

**§ 3.41 Recording fees.**

All requests to record documents must be accompanied by the appropriate fee. A fee is required for each application, patent and registration against which the document is recorded as identified in the cover sheet. The recording fee is set in § 1.21(h) of this chapter for patents and in >§ 2.6(b)(6)< [§ 2.6(q)] of this chapter for trademarks.

Dated: May 30, 1997.

**Bruce A. Lehman,**

*Assistant Secretary of Commerce and  
Commissioner of Patents and Trademarks.*

[FR Doc. 97-14711 Filed 6-4-97; 8:45 am]

BILLING CODE 3510-16-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[MD 038-3009; FRL-5835-3]

#### Approval and Promulgation of Air Quality Implementation Plans; Maryland; 15% Rate-of-Progress Plan and Contingency Measures—Cecil County Nonattainment Area

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Maryland for the Cecil County ozone nonattainment area to meet the 15 Percent Reasonable Further Progress Plan (RFP, or 15% plan), also known as rate-of-progress (ROP) requirements, of the Clean Air Act (CAA). EPA is proposing to approve Maryland's 15% plan for Cecil County because it meets the 15% plan requirements under the CAA, and is consistent with EPA policy and guidance. Emission reductions realized by Maryland's 15% plan for Cecil County are sufficient to fulfill Maryland's contingency measure obligation for the County. Therefore, EPA is also proposing approval of contingency measures for Cecil County, Maryland.

**DATES:** Comments on this proposed action must be postmarked by July 7, 1997.

**ADDRESSES:** Written comments may be mailed to David L. Arnold, Chief, Ozone/CO & Mobile Sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency—Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air,

Radiation, and Toxics Division, Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M. Street, SW., Washington, D.C. 20460; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland 21224.

#### FOR FURTHER INFORMATION CONTACT:

Carolyn M. Donahue, (215) 566-2095, at the EPA Region III address above.

Information may also be requested via e-mail at the following address:

donahue.carolyn@epamail.epa.gov.

Please note that while information may be requested via e-mail, only written comments can be accepted for inclusion in the docket.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Section 182(b)(1) of the CAA, as amended in 1990, requires ozone nonattainment areas classified as moderate and above to develop plans to reduce area-wide volatile organic compound (VOC) emissions by 15% from a 1990 baseline. These "15% plans" were to be submitted to EPA by November 15, 1993, with the reductions to occur by November 15, 1996. The CAA also sets limitations on the creditability of certain control measures towards the ROP requirements. Specifically, states cannot take credit for reductions achieved by Federal Motor Vehicle Control Program (FMVCP) measures (i.e., new car emissions standards) promulgated prior to 1990; or for reductions resulting from regulations promulgated prior to 1990 to lower the volatility (i.e., Reid vapor pressure (RVP)) of gasoline. Furthermore, the CAA does not allow credit towards RFP for post-1990 corrections to vehicle inspection and maintenance programs (I/M) or corrections to Reasonably Available Control Technology (RACT) rules, as these programs were required to be in place prior to 1990.

In addition, section 172(c)(9) of the CAA requires that contingency measures be included in the 15% plan, to be implemented if reasonable further progress is not achieved, or if the National Ambient Air Quality Standard (NAAQS) is not attained by the deadlines set forth in the CAA.

##### II. Maryland SIP Submittal for Cecil County

In Maryland, three nonattainment areas are subject to the CAA's 15% ROP requirements. These are the Baltimore nonattainment area, the Maryland

portion of the Metropolitan Washington, DC nonattainment area, and Cecil County, which is part of the Philadelphia-Wilmington-Trenton nonattainment area. The Maryland Department of the Environment (MDE) submitted revisions to its SIP for all three nonattainment area, which EPA received on July 12, 1995. EPA is taking action today only on Maryland's 15% plan submittal and contingency measures for Cecil County. The 15% plan submittals for the Maryland portion of the Metropolitan Washington, DC nonattainment area and the Baltimore nonattainment area will be the subjects of other rulemaking notices.

##### III. Analysis of SIP Revision

Table 1 presents the calculations of the required reductions for the Cecil County nonattainment area 15% ROP plan.

TABLE 1.—CALCULATION OF REQUIRED REDUCTIONS FOR MARYLAND'S 15% PLAN FOR THE CECIL COUNTY NON-ATTAINMENT AREA

[Tons per day]

(1) 1990 Base Year Inventory .....	19.0
(2) Adjustments for FMVCP/RVP .....	2.4
(3) 1990 Adjusted Base Year Inventory [(1)-(2)] .....	16.6
(4) 15% Reduction Requirement [0.15×(3)] .....	2.49
(5) Expected Emissions Growth 1990-1996 .....	0.7
(6) 3% Contingency Measures [0.03×(3)] .....	0.49
(7) Total Emissions Reductions Required [(4)+(5)+(6)] .....	3.68
(8) Total Reduction Claimed by Maryland from Creditable Measures .....	4.72

##### A. 1990 Base Year Emissions Inventory

The baseline from which states must determine the required reductions for 15% planning is the 1990 VOC base year emissions inventory. The inventory is broken down into several emissions source categories: stationary, area, on-road mobile sources, and off-road mobile sources. This emissions total is the basis for calculating emissions growth and the required 15% emissions reduction from the adjusted base year inventory. The 1990 adjusted base year inventory is derived from the 1990 base year inventory minus FMVCP/RVP reductions, RACT corrections and I/M corrections. Pursuant to the CAA, Maryland did not take credit for post-1990 RACT corrections or post-1990 I/M corrections because these programs were to be in place prior to 1990. Maryland submitted a formal SIP revision containing their official 1990 base year emission inventory on March

21, 1994. EPA approved this inventory in a notice published in the **Federal Register** on September 27, 1996 (61 FR 50715).

In its 15% plan for Cecil County, the State of Maryland submitted a 1990 base year inventory totaling 18.9 TPD. However, the approved 1990 base year inventory for Cecil County, Maryland, is 19.0 TPD. This discrepancy is not critical to the rest of Maryland's 15% plan calculations because it is not large enough to significantly change the 15% required emissions reduction calculated for the area (a difference of 0.015 TPD). EPA believes that this discrepancy arose due to rounding differences in Maryland's 15% plan and base year emissions inventory calculations. EPA will continue using the approved total of 19.0 TPD as the 1990 base year inventory for Cecil County throughout this action.

#### *B. Growth in Emissions Between 1990 and 1996*

EPA has interpreted the CAA (57 FR 13507, April 16, 1992) to require that RFP towards attainment of the ozone standard must be obtained after offsetting any growth expected to occur during that period. Therefore, to meet the 15% requirement, a state must implement measures achieving sufficient emissions reductions to offset projected growth in emissions, in addition to a 15% reduction of VOC emissions. Thus, an estimate of VOC emissions growth from 1990 to 1996 is necessary for demonstrating RFP. Growth is calculated by multiplying the 1990 base year inventory by acceptable forecasting indicators. Growth must be determined separately for each source, or by source category, since different source categories typically grow at different rates. EPA's inventory preparation guidance recommends the following indicators in order of preference: Product output, value added, earnings, and employment. Population can also serve as a surrogate indicator.

Maryland's 15% plan for Cecil County contains growth projections for point, area, on-road mobile, and non-road mobile source categories. Maryland determined the growth projection for Cecil County using the U.S. Department of Commerce Bureau of Economic Analysis (BEA) growth factors and industrial earnings as an indicator. EPA has determined that the growth projections for each of the categories in Cecil County is approvable. For a detailed description of the growth methodologies used by the State, please refer to EPA's Technical Support

Document (TSD) prepared for this action.

#### *C. Creditable Emission Control Strategies in the 15% Plan*

The specific measures adopted (either through state or federal rules) for the Cecil County nonattainment area are addressed, in detail, in the State's 15% plan for Cecil County. The control measures described below are creditable towards the 15% requirements of the CAA. EPA agrees with the emission reductions projected in the state submittal for the following measures:

##### 1. Seasonal Open Burning Ban

Maryland submitted amendments to its open burning regulation,

COMAR 26.11.07, on July 12, 1995.

These amendments institute a ban, during the peak ozone season, on the practice of burning for the disposal of brush and yard waste as a method of land clearing. On January 31, 1997, EPA's direct final approval of these revisions into the Maryland SIP was signed.

This ban on open burning, affecting Cecil County (part of the Philadelphia-Wilmington-Trenton severe nonattainment area), will result in a reduction of VOC emissions. The State of Maryland claimed 4.4 tons VOC per day (TPD) emissions reductions from the seasonal open burning ban in Cecil County. Maryland assumed 100% rule effectiveness to attain this emission reduction. However, the State did not submit any documentation substantiating why the default value of 80% rule effectiveness should not be applied to this measure.

Rule effectiveness is an estimate of how effectively a rule is implemented, and is used as a percentage of total available reductions from a control measure. Pursuant to EPA guidance, control measures are subject to a rule effectiveness adjustment, unless clearly documented reasons as to why they should not be subjected are included in the submittal. Therefore, the State of Maryland can claim 3.52 TPD emissions reductions from the seasonal open burning ban in Cecil County (80% of 4.4 TPD).

##### 2. Consumer and Commercial Products National Rule

Section 183(e) of the Act required EPA to conduct a study of VOC emissions from consumer and commercial products and to compile a regulatory priority list. EPA is then required to regulate those categories that account for 80% of the consumer product emissions in ozone nonattainment areas. Group I of EPA's

regulatory schedule lists 24 categories of consumer products to be regulated by national rule, including personal, household, and automotive products. EPA intends to issue a final rule covering these products in the near future. EPA policy allows states to claim up to a 20% reduction of total consumer product emissions towards the ROP requirement. Maryland claimed a 20% reduction or the equivalent reduction of 0.1 TPD from their 1996 projected uncontrolled consumer and commercial products emissions in its 15% plan for Cecil County. EPA has determined that this 0.1 TPD reduction is creditable in the 15% plan.

##### 3. Stage I

Stage I Vapor Recovery is a measure that controls gasoline vapor emissions at gasoline dispensing facilities that result from unloading gasoline from a delivery vessel (tank truck) into a stationary storage vessel (storage tank). The vapors displaced in the storage tank by the liquid gasoline are retrieved into the tank truck and transported back to the refinery. EPA has approved Maryland's Stage I regulation into the Maryland SIP (60 FR 1818). From this type of control measure, Maryland claimed 0.8 TPD emission reductions in the 15% plan for Cecil County. EPA has determined that these 0.8 TPD are creditable toward the 15% plan.

##### 4. Autobody Refinishing

EPA is in the process of adopting a national rule to control emissions from coatings used in auto body refinishing operations.

These coatings are typically used by industry and small businesses, or by vehicle owners. VOC emissions emanate from the evaporation of solvents used in the coating process. Although there are various avenues of VOC control in the autobody finishing process, the national rule targets the formulation of the surface coatings. In a November 24, 1994 memo, EPA set forth policy on the creditable reductions to be assumed from the national rule for autobody refinishing. That memo stipulated that a 37% reduction from current emissions, and allowed for the assumption of 100% rule effectiveness (presuming the coating application instructions were being followed). Rule penetration is also assumed to be 100%. Thus, a 37% emission reduction claimed by Maryland is allowable.

Maryland claimed a 45% emission reduction from autobody refinishing in the Cecil County 15% plan from a state autobody refinishing regulation. However, this rule has yet to be approved into the SIP. Therefore, only

a 37% reduction, or 0.14 TPD, from autobody refinishing is allowable in the Maryland 15% plan for Cecil County.

#### 5. Architectural and Industrial Maintenance (AIM) Coatings Reformulation

EPA is required to promulgate, by March 1997, a national rule for reducing emissions from architectural coatings—including interior and exterior paints, etc. In a policy memo dated March 22, 1995, EPA provided guidance on expected reductions and creditability from the national architectural coatings rule (61 FR 32729). Cecil County claims an emissions reduction of 0.2 TPD from AIM reformulation. However, EPA cannot allow 0.2 TPD because rule effectiveness was not applied to this control measure. Therefore, only 0.16 TPD (0.2 TPD x 80% rule effectiveness) can be credited to Cecil County's 15% plan.

As shown above, the 15% required reductions (2.49 TPD) and the expected emissions growth from 1990 to 1996 (0.7 TPD) for Cecil County are realized by the 4.72 TPD total emission reductions from open burning, stage I, consumer and commercial products, autobody refinishing, and AIM coatings.

#### D. Contingency Measures

Ozone areas classified as moderate or above must include in their submittal, under section 172(c)(9) of the CAA, contingency measures to be implemented if RFP is not achieved or if the standard is not attained by the applicable date. The General Preamble to Title I, (57 FR 13498) states that the contingency measures should, at a minimum, ensure that an appropriate level of emissions reduction progress continues to be made if attainment or RFP is not achieved and additional planning by the state is needed. Therefore, EPA interprets the CAA to require states with moderate and above ozone nonattainment areas to include sufficient contingency measures in the ROP plan, so that upon implementation of such measures, additional emissions reductions of up to 3% of the adjusted base year inventory (or a lesser percentage that will make up the identified shortfall) would be achieved in the year after the failure has been identified. However, the emissions reduction in Maryland's 15% plan for Cecil County exceed the required 15% by more than 3% of the required emissions reduction; thus, EPA considers the contingency measures requirement adequately addressed through the plan's total emissions reduction. Therefore, Maryland does not need to address contingency measures

for Cecil County as a separate emissions reduction requirement. The needed emission reduction for the Cecil County ROP plan is the sum of the required 15% reduction, the expected emission growth from 1990 to 1996, and the 3% contingency reduction, totaling 3.68 TPD. This emissions reduction total can be fulfilled through the creditable control measures for Cecil County, which achieve a 4.72 TPD emission reduction.

#### IV. Proposed Action

EPA has evaluated the Maryland 15% plan submittal for Cecil County for consistency with the CAA, EPA regulations, and EPA policy. The RFP progress submittal will achieve enough reductions to meet the 15% requirements of section 182(b)(1) of the CAA, as well as the additional 3% as contingency measures under 172(c)(9) of the CAA. EPA is proposing full approval of Maryland's 15% plan and contingency measures for Cecil County under section 110(k)(3) and Part D of the CAA.

Nothing in this proposed rule should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This proposed approval for the Maryland 15% plan for the Cecil County nonattainment area has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this action from E.O. 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore,

because the federal SIP-approval of Maryland's 15% plan and contingency measures for Cecil County does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. US EPA*, 427 US 246, 256-66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

#### Unfunded Mandates

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector; or to state, local, or tribal governments in the aggregate.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

The Regional Administrator's decision to approve or disapprove the SIP revision pertaining to the Maryland 15% plan and contingency measures for the Cecil County nonattainment area will be based on whether it meets the requirements of section 110(a)(2) (A)-(K) and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

#### List of Subjects in 40 CFR Parts 52 and 81

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental regulations, Reporting and recordkeeping, Ozone, Volatile organic compounds.

Dated: April 9, 1997.

**A.R. Morris,**

*Acting Regional Administrator.*

[FR Doc. 97-14719 Filed 6-4-97; 8:45 am]

BILLING CODE 6560-50-P