *Comment:* The NPCA suggests revising the Maryland AIM coatings rule

to include a coating-specific variance provision.

4. *Comment:* The NPCA suggests revising the Maryland AIM coatings rule to include a scheduled technology assessment by MDE and/or OTC AIM workgroup on the appropriateness of implementing all of the future VOC limits.

5. *Comment:* The NPCA suggests revising the Maryland AIM coatings rule to make the reporting requirements consistent with other OTC states' AIM coating rules by amending section 13. Reporting Requirements, to eliminate the annual reports for clear brushing lacquers, rust preventive coatings, and specialty primers, sealers and undercoaters. The NPCA recommends MDE replace this requirement with one that only requires the manufacturers to maintain records of the sales of these AIM products and report these sales only when requested by MDE.

6. *Comment:* NPCA suggests revising the Maryland AIM coatings rule to make section 06. Most Restrictive VOC limit, consistent with other OTC states' rules by adding the following four additional categories to the list: Calcimine recoaters, impacted immersion coatings, nuclear coatings, and thermoplastic rubber coating and mastic.

7. *Comment:* The NPCA suggests revising the Maryland AIM coatings rule to eliminate the special labeling requirement for conversion varnishes which requires manufacturers to prominently display the words ''For Professional Use Only'' on each can of conversion varnish to make the labeling requirements of the Maryland AIM coatings rule consistent with other OTC states' AIM rules.

Response: With regard to the comments submitted by the NPCA to Maryland on its proposed AIM coatings rule and subsequently, by reference, to EPA on its May 25, 2004 proposed approval of Maryland's March 19, 2004 SIP revision request, it is important to understand EPA's role with regard to review and approval or disapproval of rules submitted by states as SIP revisions. EPA can only take action upon the final adopted version of a state's regulation as submitted by that state in its SIP revision request. It is not within EPA's authority, by its rulemaking on the SIP revision or otherwise, to change or modify the text or requirements of a state regulation. Therefore, EPA cannot modify Maryland's AIM regulation as suggested in the comments submitted by the NPCA. Prior to approving a SIP revision request submitted by a state, EPA reviews the submission to ensure that the state provided the opportunity for comment and held a hearing(s) on the proposed state regulation that is at issue in the SIP revision pursuant to section 110(a) of the Act. In this case, Maryland's March 19, 2004 submission of its AIM coatings rule to EPA includes the necessary documentation to demonstrate that it met these requirements. Maryland's March 19, 2004 SIP revision submission is included in the docket of this rulemaking. A complete SIP revision submission from a state includes copies of timely comments properly submitted to the state on the proposed SIP revision and the state's responses to those comments. Maryland's March 19, 2004 submission of its AIM coatings rule as a SIP revision to EPA properly includes both the comments submitted on its proposed AIM coatings rule and Maryland's responses to those comments.

B. As noted previously, SWC is the other commenter on EPA's May 25, 2004 NPR proposing approval of Maryland's AIM coatings rule. As stated previously, the comments from NPCA incorporate by reference and endorse these comments submitted by SWC. The following summarizes the comments submitted by SWC and the NPCA (by reference) and EPA's responses:

1. *Comment:* Using Flawed Data Violates the Data Quality Objectives Act and Administrative Procedures Act—The commenters assert that the Maryland AIM coatings rule is based on flawed data and that the use of this data violates the Data Quality Objectives Act (''DQOA'') (Section 515(a) of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)). The data at issue is contained in what the commenters characterize as a ''study prepared by E.H. Pechan & Associates'' (Pechan Study) in 2001. The alleged flaws relate to projected emissions reductions calculated in the Pechan Study. The commenters assert that certain of the underlying data and data analyses are allegedly ''unreproduceable.'' Further, the commenters assert that if better data were used, the OTC model AIM coatings rule would achieve greater VOC emissions reductions, relative to the Federal AIM coatings rule, than was calculated in the Pechan Study (54 percent reduction versus 31 percent reduction), even if certain source categories were omitted from regulation under the OTC rule. For these reasons, the commenters state that EPA must not approve the proposed Maryland AIM coatings rule as a SIP revision.[1]

Response: EPA disagrees with this comment. What the commenters characterize as the Pechan Study is not at issue in this rulemaking. The Pechan Study was not submitted to EPA by Maryland in its request that EPA approve its AIM coatings rule.[2] The validity of the Pechan Study data is not at issue because Maryland did not request approval of a quantified ount of VOC emission reduction from the enactment of its regulation.[3] Rather, this AIM coatings regulation has been submitted by Maryland, and is being considered by EPA, on the basis that it strengthens the existing Maryland SIP. The commenters do not dispute that the Maryland AIM coatings rule will, in fact, reduce VOC emissions.

Section 110 of the Act provides the statutory framework for approval/disapproval of SIP revisions. Under the Act, EPA establishes NAAQS for certain pollutants. The Act establishes a joint Federal and state program to control air pollution and to protect public health. States are required to prepare SIPs for each designated ''air quality control region'' within their borders. The SIP must specify emission limitations and other measures necessary for that area to meet and maintain the required NAAQS. Each SIP must be submitted to EPA for its review and approval. EPA will review and *must approve* the SIP revision if it is found to meet the minimum requirements of the Act. *See* section 110(k)(3) of the Act, 42 U.S.C. 7410(k)(3); *see also, Union Elec. Co.* v. *EPA,* 427 U.S. 246, 265, 96 S.Ct. 2518, 49 L.Ed.2d 474 (1976). The Act

[1] One of the commenters has submitted a ''Request for Correction of Information'' (RFC) dated June 2, 2004, to EPA's Information Quality Guidelines Office in Washington, DC which raises substantively similar issues to those raised by this comment. By letter dated February 25, 2005 from Robert Brenner, Principal Deputy Assistant Administrator to the Counsel for Sherwin Williams Company, EPA responded separately to the RFC. A copy of that letter is included in the administrative record for this final rulemaking.

[2] The commenters concede that the Pechan Study and related spreadsheet are not part of the record submitted to EPA by Maryland. They assert, however, that there are references to the Pechan Study in other materials submitted by Maryland. The commenters also assert that one of them submitted a copy of the Pechan Study as an exhibit to its comments; however, EPA's review of the commenter's submission indicates that the Pechan Study was not submitted to EPA. Whether or not the Pechan Study, or data from that study, was submitted to EPA does not alter our analyses or conclusion, described herein, that the Pechan Study is not relevant in this rulemaking.

[3] The commenters assert that there is a ''discrepancy as to whether Maryland has requested credits or intends to do so in the near future.'' EPA is not aware of any discrepancy. Maryland did not request any amount of VOC reduction credits in the SIP revision that is the subject of this rulemaking.

expressly provides that the states may adopt more stringent air pollution control measures than the Act requires with or without EPA approval. *See* section 116 of the Act, 42 U.S.C. 7416. EPA must disapprove state plans, and revisions thereto, that are less stringent than a standard or limitation provided by Federal law. *See* section 110(k) of the Act, 42 U.S.C. 7410(k); *see also Duquesne Light* v. *EPA,* 166 F.3d 609 (3d Cir. 1999).

The Pechan Study is not part of Maryland's submission in support of its AIM coatings rule. Because Maryland's March 19, 2004 submission does not seek approval of a specific amount of emissions reductions, the level of emissions reductions that might be calculable using data contained in the Pechan Study is irrelevant to whether EPA should approve this SIP revision.[4] The only relevant inquiry at this time is whether this SIP revision meets the minimum criteria for approval under the Act, including the requirement that Maryland's AIM coatings rule be at least as stringent as the otherwise applicable Federal AIM coatings rule set forth at 40 CFR 59.400, subpart D.[5]

EPA has concluded that the Maryland AIM coatings rule meets the criteria for approvability. It is worth noting that EPA agrees with the commenters' conclusion that the Maryland AIM coatings rule is more stringent than the Federal AIM coatings rule, though not for the reasons given by the commenters, *i.e.*, that the commenters' ''better'' data demonstrates that OTC Model AIM coatings rule achieves a 54 percent, as opposed to the Pechan Study's 31 percent reduction in VOC emissions beyond that required by the Federal AIM coatings rule. Rather, EPA has determined that the Maryland AIM coatings rule is, on its face, more stringent than the Federal AIM coatings rule. As stated on page 1945, under ''Comparison to Federal Standards'' in the Maryland Bulletin, Volume 30, Issue 26 (December 26, 2003): ''[T]his proposed action is more restrictive or stringent than the corresponding Federal standards * * *.'' Examples of categories for which Maryland's AIM coatings rule is facially more stringent than the Federal AIM coatings rule include, but are not limited to, the VOC content limit for non-flat high gloss coatings and antifouling coatings. The Federal AIM coatings rule's VOC content limit for non-flat high gloss coatings is 380 grams/liter while the Maryland AIM coatings rule's limit is 250 grams/liter, and the Federal AIM coatings rule's VOC content limit for anti-fouling coatings is 450 grams/liter while the Maryland AIM coatings rule's is 400 grams/liter. Examples of categories for which the Maryland AIM coatings rule is as stringent, but not more stringent, than the Federal AIM coatings rule include, but are not limited to, the VOC content limit for antenna coatings and low-solids coatings. In both rules the VOC content limits for these categories are 530 grams/liter and 120 grams/liter, respectively. Thus, on a category by category basis, EPA believes that Maryland's AIM coatings rule is as stringent or more stringent than the Federal AIM coatings rule. Further, EPA has received no comments that the Maryland AIM coatings rule is less stringent than the Federal AIM coatings rule.

2. *Comment:* The MD AIM Coatings Rule Was Adopted in Violation of Clean Air Act Section 183(e)(9)—The commenters state that in 1998, after a seven-year rule development process, EPA promulgated its nationwide emission limitation for AIM coatings pursuant to Clean Air Act section 183(e). The commenters note that Maryland's AIM coatings rule seeks to impose numerous VOC emission limits that will be more stringent than the corresponding limits in EPA's regulation. The commenters assert that section 183(e)(9) requires that any state which proposes regulations to establish emission standards other than the Federal standards for products regulated under Federal rules shall first consult with the EPA Administrator. The commenters believe that Maryland failed to engage in that required consultation, and that, therefore, (1) Maryland violated section 183(e)(9) in its adoption of the Maryland AIM coatings rule, and (2) approval of the AIM coatings rule by EPA would violate, and is, therefore, prohibited by sections 110(a)(2)(A) and (a)(2)(E) of the Act.

Response: EPA disagrees with this comment. Contrary to the implication of the commenters, section 183(e)(9) does not require states to seek EPA's permission to regulate consumer products. By its explicit terms, the statute contemplates consultation with EPA only with respect to ''whether any other state or local subdivision has promulgated or is promulgating regulations or any products covered under [section 183(e)].'' The commenters erroneously construe this as a requirement for permission rather than informational consultation. Further, the final Federal AIM coatings regulations at 40 CFR 59.410 explicitly provides that states and their political subdivisions retain authority to adopt and enforce their own additional regulations affecting these products. *See also* 63 FR 48848, 48884 (September 11, 1998). In addition, as stated in the preamble to the final rule for architectural coatings, Congress did not intend section 183(e) to preempt any existing or future state rules governing VOC emissions from consumer and commercial products. *See id.* at 48857. Accordingly, MDE retains authority to impose more stringent limits for architectural coatings as part of its SIP, and its election to do so is not a basis for EPA to disapprove the submission for inclusion into the SIP. *See Union Elec. Co.* v. *EPA,* 427 U.S. at 265–66 (1976). Although national uniformity in consumer and commercial product regulations may have some benefit to the regulated community, EPA recognizes that some localities may need more stringent regulation to combat more serious and more intransigent ozone nonattainment problems.

Further, there was ample consultation with EPA prior to Maryland's adoption of its AIM coatings rule. On March 28, 2001 the OTC adopted a Memorandum of Understanding (MOU) on regional control measures, signed by all the member states of the OTC, including Maryland, which officially made available the OTC model rules, including the AIM coatings model rule. See the discussion of this MOU in the Report of the Executive Director, OTC, dated July 24, 2001, a copy of which has

[4] After submission of a request for approval of a quantified amount of emissions reductions credit due to the AIM coatings rule by the State, EPA will evaluate the credit attributable to the rule. Whatever methodology and data the State uses in such a request will become ripe for public comment.

[5] The commenters assert that ''it makes no difference whether Maryland is asking for credits at this time for there to be a Data Quality Act challenge,'' apparently because the fact that material from the Pechan Study appears in the rulemaking docket for this action, there is ''dissemination of flawed data.'' This ignores that fact that EPA is taking no stance on the Pechan Study and its underlying data. That study is irrelevant to our analysis as to whether the Maryland AIM rule is approvable as a measure meeting the requirements of section 110 of the Act that strengthens the Maryland SIP. EPA is not required to address irrelevant material merely because it is in the rulemaking docket. Section 307(d)(6)(B) of the CAA (which aplies to, among other things, SIP revisions, *see* 42 U.S.C. 7607(d)(1)(B)), requires EPA to respond to ''each of the significant comments, criticisms, and new data submitted * * * during the public comment period.'' 42 U.S.C. 7607(d)(6)(B). The United States Supreme Court has held that ''irrelevant'' matter in the docket is not ''significant'' as that term is used in the CAA, and EPA has no duty to respond to them. *See Whitman* v. *Amer. Trucking Ass'ns., Inc.,* 531 U.S. 457, n. 2 at 470 (2001). With respect to the Pechan data, we are not disseminating it, but we rather are fulfilling our statutory role as custodian of a docket containing irrelevant material submitted by third parties.

been included in administrative record of this final rulemaking. That MOU includes the following text, ''WHEREAS after reviewing regulations already in place in OTC and other States, reviewing technical information, consulting with other States and Federal agencies, consulting with stakeholders, and presenting draft model rules in a special OTC meeting, OTC developed model rules for the following source categories * * * architectural and industrial maintenance coatings * * *.'' (a copy of the signed March 28, 2001 MOU has been placed in the administrative record of this final rulemaking).

Therefore, there is no validity to the commenters' assertion that Maryland failed to consult with EPA in the adoption of its AIM coatings rule. EPA was fully cognizant of the requirements of the Maryland AIM coatings rule before its formal adoption by Maryland.[6] For all these reasons, EPA disagrees that Maryland violated section 183(e)(9) in its adoption of the its AIM coatings rule, and disagrees that approval of the Maryland AIM coatings rule by EPA is in violation of or prohibited by section 110(a)(2)(A) and (a)(2)(E) of the Act.

3. *Comment:* The MD AIM Coatings Rule Was Adopted in Violation of Clean Air Act Section 184(c), and Approval of the SIP Revision Would, Itself, Violate That Section—The commenters believe the OTC violated Clean Air Act section 184(c)(l) by failing to ''transmit'' its recommendations to the Administrator, and that the OTC's violation was compounded by the Administrator's failure to review the Model Rule through the notice, comment and approval process required by Clean Air Act section 184(c)(2)–(4). The commenters assert that these purported violations of the Clean Air Act prevent Maryland from adopting the Maryland AIM coatings rule, and now prevent EPA from validly approving them as a revision to the Maryland SIP.

Response: EPA disagrees with this comment. Section 184(c)(1) of the Act states that ''the [OTC] may, after notice and opportunity for public comment, develop recommendations for additional control measures to be applied within all or a part of such transport region if the commission determines such measures are necessary to bring any area in such region into attainment by the dates provided by this subpart.'' It is important to note that the OTC model AIM coatings rule was not developed pursuant to section 184(c)(1), which provision is only triggered ''[u]pon petition of any State within a transport region established for ozone * * *.'' No such petition preceded the development of the model AIM coatings rule. Nor, for that matter, was development of a rule upon State petition under section 184(e)(1) meant to be the exclusive mechanism for development of model rules within the OTC. Nothing in section 184 prevents the voluntary development of model rules without the prerequisite of a state petition. Section 184 is a voluntary process and the OTC may opt for that process or another. This provision of the Act was not intended to prevent OTC's development of model rules which states may individually choose to adapt and adopt on their own, as Maryland did, basing its AIM coatings rule on the model developed within the context of the OTC. In developing its state rule from the OTC model, Maryland was free to adapt that rule as it saw fit (or to leave the OTC model rule essentially unchanged), so long as its rule remained at least as stringent as the Federal AIM coatings rule.

As previously stated, on March 28, 2001, the OTC member states signed a MOU on regional control measures, including the AIM coatings model rule. The OTC did not develop recommendations to the Administrator for additional control measures. The MOU stated that implementing these rules will help attain and maintain the 1-hour standard for ozone and were therefore made available to the states for use in developing their own regulations.[7]

Even though the OTC did not develop the model AIM coatings rule pursuant to section 184(c)(1) of the Act, nevertheless it provided ample opportunity for OTC member and stakeholder comment by holding several public meetings concerning the model rules including the AIM coatings model rule. The sign-in sheets or agenda for four meetings held in 2000 and 2001 at which the OTC AIM coatings model was discussed (some of which reflect the attendance of a representative of the EPA and/or the commenters), have been placed in the administrative record for this final rulemaking.

4. *Comment:* The MD AIM Coatings Rule Violates the Commerce Clause and the Equal Protection Clause of the U.S. Constitution—The commenters' title heading of this comment states that the Maryland AIM coatings rule violates the Equal Protection Clause of the U.S. Constitution, but the text that follows that title heading provides no arguments or assertions to support this claim. In both the title heading and the text that follows, the commenters claim that the Maryland AIM coatings rule violates the Commerce Clause of Article I, section 8, of the U.S. Constitution, because it allegedly imposes an unreasonable burden on interstate commerce. The commenters assert that because the Maryland AIM coatings rule contains VOC limits and other provisions that differ from the Federal AIM coatings rule in 40 CFR 59.400, the rule imposes unreasonable restrictions and burdens on the flow of coatings in interstate commerce. The commenters further clarify that the burdens of the Maryland AIM coatings rule are excessive and outweigh the benefits of the rule. The commenters argue that EPA should disapprove the SIP revision on this basis.

[6] While EPA reviewed the model AIM coatings rule and the draft Maryland version of that rule, EPA had no authority under the Clean Air Act to dictate the exact language or requirements of the rule. As explained previously, EPA's role is to review a state submission to ensure it meets the applicable criteria of section 110 generally, and, in the case of an AIM rule to ensure it is at least as stringent as the otherwise applicable Federal rule.

[7] The commenters argue that section 184 either does not require a formal petition to be triggered, or alternatively, that the MOU between the OTC states qualifies as a ''petition.'' With respect to their first argument, section 184(c) says that the OTC ''may, after notice and opportunity for public comment, develop recommendations for additional control measures * * *'' and that the recommendations shall be presented to the EPA Administrator. This mechanism is triggered ''upon petition of any State with a transport region established for ozone, and based on a majority vote of the Governors on the Commission (or their designees) * * *.'' 42 U.S.C. 7511d(c)(1) (emphasis added). The clear and unambiguous language of the Act requires a petition and a vote. We reasonably interpret section 184(c), in light of the obligation to conduct a vote, to require the petition to be a manifestation of an express intent to invoke the section 184(c) process. Further, any petition would need to be sufficient in its clarity to put members on notice of their obligation to hold a vote and fulfill the other provisions of the section 184 process. We do not believe that a document which in hindsight might be construed as an inadvertent opt-in to the voluntary section 184 process could be the petition affirmatively intended by the Act.

With respect to the argument that the MOU is in hindsight a ''petition'' triggering the section 184 rule development process, nothing in the record indicates that the OTC treated this MOU as a petition to initiate the section 184 process. This is not surprising because the MOU's plain language recites that the model rules had already been developed that by the time the MOU was signed (''WHEREAS * * * OTC developed final model rules for the following source categories * * *.''). Under section 184(c) the petition initiates the voluntary section 184 rule development process. 42 U.S.C. 7511d(c)(1). The MOU, however, came near the end of the OTC's model rule development process. This is a strong indication that the OTC did not intend the AIM coatings rule, or the other rules recited in the MOU, to be subject to the section 184 process. By its failure to express an intention to trigger the section 184 rule development mechanism, we reject the argument that the MOU constitutes a section 184(c) petition. The MOU neither expressly nor inadvertently opted-in the OTC states to the section 184 process.

Response: As indicated previously, the commenters provide no arguments or assertions as to the claim made in the title heading of this comment that the Maryland AIM coatings rule violates the Equal Protection Clause of the U.S. Constitution (see pages 12–13 of the letter dated June 24, 2005 from SWC to Docket ID No. MD166–3111, EPA Proposal To Approve SIP Revision Submitted by the State of Maryland Concerning Architectural and Industrial Maintenance (AIM) Coatings). Moreover, the text of the comment following the title heading does not reference or even make mention of the Equal Protection Clause. Lastly, in no other comment submitted by SW on EPA's May 25, 2004 proposed approval of Maryland's AIM coatings rule is there any mention or reference to the Equal Protection Clause of the U.S. Constitution. EPA does not believe that any provision of the Maryland AIM coatings rule violates the Equal Protection Clause of the U.S. Constitution.

Regarding the comment that Maryland's AIM coatings rule violates the Commerce Clause of the U.S. Constitution, EPA agrees with this comment only to the extent that it acknowledges that AIM coatings are products in interstate commerce and that state regulations on coatings therefore have the potential to violate the Commerce Clause. EPA understands the commenters' practical concerns caused by differing state regulations, but disagrees with the commenters' view that the Maryland AIM coatings rule impermissibly impinges on interstate commerce. A state law may violate the Commerce Clause in two ways: (i) By explicitly discriminating between interstate and intrastate commerce; or (ii) even in the absence of overt discrimination, by imposing an incidental burden on interstate commerce that is markedly greater than that on intrastate commerce. The Maryland AIM coatings rule does not explicitly discriminate against interstate commerce because it applies evenhandedly to all coatings manufactured or sold for use within the state. At most, therefore, the Maryland AIM coatings rule could have an incidental impact on interstate commerce. In the case of incidental impacts, the Supreme Court has applied a balancing test to evaluate the relative impacts of a state law on interstate and intrastate commerce. *See, Pike* v. *Bruce Church, Inc.,* 397 U.S. 137 (1970). Courts have struck down even nondiscriminatory state statutes when the burden on interstate commerce is ''clearly excessive in relation to the putative local benefits.'' *Id.* at 142.

At the outset, EPA notes that it is unquestionable that Maryland has a substantial and legitimate interest in obtaining VOC emissions for the purpose of attaining the ozone NAAQS. The adverse health consequences of exposure to ozone are well known and well established and need not be repeated here. *See, e.g., National Ambient Air Quality Standards for Ozone: Final Response to Remand,* 68 FR 614, 620–25 (January 6, 2003). Thus, the objective of Maryland in adopting the Maryland AIM coatings rule is to protect the public health of the citizens of Maryland. The courts have recognized a presumption of validity where the state statute affects matters of public health and safety. *See, e.g., Kassel* v. *Consolidated Freightways Corp. of Delaware,* 450 U.S. 662, 671 (1980). Moreover, even where the state statute in question is intended to achieve more general environmental goals, courts have upheld such statutes notwithstanding incidental impacts on out of state manufacturers of a product. *See, e.g, Minnesota* v. *Clover Leaf Creamery,* et al., 449 U.S. 456 (1981) (upholding state law that banned sales of milk in plastic containers to conserve energy and ease solid waste problems).

The commenters assert, without reference to any facts, that the Maryland AIM coatings rule imposes burdens and has impacts on consumers that are ''clearly excessive in relation to the purported benefits * * *.'' By contrast, EPA believes that any burdens and impacts occasioned by the Maryland AIM coatings rule are not so overwhelming as to trump the state's interest in the protection of public health. First, the Maryland AIM coatings rule does not restrict the transportation of coatings in commerce itself, only the sale of nonconforming coatings within the state's own boundaries. The state's rule excludes coatings sold or manufactured for use outside the state or for shipment to others. COMAR 26.11.33.01(B)(1)(a) and (b). The Maryland AIM coatings rule cannot be construed to interfere with the transportation of coatings through the state en route to other states. As such, EPA believes that the cases concerning impacts on the interstate modes of transportation themselves are inapposite. *See, e.g., Bibb* v. *Navajo Freight Lines,* 359 U.S. 520 (1938).

Second, the Maryland AIM coatings rule is not constructed in such a way that it has the practical effect of requiring extraterritorial compliance with the state's VOC limits. The Maryland AIM coatings rule only governs coatings manufactured or sold for use within the state's boundaries. The manufacturers of coatings in interstate commerce are not compelled to take any particular action, and they retain a range of options to comply with the rule, including, but not limited to: (1) Ceasing sales of nonconforming products in Maryland; (2) reformulating nonconforming products for sale in Maryland and passing the extra costs on to consumers in that state; (3) reformulating nonconforming products for sale more broadly; (4) developing new lines of conforming products; or (5) entering into production, sales or marketing agreements with companies that do manufacture conforming products. Because manufacturers or sellers of coatings in other states are not forced to meet Maryland's regulatory requirements elsewhere, the rule does not impose the type of obligatory extraterritorial compliance that the courts have considered unreasonable. *See, e.g., NEMA* v. *Sorrell,* 272 F.3d 104 (2d Cir. 2000) (state label requirement for light bulbs containing mercury sold in that state not an impermissible restriction). It may be that the Maryland AIM coatings rule will have the effect of reducing the availability of coatings or increasing the cost of coatings within the state, but courts typically view it as the prerogative of the state to make regulatory decisions with such impacts upon its own citizens. *NPCA* v. *City of Chicago,* 45 F.3d 1124 (7th Cir. 1994), *cert. denied,* 515 U.S. 1143 (1995) (local restriction on sales of paints used by graffiti artists may not be the most effective means to meet objective, but that is up to the local government to decide).

Third, the burdens of the Maryland AIM coatings rule typically do not appear to fall more heavily on interstate commerce than upon intrastate commerce. The effect on manufacturers and retailers will fall on all manufacturers and retailers regardless of location if they intend their products for sale within Maryland, and does not appear to have the effect of unfairly benefitting in-state manufacturers and retailers. The mere fact that there is a burden on some companies in other states does not alone establish impermissible interference with interstate commerce. *See, Exxon Corp.* v. *Maryland,* 437 U.S. 117, 126 (1978).

In addition, EPA notes that courts do not typically find violations of the Commerce Clause in situations where states have enacted state laws with the authorization of Congress. *See, e.g., Oxygenated Fuels Assoc., Inc.* v. *Davis,* 63 F. Supp. 1182 (E.D. Cal. 2001) (state ban on MTBE authorized by Congress);

NEMA v. *Sorell,* 272 F.3d 104 (2d Cir. 2000) (RCRA's authorization of more stringent state regulations confers a ''sturdy buffer'' against Commerce Clause challenges). Section 183(e) of the Act governs the Federal regulation of VOCs from consumer and commercial products, such as coatings covered by the Maryland AIM coatings rule. EPA has issued a Federal regulation that provides national standards, including VOC content limits, for such coatings. *See* 40 CFR 59.400 *et seq.* Congress did not, however, intend section 183(e) to pre-empt additional state regulation of coatings, as is evident in section183(e)(9) which indicates explicitly that states may regulate such products. EPA's regulations promulgated pursuant to the Act recognized that states might issue their own regulations, so long as they meet or exceed the requirements of the Federal regulations. *See, e.g.*, the National Volatile Organic Compound Emission Standards for Architectural Coatings, 40 CFR 59.410, and the **Federal Register** which published the standards, 63 FR 48848, 48857 (September 11, 1998). Thus, EPA believes that Congress has clearly provided that a state may regulate coatings more stringently than other states.

In section 116 of the Act, Congress has also explicitly reserved to states and their political subdivisions the right to adopt local rules and regulations to impose emissions limits or otherwise abate air pollution, unless there is a specific Federal preemption of that authority. When Congress intended to create such Federal preemption, it does so through explicit provisions. *See, e.g.*, section 209(a) of the Act, which pertains to state or local emissions standards for motor vehicles; and section 211 of the Act which pertains to fuel standards. Moreover, the very structure of the Act is based upon ''cooperative federalism,'' which contemplates that each state will develop its own state implementation plan, and that states retain a large degree of flexibility in choosing which sources to control and to what degree in order to attain the NAAQS by the applicable attainment date. *Union Electric Co.* v. *EPA,* 427 U.S. 246 (1976). Given the structure of the Act, the mere fact that one state might choose to regulate sources differently than another state is not, in and of itself, contrary to the Commerce Clause.

Finally, EPA understands that there may be a practical concern that a plethora of state regulations creating a checkerboard of differing requirements would not be the best approach to regulating VOCs from AIM coatings or other consumer products. Greater uniformity of standards does have beneficial effects in terms of more cost effective and efficient regulations. As EPA noted in its own AIM coatings rule, national uniformity in regulations is also an important goal because it will facilitate more effective regulation and enforcement, and minimize the opportunities for undermining the intended VOC emission reductions. 63 FR 48856–48857. However, EPA also recognizes that Maryland and other states with longstanding ozone nonattainment problems have local needs for VOC reductions that may necessitate more stringent coatings regulations. Under section 116 of the Act, states have the authority to do so, and significantly, many states in the Northeast have joined together to prepare and promulgate regulations more restrictive than the Federal AIM coatings rule to apply uniformly across that region. This regional collaboration provides regional uniformity of standards. Maryland may have additional burdens to insure compliance with its rule, but for purposes of this action, EPA presumes that Maryland take appropriate actions to enforce it as necessary. EPA has no grounds for disapproval of the SIP revision based upon the commenters' Commerce Clause comment.

5. *Comment:* The MD AIM Coatings Rule Is Arbitrary and Capricious Because the Record Supporting It Is Deficient—The commenters assert that the Maryland AIM coatings rule violates the Maryland law as being arbitrary and capricious, because the record supporting Maryland's actions is deficient in numerous areas. First, the commenters allege that MDE has not undertaken any independent cost analyses, and instead relied solely on information used by CARB to support the suggested control measure (SCM). Second, the commenters assert that MDE failed to address any relevant differences between climatic conditions or the markets for the regulated products in Maryland and California. Finally, the commenters assert that Maryland's adoption of its AIM coatings rule is arbitrary and capricious because its does not include an averaging provision for inclusion in Maryland SIP as advocated by the commenters.

Response: EPA disagrees with this comment. The cost per ton figure determined by Maryland in its economic analysis, its decision to rely upon information from California and its decision whether to include averaging provisions in its final AIM coatings rule, are all decisions which fall within a state's purview, and issues regarding those decisions are rightly raised by interested parties to the state during its regulatory adoption process. Maryland's March 19, 2004 SIP revision submittal provides evidence that it has the legal authority to adopt its AIM coatings rule and that it has followed all of the requirements in the State law that are related to adoption of the plan. As noted in *BCCA Appeal Group* v. *EPA*, 355 F.3d 817 (5th Cir. 2004):

> [T]he CAA only requires that the states provide ''necessary assurances that the State * * * will have adequate * * * authority under State (and as appropriate, local) law to carry out such implementation plan (and it is not prohibited by any provision of * * * State law from carrying out such implementation plan or portion thereof).'' 42 U.S.C. 7410(a)(2)(E)(i). There is no statutory requirement that the EPA review SIP submissions to ensure compliance with state law * * *. Such a requirement would be extremely burdensome and negate the rationale for having the state provide the assurances in the first instance. The EPA is entitled to rely on a state's certification unless it is clear that the SIP violates state law, and proof thereof, such as a state court decision, is presented to EPA during the SIP approval process. 355 F.3d 817, n.11 at 830.

The commenters have offered no proof, such as a state court decision, that Maryland's AIM coatings rule clearly violates local law. EPA therefore is relying on Maryland's certification that it had the legal authority to adopt its AIM coatings rule and that it has followed all of the requirements in the State law that are related to adoption of this SIP revision.

6. *Comment:* The Emission Limits and Compliance Schedule in the MD AIM Coatings Rule Are Neither Necessary nor Appropriate To Meet Applicable Requirements of the Clean Air Act—The commenters claim that the Maryland AIM coatings rule is not ''necessary or appropriate'' for inclusion in the Maryland SIP, because EPA did not direct Maryland to achieve VOC reductions through the AIM coatings rule, but left it to the State to decide how such reductions can be achieved. The commenters further claim that the Maryland AIM coatings rule is not necessary or appropriate for inclusion in the Maryland SIP because of the numerous alleged procedural and substantive failings on the part of MDE in promulgating the rule. The commenters assert that prior to proposing a SIP revision, the state must first provide reasonable notice and a public hearing, thereby implying that Maryland failed to do so.

Response: EPA disagrees with this comment. If fulfillment of the ''necessary or appropriate'' condition of section 110(a)(2)(A) required EPA first to determine that a measure was

necessary or appropriate and then to require a state to adopt that measure, this condition would present a ''catch 22'' situation. EPA does not generally have the authority to require the State to enact and include in its SIP any particular control measure, even a ''necessary'' one.[8] However, under section 110(a)(2)(a) a control measure must be either ''necessary *or* appropriate'' (emphasis added); the use of the disjunctive ''or'' does not provide that a state must find that only a certain control measure and no other measure will achieve the required reduction. Rather, a state may adopt and propose for inclusion in its SIP any measure that meets the other requirements for approvability so long as that measure is at least an appropriate, though not exclusive, means of achieving emissions reduction. *See also, Union Elec. Co.* v. *EPA,* 427 U.S. 246, 264–266 (1976) (holding that ''necessary'' measures are those that meet the 'minimum conditions' of the Act, that a state ''may select whatever mix of control devices it desires,'' even ones more stringent than Federal standard, to achieve compliance with a NAAQS, and that ''the Administrator must approve such plans if they meet the minimum requirements'' of section 110(a)(2) of the Act). Clearly, in light of the Act and the case law, EPA's failure to specify that state adopt a specific control measure cannot dictate whether a specific measure is necessary or appropriate.

In this particular instance, EPA identified an emission reduction shortfall associated with Maryland's 1-hour ozone attainment demonstration SIPs for the Baltimore and Philadelphia areas, and required Maryland (and Delaware, New Jersey and Pennsylvania in the case of the Philadelphia area) to address the shortfalls (*See,* 64 FR 70460 (December 16, 1999) and 66 FR 586 (January 3, 2001)). Maryland also needs reductions to satisfy the requirements for rate-of-progress (ROP) and attainment plans (including contingency measures) for the reclassified Metropolitan Washington DC severe 1-hour ozone nonattainment area. It is the State's prerogative to develop whatever rule or set of rules it deems necessary or appropriate such that the rule or rules will collectively achieve the additional emission reductions needed to satisfy the ROP and attainment plan requirements for its 1-hour ozone severe nonattainment areas. Because commenters might find it more necessary or appropriate to obtain the needed VOC emission reductions elsewhere is not a basis for EPA to disapprove the rule implementing Maryland's determination of the best approach to obtain the needed reductions.

EPA also disagrees with the commenters' view of Maryland's public notice and hearing procedure. In its March 19, 2004 SIP revision submittal, the MDE included copies of the public notices published in six newspapers throughout the State of Maryland, including the Baltimore Sun and Washington Post, announcing its intent to adopt the AIM coatings rule, to submit the rule to EPA as a SIP revision, and to hold a public hearing (providing date, time, venue), and instructions for submitting comments. From the documentation provided in its March 19, 2004 submittal and from the fact that both commenters testified and submitted written comments pursuant to the hearing and these published notices, EPA believes that Maryland fulfilled the requirements of section 110(a) of the Act with respect to reasonable notice and a public hearing in connection with SIP revision submissions. As stated previously, Maryland's March 19, 2004 SIP revision submittal provides evidence that it has the legal authority to adopt its AIM coatings rule and that it has followed all of the requirements in the State law and constitution that are related to adoption of the plan (see EPA's response to Comment B.5.). *See BCCA Appeal Group* v. *EPA,* 355 F.3d 817, n.11 at 830. (EPA may rely on the state's certification that it has complied with applicable state requirements for promulgating a rule submitted as a revision to its SIP.)

7. *Comment:* The commenters claim that EPA's action to approve or disapprove Maryland's AIM coatings rule is a ''significant regulatory action'' as defined by Executive Order 12866, 58 FR 51735 (September 30, 1993).

Response: EPA disagrees with this comment. 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. The commenters allege that EPA's approval of the Maryland AIM coatings rule is a ''significant regulatory action'' because it meets several of the following criteria specified in Executive Order 12866: ''[it will have] an annual effect on the economy of $100 million or more or [it will] adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities * * *.'' However, this action merely approves existing state law as meeting Federal requirements. EPA's approval of this SIP revision imposes no additional requirements beyond those imposed by state law. Accordingly, this action meets none of the criteria listed above. Any cost or any material adverse effects on the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities exist, if at all, due to Maryland's approval of its state AIM coatings rule, not by EPA's approval of that rule into the Maryland SIP. If EPA failed to act on the Maryland AIM coatings rule, the effects of the rule would not be changed because this rule went effect in Maryland on January 1, 2005. Nothing that EPA might do at this point in time alters that fact.

Furthermore, Maryland voluntarily adopted its version of the OTC model AIM coatings rule and, as the commenters themselves acknowledge, EPA legally could not impose this control measure on the State. *Virginia* v. *EPA,* 108 F.3d 1397 (D.C. Cir. 1997). EPA's approval of this state rule merely fulfills its statutory obligation under the Act to review SIP submissions and approve state choices, provided that they meet the criteria of the Clean Air Act.

III. Final Action

EPA is approving the Maryland SIP revision for the control of VOC emissions from AIM coatings rule submitted on March 19, 2004. The Maryland AIM coatings rule is part of Maryland's strategy to satisfy the requirements of its severe ozone nonattainment areas and to achieve and maintain the ozone standard throughout the State of Maryland.

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,

[8] As noted in *Virginia* v. *EPA,* 108 F.3d 1397 (D.C. Cir. 1997), EPA does have the authority within the mechanism created by section 184 of the Act to order states to adopt control measures recommended by the OTC, if EPA agrees with and approves that recommendation. 108 F.3d, n.3 at 1402. As we have previously stated, the OTC model AIM coatings rule was not developed pursuant to the section 184 mechanism; EPA therefore has no authority to order that Maryland or any other state adopt this measure in order to reduce VOC emissions.

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 July 11, 2005. 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, pertaining to Maryland's AIM coatings rule, 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, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 2, 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 (c) is amended by adding entries for COMAR 26.11.33 through 26.11.33.14 to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE MARYLAND SIP

Code of Maryland Administrative Regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR 52.1100
*	*	*	*	*
26.11.33 Architectural Coatings				
26.11.33.01	Applicability and Exemptions	3/29/04	5/12/05 [Insert page number where the document begins].	
26.11.33.02	Test Methods—Incorporation by Reference	3/29/04	5/12/05 [Insert page number where the document begins].	
26.11.33.03	Definitions	3/29/04	5/12/05 [Insert page number where the document begins].	

EPA-APPROVED REGULATIONS IN THE MARYLAND SIP—Continued

Code of Maryland Administrative Regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR 52.1100
26.11.33.04	General Standard—VOC Content Limits	3/29/04	5/12/05 [Insert page number where the document begins].	
26.11.33.05	VOC Content Limits	3/29/04	5/12/05 [Insert page number where the document begins].	
26.11.33.06	Most Restrictive VOC Limit	3/29/04	5/12/05 [Insert page number where the document begins].	
26.11.33.07	Painting Restrictions	3/29/04	5/12/05 [Insert page number where the document begins].	
26.11.33.08	Thinning	3/29/04	5/12/05 [Insert page number where the document begins].	
26.11.33.09	Rust Preventive Coatings	3/29/04	5/12/05 [Insert page number where the document begins].	
26.11.33.10	Coatings Not Listed in Regulation .05	3/29/04	5/12/05 [Insert page number where the document begins].	
26.11.33.11	Lacquers	3/29/04	5/12/05 [Insert page number where the document begins].	
26.11.33.12	Container Labeling Requirements	3/29/04	5/12/05 [Insert page number where the document begins].	
26.11.33.13	Reporting Requirements	3/29/04	5/12/05 [Insert page number where the document begins].	
26.11.33.14	Compliance Provisions and Test Methods	3/29/04	5/12/05 [Insert page number where the document begins].	
*	*	*	*	*	*	*

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[FR Doc. 05–9314 Filed 5–11–05; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R03–OAR–2004–MD–0001; R03–OAR–2004–VA–0005; FRL–7909–9]

Approval and Promulgation of Air Quality Implementation Plans; Maryland and Virginia; Non-Regulatory Voluntary Emission Reduction Program Measures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving State Implementation Plan (SIP) revisions submitted by the State of Maryland and by the Commonwealth of Virginia. These revisions establish a number of non-regulatory measures for which Maryland and Virginia seek SIP credit in rate-of-progress and attainment planning for the Metropolitan Washington, DC 1-hour ozone nonattainment area (the Washington area). The intended effect of this action is to approve SIP revisions submitted by Maryland and Virginia which establish certain non-regulatory measures. The non-regulatory measures include use of low-or-no-volatile organic compound (VOC) content paints by certain State and local government agencies; auxiliary power units on locomotives; sale of reformulated consumer products in the Northern Virginia area; accelerated retirement of portable fuel containers by certain State and local government agencies; and, renewable energy measures (wind-power purchases by certain local government agencies).

DATES: This final rule is effective on June 13, 2005.

ADDRESSES: EPA has established a docket for each of the SIP revisions subject to this action under Regional Material in EDocket (RME) ID Numbers R03–OAR–2004–MD–0001 and R03–OAR–2004–VA–0005. 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; and the Virginia