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.*).

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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

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 September 20, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action 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, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 17, 2004.

Nancy Lindsay,

Acting Regional Administrator, Region IX.

■ Part 52, Chapter I, Title 40 of the Code of Federal Regulations 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 F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(316)(i)(D) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(316) * * *

(i) * * *

(D) South Coast Air Quality Management District.

(*1*) Rule 1133 adopted on January 10, 2003; Rule 1133.1 adopted on January 10, 2003; and, Rule 1133.2 adopted on January 10, 2003.

* * * * *

[FR Doc. 04–16570 Filed 7–20–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DC–2025, MD–3064, VA–5052; DC052–7007, MD143–3102, VA129–5065; FRC–7790–5]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Maryland; Virginia; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: EPA is taking final action to remove codification of certain State Implementation Plan (SIP) approvals vacated by United States Court of Appeals for the District of Columbia Circuit and remanded to EPA. EPA is also concurrently vacating an indefinite stay, which EPA had issued pending completion of judicial review, of a conditional approval promulgated on April 17, 2003. These revisions relate to the 1-hour ozone attainment demonstration and the 1996–1999 rate-of-progress (ROP) plans for the Metropolitan Washington DC ozone nonattainment area (the Washington area) submitted by the District of Columbia's Department of Health (DoH), by the Maryland Department of the Environment (MDE) and by the Virginia Department of Environmental Quality (VADEQ), including enforceable commitments submitted by the District of Columbia, Virginia and Maryland as part of the 1-hour attainment demonstration. EPA is correcting the codification of the approval of these revisions in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on August 20, 2004.

In addition, EPA is vacating the stay on 40 CFR 52.473, 52.1072(e) and 52.2450(b), effective August 20, 2004.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

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

SUPPLEMENTARY INFORMATION:

I. What Previous Action Had Been Taken on These SIP Revisions?

A. January 3, 2001 Approval

On January 3, 2001 (66 FR 586), the EPA approved the 1996–1999 ROP plans, an attainment date extension and the attainment demonstrations for the Washington, DC area. On July 2, 2002, the United States Courts of Appeals for the District of Columbia Circuit (the Circuit Court) vacated our January 3, 2001, approval of the attainment demonstration, 1996–1999 ROP plan and extension of the attainment date. *See Sierra Club* v. *Whitman*, 294 F.3d 155, 163 (D.C. Cir. 2002).

B. April 17, 2003 Conditional Approval

In response to the Circuit Court's July 2002 ruling, on January 24, 2003, the EPA published a final action (68 FR 3410) determining that the Washington area failed to attain the serious ozone nonattainment deadline of November 15, 1999, and reclassified the Washington area to severe ozone nonattainment by operation of law.

On February 3, 2003, the EPA published a notice of proposed rulemaking (68 FR 5246) regarding the SIP revisions covered by the vacated January 3, 2001, final rule. On April 17, 2003 (68 FR 19106), EPA conditionally approved these same SIP revisions. On February 3, 2004, the Circuit Court issued an opinion to vacate our conditional approval of the attainment demonstration, and ROP plan. See *Sierra Club* v. *EPA*, 356 F.3d at 302–04 (D.C. Cir. 2004).

On March 19, 2004, the Sierra Club filed a ''Petition for Panel Rehearing'' requesting the Circuit Court to reconsider one issue addressed in a footnote of the opinion. This issue was

not related to vacatur of the conditional approval.

On April 15, 2004 (69 FR 19937), EPA indefinitely stayed, pending completion of judicial review, a conditional approval promulgated on April 17, 2003 in response to the March 19, 2004, petition for rehearing. In the preamble to that rule, EPA stated that EPA would lift the stay and/or vacate the conditional approval after the issuance of the mandate by the Circuit Court in a manner consistent with any order the Court may issue in *Sierra Club* v. *EPA*. See 69 FR at 19138, April 15, 2004.

On April 16, 2004, Circuit Court issued an order slightly revising the February 3, 2004, opinion to address the petition for rehearing and leaving its decision to vacate and remand the conditional approval to EPA intact. On April 23, 2004, the Circuit Court issued its mandate thereby relinquishing jurisdiction over this matter and remanding it to EPA.

II. What Action Is EPA Taking Today?

A. Actions Regarding the January 3, 2001, Final Rule (66 FR 586)

EPA is vacating the January 3, 2001 final rule (66 FR 586) by amending 40 CFR part 52 to remove codification of certain plan approvals that the United States Court of Appeals for the District of Columbia Circuit vacated and remanded to EPA. The intended effect of this action would be to remove and reserve the following in 40 CFR part 52:

(1) In subpart J—District of Columbia: § 52.475 ''Extensions,'' and paragraphs (b) and (c) in § 52.476 ''Control strategy and rate-of-progress plan: ozone;''

(2) In subpart V—Maryland: paragraph (a) in § 52.1078 ''Extensions,'' and paragraphs (e) and (g) in § 52.1076 ''Control strategy plans for attainment and rate-of-progress: Ozone;'' and,

(3) In subpart VV,—Virginia: § 52.2429 ''Extensions,'' and paragraphs (c) and (d) in § 52.2428 ''Control Strategy: Carbon monoxide and ozone.''

B. Actions Regarding the April 17, 2003, Final Rule (68 FR 19106)

EPA is vacating the April 17, 2003 final rule (68 FR 19106) by amending 40 CFR part 52 to remove codification of certain plan approvals for which the United States Court of Appeals for the District of Columbia Circuit vacated our final action. The intended effect of this action would be to: remove and reserve in 40 CFR part 52:

(1) Remove and reserve § 52.473 ''Conditional approval'' in 40 CFR part 52, subpart J;

(2) Remove and reserve paragraph (e) in § 52.1072 ''Conditional approval'' in 40 CFR part 52, subpart V; and,

(3) Remove and reserve paragraph (b) in § 52.2450 ''Conditional approval'' in 40 CFR part 52, subpart VV.

C. Stay of the Conditional Approval

Because EPA is vacating the actions which EPA stayed on April 15, 2004 (69 FR 19937), the need for the stay has become moot. Concurrently with vacating the April 17, 2003 final rule, EPA is vacating this April 15, 2004 final rule that imposed the stay on 40 CFR 52.473, 40 CFR 52.1072(e) and 40 CFR 52.2450(b). Because EPA is vacating the underlying rules—40 CFR 52.473, 40 CFR 52.1072(e) and 40 CFR 52.2450(b)—that were stayed indefinitely on April 15, 2004, EPA must vacate the April 15, 2004 stay rather than lift this stay.

III. Final Action

A. District of Columbia

EPA is amending 40 CFR part 52 to remove the codification of certain plan approvals that the United States Court of Appeals for the District of Columbia Circuit vacated and remanded to EPA. EPA is removing and reserving the following sections or paragraphs in 40 CFR part 52, subpart J:

(1) § 52.475 Extensions;

(2) Paragraphs (b) and (c) in § 52.476 Control strategy and rate-of-progress plan: ozone; and,

(3) § 52.473 Conditional Approval;

B. State of Maryland

EPA is amending 40 CFR part 52 to remove the codification of certain plan approvals that the United States Court of Appeals for the District of Columbia Circuit vacated and remanded to EPA. EPA is removing and reserving the following paragraphs in 40 CFR part 52, subpart V:

(1) Paragraph (a) in § 52.1078 Extensions;

(2) Paragraphs (e) and (g) in § 52.1076 Control strategy plans for attainment and rate-of-progress: Ozone; and,

(3) Paragraph (e) in § 52.1073 Approval Status.

C. Commonwealth of Virginia

EPA is amending 40 CFR part 52 to remove the codification of certain plan approvals that the United States Court of Appeals for the District of Columbia Circuit vacated and remanded to EPA. EPA is removing and reserving the following sections or paragraphs in 40 CFR part 52, subpart VV:

(1) § 52.2429 Extensions;

(2) Paragraphs (c) and (d) in § 52.2428 Control Strategy: Carbon monoxide and ozone; and,

(3) Paragraph (b) in § 52.2450 Conditional Approval.

D. Vacating of the Stay on 40 CFR 52.473, 40 CFR 52.1072(e) and 40 CFR 52.2450(b)

Because EPA is vacating 40 CFR 52.473, 40 CFR 52.1072(e) and 40 CFR 52.2450(b) EPA is vacating the stay, which was promulgated on April 15, 2004 on 40 CFR 52.473, 40 CFR 52.1072(e) and 40 CFR 52.2450(b).

IV. Basis for Exception From Notice and Comment Rulemaking

Section 553(b)(3)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because we are merely correcting those portions of 40 CFR part 52 that were stricken when the Circuit Court vacated our January 3, 2001 approvals and our April 17, 2003 conditional approvals and mooted the need to continue the April 15, 2004 stay of the April 17, 2003 conditional approvals. EPA believes that notice and comment procedures would serve no purpose because this action is a nondiscretionary ministerial action necessitated by the Circuit Court orders vacating the January 3, 2001 approvals and our April 17, 2003 conditional approvals and by the subsequent mooting the need to continue the April 15, 2004 stay of the April 17, 2003 conditional approvals. We find that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

V. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action is taken pursuant to a decision of the United States Court of Appeals for the District of Columbia Circuit and merely reflects the Circuit Court's action in vacating EPA's rules approving pre-existing state requirements. The vacated final rules merely approved state law as meeting Federal requirements and imposed no

additional requirements beyond those imposed by state law. The Circuit Court's action does not change or negate the pre-existing state requirements, impose any new requirements on sources, including small entities, nor impose any additional enforceable duty beyond that previously required and it does not contain any unfunded mandate or significantly or uniquely affect small governments. Under these circumstances, correcting the approval status in 40 CFR part 532 of these State implementation plans does not impose any new requirements on sources, including small entities. 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 merely implements the Circuit Court's order vacating EPA's approvals and conditional approvals, it does not impose any additional enforceable duty beyond that previously required and 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).

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 merely reflects the Circuit Court's decision, removing EPA's approval or conditional approval, it 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 rule merely implements the Circuit Court's orders vacating EPA's approvals and conditional approvals of 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 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

This technical correction action does not involve technical standards; 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.*).

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).

B. 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 September 20, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to vacate certain approvals of SIP revisions submitted by the District of Columbia, Maryland and Virginia may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: July 13, 2004.

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 J—District of Columbia

§ 52.475 [Removed]

■ 2. Section 52.475 is removed and reserved.

§ 52.476 [Amended]

■ 3. Section 52.476 is amended by removing and reserving paragraphs (b) and (c).

Subpart V—Maryland

§ 52.1076 [Amended]

■ 4. Section 52.1076 is amended by removing and reserving paragraphs (e) and (g).

§ 52.1078 [Amended]

■ 5. Section 52.1078 is amended by removing and reserving paragraph (a).

Subpart VV—Virginia

§ 52.2428 [Amended]

■ 6. Section 52.2428 is amended by removing and reserving paragraphs (c) and (d).

§ 52.2429 [Removed]

■ 7. Section 52.2429 is removed and reserved.

[FR Doc. 04–16569 Filed 7–20–04; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[PA209–4302; FRL–7781–3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation of the Hazelwood SO_2 Nonattainment and the Monongahela River Valley Unclassifiable Areas to Attainment and Approval of the Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving State Implementation Plan (SIP) revisions submitted by the Commonwealth of Pennsylvania. These revisions include a