TABLE 3.—PROHIBITED ACTS AND DISCIPLINARY SEVERITY SCALE—Continued

Code	Prohibited acts	Sanctions
*	* * * * * * *	
297	Use of the telephone for abuses other than criminal activity (*e.g.,* circumventing telephone monitoring procedures, possession and/or use of another inmate's PIN number; third-party calling; third-party billing; using credit card numbers to place telephone calls, conference calling; talking in code).	
*	* * * * * * *	
	MODERATE CATEGORY	
*	* * * * * * *	
332	Smoking where prohibited.	
*	* * * * * * *	
397	Use of the telephone for abuses other than criminal activity (*e.g.,* conference calling, possession and/or use of another inmate's PIN number, three-way calling, providing false information for preparation of a telephone list).	
*	* * * * * * *	
	LOW MODERATE CATEGORY	
*	* * * * * * *	
403	(Not to be used).	
*	* * * * * * *	
406	Unauthorized use of mail (Restriction, or loss for a specific period of time, of these privileges may often be an appropriate sanction G) (May be categorized and charged in terms of greater severity, according to the nature of the unauthorized use; *e.g.,* the mail is used for planning, facilitating, committing an armed assault on the institution's secure perimeter, would be charged as a Code 101 Assault).	
*	* * * * * * *	
497	Use of the telephone for abuses other than criminal activity (*e.g.,* exceeding the 15-minute time limit for telephone calls; using the telephone in an unauthorized area; placing of an unauthorized individual on the telephone list).	
*	* * * * * * *	

[FR Doc. 00–25729 Filed 10–5–00; 8:45 am]
BILLING CODE 4410–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA088–5051a; FRL–6880–8]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Revised 15% Plan for Northern Virginia Portion of the Metropolitan Washington, DC Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is converting its conditional interim approval of a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia (the ''Commonwealth'') to a full approval. This revision satisfies the 15 percent rate of progress (ROP) plan (the 15% plan) requirements of the Clean Air Act (the Act) for the Northern Virginia portion of the Metropolitan Washington, DC ozone nonattainment area (the Washington area). The intended effect of this action is to convert the conditional interim approval to a full approval because the Commonwealth has fulfilled the conditions listed in EPA's conditional interim approval of the original 15% plan for the Northern Virginia portion of the Washington area.

DATES: This direct final rule is effective on November 20, 2000 without further notice, unless EPA receives adverse comment by November 6, 2000. If adverse comment is received, EPA 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: Comments may be mailed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency—Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at:

Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103;

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and

Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

Persons interested in examining these documents should schedule an appointment with the contact person (listed below) at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Janice Lewis, (215) 814–2185, at the

EPA Region III address above, or by e-mail at lewis.janice@epa.gov. Please note that while questions may be submitted via e-mail, any comments on the rulemaking action must be submitted, in writing, to the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background

On April 14, 1998, the Virginia Department of the Environmental Quality (DEQ) submitted a revision to its SIP for the Washington area. The revision consists of an amended plan to achieve a 15% reduction from 1990 base year levels in volatile organic compound (VOC) emissions. On June 24, 1997 (62 FR 33999), EPA granted conditional interim approval of Virginia's original 15% plan for the Northern Virginia portion of the Washington area. Virginia's revisions to its 15% plan were made to satisfy the conditions imposed by EPA in the June 24, 1997 conditional interim approval. The interim part of the June 24, 1997 (62 FR 33999) conditional interim approval was related to the implementation of Virginia's Enhanced I/M program. On September 1, 1999 (64 FR 47670), EPA published a direct final rule converting its May 15, 1997 (62 FR 26745) final conditional interim approval of the Virginia Enhanced I/M program to a full approval, thus removing the interim status. This was done because EPA determined that all of the conditions of its May 15, 1997 conditional interim approval of the Enhanced I/M SIP had been satisfied by the Commonwealth.

The Metropolitan Washington D.C. ozone nonattainment area consists of the District of Columbia, five counties in Maryland, and in Northern Virginia, the counties of Arlington, Fairfax, Loudoun, Prince William and Stafford and the cities of Alexandria, Falls Church, Manassas, Manassas Park and Fairfax.

The Commonwealth of Virginia, State of Maryland and the District of Columbia in conjunction with municipal planning organizations collaborated on a coordinated 15% plan for the entire Washington area (regional 15% plan). This was done under the auspices of the regional air quality planning committee, the Metropolitan Washington Air Quality Committee (MWAQC), and with the assistance of the local municipal planning organization, the Metropolitan Washington Council of Governments (MWCOG), to ensure coordination of air quality and transportation planning. Although the plan was developed by a regional approach, each jurisdiction is required to submit the 15% plan to EPA for approval as a revision to its SIP. Because the reasonable further progress requirements such as the 15% plan affect transportation improvement plans, municipal planning organizations have historically been heavily involved in air quality planning in the Washington area.

As explained in further detail below, the regional 15% plan determined the regional target level, regional projections of growth and finally the total amount of creditable reductions required to meet the 15% reasonable further progress requirement for the entire Washington area. Maryland, Virginia and the District agreed to apportion this total amount of required creditable reductions among the three jurisdictions. EPA is taking action today only on Virginia's revised 15% plan submittal for the Washington area, having already granted full approvals of both the District's and Maryland's 15% plans for their portions of the Washington area on August 5, 1999 (64 FR 42600) and July 19, 2000 (65 FR 44686), respectively. This rulemaking is being taken to convert the June 24, 1997 conditional interim approval of Virginia's 15% plan for the Washington area to a full approval based upon EPA's determination that the Commonwealth has fulfilled the conditions imposed in that conditional interim approval.

A. Base Year Emission Inventory

The baseline from which states must determine the required reductions for 15% planning is the 1990 base year emission inventory. The inventory is broken down into several emissions source categories: stationary point, area, on-road mobile sources, and off-road mobile sources. The base year inventory includes emissions of all sources within the nonattainment area and certain large point sources within twenty-five miles of the boundary. A subset of the 1990 base year inventory is the 1990 rate-of-progress (ROP) inventory which includes only anthropogenic (man-made) emissions actually within the nonattainment area boundaries. EPA approved this base year inventory SIP revision for the entire Washington area on July 8, 1998 (63 FR 36854).

B. Growth in Emissions Between 1990 and 1996

EPA has interpreted the Act to require that reasonable further progress towards attainment of the ozone standard must be obtained after offsetting any growth expected to occur over that period. Therefore, to meet the 15% reasonable further progress requirement, a state must enact measures achieving sufficient emissions reductions to offset projected growth in VOC emissions, in addition to a 15% reduction of VOC emissions. A detailed description of the growth methodologies used by the Commonwealth is provided in EPA's conditional interim approval of Virginia's 15% plan (62 FR 33999, June 24, 1997) and in the Technical Support Document (TSD) prepared for that action.

The one area of concern relating to growth projections in the original 15% plan was related to the point source inventory. Condition 1 of the June 24, 1997 (62 FR 33999) conditional interim approval required that Virginia revise its plan to properly account for growth in point sources between 1990 and 1996. EPA's analysis of the revised 15% plan supports removal of this condition, since Virginia used the appropriate methodology in reappraising its point source inventory growth between 1990 and 1996. EPA here notes that the revised 15% plan has a point source inventory number that differs from Virginia's SIP approved inventory—8.1 tons per day (tpd) in the revised 15% plan submittal versus 8.3 tpd in the approved inventory. EPA is not revising the SIP approved inventory by this action. The 8.1 tpd number is acceptable for use in the revised 15% plan, as the discrepancy serves to lower the 15% plan's target level, thus making the plan's VOC reductions more restrictive than required if one were to use the approved inventory numbers. EPA is approving the Commonwealth of Virginia's 1990–1996 emissions growth projections in its revised 15% plan.

C. Enhanced Vehicle Inspection and Maintenance (I/M) Program

Condition 2 of EPA's conditional interim approval of the original 15% plan required the Commonwealth to meet the conditions EPA imposed in its May 15, 1997 conditional interim approval of Virginia's enhanced motor vehicle inspection and maintenance (I/M) program. Virginia was also required to remodel the I/M benefits claimed in the 15% plan using the following two EPA guidance memoranda: *Date by which States Need to Achieve all the Reductions Needed for the 15 Percent Plan from I/M and Guidance for Recalculation,* from John Seitz and Margo Oge dated August 13, 1996, and *Modeling 15% VOC Reductions from I/M in 1999—Supplemental Guidance,* from Gay MacGregor and Sally Shaver dated December 23, 1996.

The Commonwealth has remedied condition 2 imposed in the conditional interim approval of its original 15% plan. On September 1, 1999 (64 FR 47670), EPA published a direct final

rule converting its May 15, 1997 (62 FR 26745) final conditional interim approval of the Virginia enhanced I/M SIP revision to a full approval. This was done because EPA determined that all of the conditions of the May 15, 1997 conditional interim approval of the enhanced I/M SIP had been satisfied by the Commonwealth. Further, EPA has determined that Virginia appropriately remodeled the I/M benefits of the program, and that there are no adverse affects on the 15% plan due to this remodeling.

D. Target Level Emissions/Emission Reductions Needs

As part of the conditional interim approval of its original 15% plan, Virginia was also required to remodel to determine affirmatively the creditable reductions from reformulated gasoline (RFG) and the Tier 1 Federal Motor Vehicle Control Program (FMVCP) in accordance with EPA guidance. Virginia was required to remodel the benefits of enhanced I/M, RFG and Tier 1 under the revised plan to compare the mobile source target level in 1999 versus the target level for mobile sources which was determined for the original plan.

EPA concurs with the remodeling demonstration submitted as part of the revised 15% plan, and with the revised mobile source target level calculation. Virginia's portion of the corrected target level is 163.8 tpd.

The regional 15% plan calculates a target level of emissions to meet the 15% reasonable further progress requirement over the entire nonattainment area. The regional 15% plan contains a projection of emissions growth from 1990 to 1996 and, in effect, apportions among Virginia, Maryland and the District of Columbia (the three jurisdictions) the amount of creditable emission reductions that each jurisdiction must achieve in order for the entire nonattainment area to achieve a 15% reduction in VOC emissions net of growth. Each jurisdiction then adopted the regional plan, which identified the amount of creditable emission reductions which that jurisdiction must achieve for the regional plan to get a 15% reduction accounting for any growth. The regional plan calculated the ''target level'' of 1996 VOC emissions, in accordance with applicable EPA guidance.

EPA has interpreted section 182(b) of the Act to require that the base year VOC emission inventory be adjusted to account for reductions in VOC emissions that would have occurred from the pre-1990 FMVCP and Reed Vapor Pressure (RVP) programs. To meet EPA's applicable guidance on this requirement, the regional plan contains a calculation of the reductions occurring between 1990 and 1996 from the pre-1990 Tier 0 FMVCP and RVP programs and the result of subtracting these reductions from the 1990 ROP inventory. The net result of this calculation yielded the ''1990 base year inventory adjusted to 1996''.

Virginia's 15% plan relies upon reductions from its revised enhanced I/M program to achieve the required 15% level as soon after November 15, 1996 as practicable, but not later than 1999. Under EPA's applicable guidance for 15% plans that rely upon reductions from enhanced I/M after 1996, the target level must also take into account the effects of the pre-1990 Tier 0 FMVCP on 1990 emissions due to turnover in vehicles between 1996 and 1999. Therefore, to meet EPA's applicable guidance for this requirement, Virginia's 15% plan contains a calculation of the non-creditable reductions from the pre-1990 Tier 0 FMVCP and RVP programs between 1990 and 1999 and the result of subtracting these reductions from the 1990 ROP inventory. The result of this calculation yielded the ''1990 base year inventory adjusted to 1999.'' Virginia's 15% plan clearly identifies the difference between the ''1990 base year inventory adjusted to 1996'' and ''1990 base year inventory adjusted to 1999'' as the ''fleet turnover correction'' (FTC) necessary to meet EPA's guidance.

In its plan, Virginia calculates a ''base'' 1996 VOC target level as 85% of the ''1990 adjusted base year inventory for 1996.'' In accordance with EPA's guidance, as discussed above, Virginia subtracts the FTC from the ''base'' 1996 VOC target level to yield a ''final'' 1996 VOC target level for the 15% plan. In Table 1 below, we have provided a summary of the calculations for the 1996 VOC target level for the entire Washington area.

TABLE 1.—REQUIRED REDUCTIONS FOR THE METROPOLITAN WASHINGTON, DC NONATTAINMENT AREA 15% PLAN

[Tons per day]

Metropolitan Washington, DC nonattainment area target level calculation					
	Item	District of Columbia	Maryland	Virginia	Washington D.C. Area Totals
1	1990 ROP Inventory	60.3	241.7	226.5	528.5
2	1990 Adjusted Base Year Inventory adjusted to 1996	51.2	215.1	196.8	463.1
3	1990 Adjusted Base Year Inventory adjusted to 1999	49.9	210.9	193.3	454.1
4	FTC Adjustment (Line 2 minus Line 3)	1.3	4.2	3.5	9.0
5	Base 1996 target Level = 85% of Line 2 (0.85 × Line 2)	43.5	182.8	167.3	393.6
6	Final 1996 Regional Target Level (Line 5 minus Line 4)	42.2	178.6	163.8	384.6
7	Projected 1996 Uncontrolled Emissions	48.5	234.7	219.4	502.4
8	Required Regional Emission Reductions (Line 8 minus Line 7)*	.....	.....	.....	117.8
9	Apportioned State Emission Reductions*	8.5	57.5	51.8	117.8

*The small discrepancy between values is due to rounding the apportioned emission reductions to the nearest tenth.

The emission reductions required to meet the 15% reasonable further progress requirement equals the difference between the projected 1996 emissions under the current control strategy (the 1996 uncontrolled emissions) and the target level. This amount of emission reductions reflects a 15% reduction from the adjusted base year inventory and any reductions necessary to offset emissions growth projected to occur between 1990 and 1996. The Washington area's regional VOC target level is 384.6 tpd. EPA has determined that this regional target level and the emission reduction needed for the Washington area have been properly calculated in accordance with EPA guidance.

The three Washington area jurisdictions agreed to apportion the amount of emission reductions needed for the entire area to achieve the 15% reduction among themselves. This

apportionment is also shown in Table 1 above. Virginia's share is 51.8 tpd.

E. Reasonable Further Progress

The final condition for full approval of the 15% plan was for Virginia to demonstrate, using appropriate documentation methodologies and credit calculations, that it had satisfied the 15% plan requirement for the Washington area. As part of the revised 15% plan, recalculations to the inventory, target level and 15% reduction amounts were adjusted. Under the new plan, Virginia's portion of the 15% plan requirement decreased from 54.5 tpd to 51.8 tpd.

EPA agrees with the credit calculation methodology used in the revised plan to justify this number. As demonstrated in Chapter 5 of the revised plan SIP submittal, appropriate assumptions and calculation methodologies were employed, as per EPA guidance, in calculating the new figures. EPA therefore concurs that Virginia must achieve at least 51.8 tpd in creditable emission reductions to demonstrate that Virginia has met its 15% VOC reduction requirement for the Washington, DC area.

EPA believes that in its revised 15% plan the Commonwealth has made all the necessary corrections to establish the creditability of sufficient control measures to met the 15% VOC reduction requirement. Virginia has demonstrated there are sufficient creditable measures in the revised 15% plan to achieve at least 54.85 tpd of reductions. This 54.85 tpd reduction results from either rules promulgated by EPA or measures contained in the approved Virginia SIP. Table 2 below summarizes the creditable measures from Virginia's 15% plan for the Washington area.

TABLE 2.—CREDITABLE VOC REDUCTIONS IN VIRGINIA'S 15% PLAN FOR THE METROPOLITAN WASHINGTON, DC NONATTAINMENT AREA

[Tons per day]

Creditable reductions	
Enhanced Inspection and Maintenance	19.50
Tier 1 FMVCP	6.10
Landfill Controls	0.27
Stage II Recovery Nozzles	6.80
Reformulated Gasoline (on/off road)	9.10
Auto Refinishing	2.51
AIM—Reformulated Surface Coating	5.30
Reformulated Consumer/Commercial Products	1.80
Stage I Enhancement	0.30
VOC RACT > 50 tpy Sources	0.40
Point Sources Controls > 25 tpy Sources	0.03
Seasonal Open Burning Ban	2.60
Total Fully Creditable Reductions	54.85

F. Transportation Conformity Budgets

As is the case with any ROP plan, Virginia's 15% plan for the Washington, DC area contains a mobile budget for VOC emissions. By approving Virginia's 15% plan, EPA is granting a de facto approval of the budget in this plan. However, EPA wishes to clarify that the budget in Virginia's 15% plan will not be the applicable budget for any future conformity determinations because there are mobile budgets for both VOC and nitrogen oxides (NO_X) that have been found adequate for the Washington, DC area that apply in 1999 and all subsequent years. To verify which budgets apply in the Washington, DC area, please contact the EPA Regional office listed in the **ADDRESSES** section or consult EPA's ''Adequacy Review of SIP Submissions for Conformity'' web page at http://www.epa.gov/oms/transp/conform/adequacy.htm.

EPA's review of this material indicates that Virginia's revised 15% plan SIP revision meets the requirements of the Act and applicable EPA guidance. EPA is therefore converting its conditional interim approval of Virginia's 15% plan to a full approval.

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege''' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations.

Virginia's Voluntary Environmental Assessment Privilege law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The privilege does not extend to documents or information that are: (1) Generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1997, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce federally authorized environmental programs in a manner that is no less stringent than their federal counterparts. * * * '' Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty.

The Attorney General's January 12, 1997 opinion states that the quoted language renders this statute inapplicable to enforcement of any federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with federal law, which is one of the criteria for immunity.'' Thus, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the federal requirements.

EPA is converting its conditional interim approval of Virginia's 15% plan to a full approval by this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a

separate document that will serve as the proposal to convert the conditional interim approval to a full approval should adverse or critical comments be filed. This rule will be effective November 20, 2000 without further notice unless the Agency receives adverse comments by November 6, 2000. If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on the proposed rule. Parties interested in commenting on this action converting the conditional approval of the Commonwealth's 15% plan to a full approval should do so at this time. If no such comments are received, the public is advised that this rule will be effective on November 20, 2000 and no further action will be taken on the proposed rule.

II. Final Action

EPA is converting its conditional interim approval of Virginia's 15% plan for its portion of the Metropolitan Washington, DC ozone nonattainment area to a full approval based upon the evaluation of the SIP revision submittal made by Virginia on April 14, 1998 consisting of the revised 15% plan for its portion of the Metropolitan Washington, DC ozone nonattainment area.

III. Administrative Requirements

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. 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 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998).

This rule will 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), because it merely approves a state 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 (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.

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order.

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 November 20, 2000. 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 converting EPA's conditional interim approval of Virginia's 15% plan for Metropolitan Washington, D.C. ozone nonattainment area to a full approval may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: September 25, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

40 CFR part 52 of chapter I, title 40 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 VV—Virginia

2. Section 52.2428 is amended by designating the existing text as paragraph (a) and adding paragraph (b) to read as follows:

§ 52.2428 Control strategy: Carbon monoxide and ozone.

(a) * * *

(b) EPA approves the Commonwealth's 15 Percent Rate of Progress Plan for the Virginia portion of the Metropolitan Washington, D.C. ozone nonattainment area, submitted by

the Acting Director of the Virginia Department of the Environmental Quality on April 14, 1998.

§ 52.2450 [Amended]

3. Section 52.2450 is amended by removing and reserving paragraph (e).

[FR Doc. 00–25470 Filed 10–5–00; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 132

[FRL–6881–9]

Identification of Approved and Disapproved Elements of the Great Lakes Guidance Submission From the State of New York, and Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA published the final Water Quality Guidance for the Great Lakes System (the Guidance) on March 23, 1995. Section 118(c) of the Clean Water Act (CWA) requires the Great Lakes States of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin to adopt within two years of publication of the final Guidance (*i.e.,* March 23, 1997) minimum water quality standards, antidegradation policies and implementation procedures that are consistent with the Guidance, and to submit them to EPA for review and approval. Each of the Great Lakes States made those submissions.

Today, EPA is taking final action on the Guidance submission of the State of New York. EPA's final action consists of approving those elements of the State's submission that are consistent with the Guidance, disapproving those elements that are not consistent with the Guidance, and specifying in a final rule the elements of the Guidance that apply in the portion of New York State within the Great Lakes System where the State either failed to adopt required elements or adopted elements that are inconsistent with the Guidance.

EFFECTIVE DATE: November 6, 2000.

ADDRESSES: The public docket for EPA's final actions with respect to the Guidance submission of the State of New York is available for inspection and copying at U.S. EPA Region 2, 290 Broadway, New York, N.Y. 10007 by appointment only. Appointments may be made by calling Wayne Jackson (telephone 212–637–3807).

FOR FURTHER INFORMATION CONTACT: Mark Morris (4301), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460 (202–260–0312); or Wayne Jackson, U.S. EPA Region 2, 290 Broadway, New York, N.Y. 10007 (212–637–3807).

SUPPLEMENTARY INFORMATION:

I. Discussion

A. Potentially Affected Entities

Entities potentially affected by today's action are those discharging pollutants to waters of the United States in the Great Lakes System in the State of New York. Potentially affected categories and entities include:

Category	Examples of Potentially Affected Entities
Industry	Industries discharging to waters within the Great Lakes System as defined in 40 CFR 132.2 in New York State.
Municipalities	Publicly-owned treatment works discharging to waters within the Great Lakes System as defined in 40 CFR 132.2. in New York State.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding regulated entities likely to be affected by these final actions. This table lists the types of regulated entities that EPA believes could be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility may be affected by this final action, you should examine the definition of ''Great Lakes System'' in 40 CFR 132.2 and examine 40 CFR 132.2 which describes the part 132 regulations. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Background

On March 23, 1995, EPA published the Guidance. *See* 60 FR 15366; 40 CFR part 132. The Guidance establishes minimum water quality standards, antidegradation policies, and implementation procedures for the waters of the Great Lakes System in the States of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin. Specifically, the Guidance specifies numeric criteria for selected pollutants to protect aquatic life, wildlife and human health within the Great Lakes System and provides methodologies to derive numeric criteria for additional pollutants discharged to these waters. The Guidance also contains minimum implementation procedures and an antidegradation policy.

Soon after being published, the Guidance was challenged in the U.S. Court of Appeals for the District of Columbia Circuit. On June 6, 1997, the Court issued a decision upholding virtually all of the provisions contained in the 1995 Guidance. *American Iron and Steel Institute, et al.* v. *EPA (AISI),* 115 F.3d 979 (D.C. Cir. 1997). The Court vacated the human health criterion for polychlorinated biphenyls (PCBs) and the acute aquatic life criterion for selenium, and the provisions of the Guidance ''insofar as it would eliminate mixing zones for (bioaccumulative chemicals of concern (BCCs)) and impose (water quality-based effluent limitations (WQBELs)) upon internal facility waste streams.'' 115 F.3d at 985. On October 9, 1997, EPA published a document revoking the PCB human health criteria pursuant to the Court's decision. 62 FR 52922. On April 23, 1998, EPA published a second notice amending the 1995 Guidance to remove the BCC mixing zone provisions from 40 CFR part 132 (found in procedure 3.C. of appendix F) and to remove language in the Pollutant Minimization Program provisions (procedure 8.D. of appendix F) that might imply that permitting authorities are required to impose WQBELs on internal waste streams or to specify control measures to meet WQBELs. 63 FR 20107. On June 2, 2000, EPA published a third document withdrawing the acute criteria for selenium. 65 FR 35283.

40 CFR 132.4 requires the Great Lakes States to adopt water quality standards, antidegradation policies, and implementation procedures for waters within the Great Lakes System consistent with the Guidance or be subject to EPA promulgation. 40 CFR 132.5(d) provides that, where a State makes no submission to EPA, the Guidance shall apply to discharges to waters in that State upon EPA's publication of a final rule indicating the effective date of the part 132 requirements in that jurisdiction.

On July 1, 1997, the National Wildlife Federation filed suit alleging that EPA had a non-discretionary duty to promulgate the Guidance for any State that failed to adopt standards, policies and procedures consistent with the Guidance. *National Wildlife Federation* v. *Browner,* Civ. No. 97–1504–HHK (D.D.C.). EPA negotiated a consent decree providing that the EPA Administrator must sign, by February 27, 1998, a **Federal Register** document making part 132 effective in any State in