If the USEPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent rulemaking that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The USEPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on August 8, 1997.

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

V. Administrative Requirements

A. Executive Order 12866

This action 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 D. Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. § 600 *et seq.*, USEPA 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, USEPA 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 does not impose any new requirements, the Administrator 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 Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Clean Air Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. EPA.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, USEPA must undertake various actions in association with any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. 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 the private sector, result from this action.

D. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 8, 1997. 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: May 22, 1997.

Elissa Speizman,

Acting Regional Administrator.

For the reasons stated in the preamble, 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. 7401–7671q.

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(133) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(133) On July 23, 1996, the Illinois Environmental Protection Agency submitted a site-specific State Implementation Plan revision request for the Chase Products Company's Broadview (Cook County), Illinois facility located at 19th Street and Gardner Road, as part of the Ozone Control Plan for the Chicago area. The resulting revision revises the control requirements codified at 35 Illinois Administrative Code Part 218 Subpart DD Section 218.686 as they apply to the Chase Products Company's Broadview facility.

(i) Incorporation by reference. May 16, 1996, Opinion and Order of the Illinois Pollution Control Board AS 94–4, effective May 16, 1996.

[FR Doc. 97–14583 Filed 6–6–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 099–4063; FRL–5837–6]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; 15 Percent Plan and 1990 VOC Emission Inventory for the Philadelphia Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final rulemaking.

SUMMARY: EPA is granting conditional interim approval of the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania, for the Philadelphia ozone nonattainment area, to meet the 15 percent reasonable further progress (RFP, or 15% plan), also known as rate-of-progress requirements of the Clean Air Act. EPA is granting conditional interim approval because the 15% plan submitted by Pennsylvania for the Philadelphia area relies on the inspection and maintenance (I/M) program that received a conditional interim approval. Finally, EPA is approving the Philadelphia 1990 VOC emission inventory with certain exceptions as explained herein.

DATES: This action is final on July 9, 1997.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the U.S. Environmental Protection Agency—Region III, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107 and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Cynthia H. Stahl, Ozone/Carbon Monoxide and Mobile Sources Section (3AT21), USEPA—Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, or by telephone at: (215) 566–2180 or via e-mail at: stahl.cynthia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: On March 11, 1997, EPA proposed conditional interim approval of the Philadelphia 15% plan and the 1990 VOC emission inventory (62 FR 11131). The basis for EPA's action is that the Philadelphia 15% plan on its face achieves the required 15% emission reduction but does not contain the required verification of emission calculations necessary for full approval and relies on the Pennsylvania Inspection and Maintenance (I/M) rule that received final conditional interim approval on January 28, 1997 (62 FR 4004). The details of the September 12, 1996 Pennsylvania submittal are contained in the March 11, 1997 notice and accompanying technical support document and will not be reiterated here. The discussion here will address additional information submitted by Pennsylvania on April 10, 1997 and EPA's responses to public comments received on the proposed rulemaking notice. This action is being taken under section 110 of the Clean Air Act (the Act).

I. Pennsylvania DEP's April 10, 1997 Supplement

Pennsylvania submitted a letter to EPA on April 10, 1997, within the required time frame, committing to satisfy all the conditions listed by EPA in the proposed rulemaking notice and within the time frames required by that notice. Included in its April 10, 1997 addendum is additional documentation to satisfy some of those conditions listed by EPA. Specifically, Pennsylvania submitted additional stationary source documentation (identified as Attachment 1 of its addendum) for the shutdown credits claimed in the 15% plan. Part of this documentation is the detailed emission inventory breakdown on a unit by unit basis for Philadelphia County that was not included in the September 12, 1996 submittal. Pennsylvania also included sample calculations and a copy of the methodology it followed to determine stationary source emissions (identified as Attachment 1 of its addendum) and revised charts and tables for insertion into the September 12, 1996 submittal (identified as Attachment 2 of its addendum). Pennsylvania adjusted the amount of shutdown credit claimed in the 15% plan and is now claiming 2.0 tons per day (TPD) rather than the 3.4 TPD claimed in the September 12, 1996 submittal. The revised charts and tables pertain to these corrections. These revisions occur in Figure 1.2, Table 5.3, Section 6.1.1, Table 6.3 and Section 6.2.3 of the Commonwealth's addendum to its 15% plan..

EPA's evaluation of the April 10, 1997 addendum submitted by Pennsylvania is detailed in the technical support document (TSD) that is part of the docket to this rulemaking. Briefly, EPA has determined that Pennsylvania has resolved the inconsistencies with the 1990 VOC emissions inventory, with the exception of those certain source emissions at United States Steel—Fairless (USX—Fairless) located in Bucks County. Consequently, EPA is approving the 1990 VOC emission inventory submitted on September 12, 1996 for the Philadelphia nonattainment area, with the exception of certain sources located at USX—Fairless. These sources are identified as: 1) no. 3 blast furnace (source no. 243), 2) no.1 open hearth furnace (source no. 251), 3) no.1 soaking pits (20) (source no. 300), 4) no.2 soaking pits (1–8) (source no. 330), 5) no.2 soaking pits (9–16) (source no. 338), and 6) 80 in. Hot strip mill (source no. 351). The 1990 VOC emissions for the above-named sources at USX—Fairless were approved by EPA in a previous rulemaking notice (April 9, 1996, 61 FR 15709). That version of the 1990 VOC emissions for the above-named sources at USX—Fairless remains SIP approved.

Pennsylvania has satisfactorily documented the emission reduction credits due to shutdowns and over control with the exception of those credits claimed for following four sources: Congoleum (NEDS ID 0049), Sun R&M (NEDS ID 0025), Rohm & Haas (NEDS ID 0009), and BP Oil (NEDS ID 0030). EPA has recalculated the available emission reduction credit from shutdown and over controlled sources based on the April 10, 1997 documentation and is approving an emission credit of 1.82 TPD for the Philadelphia 15% plan. This is less than the 3.4 TPD figure in the September 12, 1996 Pennsylvania submittal and the 2.0 TPD figure in the April 10, 1997 addendum. The lesser amount of these credits does not jeopardize the ability of Pennsylvania to meet the 15% target level of emissions required by the Act. As a result of the additional documentation provided by Pennsylvania on April 10, 1997, Pennsylvania has satisfied conditions 1 through 3 listed in the notice of proposed rulemaking. The remaining conditions (4 and 5) pertain to the inspection and maintenance (I/M) rule. Pennsylvania expects to satisfy those conditions within the required time frames.

II. Public Comments and Response

As a result of the March 11, 1997 proposed rulemaking notice, EPA received comments from the Clean Air Council (CAC). The comments and EPA's responses follow below.

Comment 1: CAC agrees with EPA's assessment that the Philadelphia 15% plan contains various defects and cannot be determined to achieve the 15% reduction required by the Act. CAC, however, states that these defects preclude approval of the 15% plan.

Response 1: As described above, Pennsylvania's April 10, 1997 addendum to its September 12, 1996 submittal resolves the emission inventory and creditability issues discussed in EPA's proposed rulemaking notice. As a result, EPA has determined that Pennsylvania has satisfied conditions 1 through 3 listed in the March 11, 1997 proposed rulemaking notice (62 FR 11131). The remaining conditions pertain to I/M and allow Pennsylvania additional time in accordance with the National Highway Systems Designation Act. Consequently, the defects identified in the March 1997 proposed rulemaking notice have been remedied.

Comment 2: CAC commented that the Philadelphia plan, which takes credit for federal control measures such as architectural and industrial maintenance coating, consumer/commercial products and autobody refinishing, should not be approved because those federal control measures have not yet been promulgated. CAC states that allowing such credit violates section 182(b)(1)(C) of the Act. CAC further commented that EPA cannot lawfully base SIP decisions on as-yet unpromulgated rules because it does not know what these final rules will say. CAC contends that allowing credit on as-yet unpromulgated rules, even with the caveat that the states must revisit the rule later if the federal rules turn out differently than predicted, amounts to an unlawful extension of a SIP

submission deadline. CAC stated that EPA must base its decision on the record before it at the time of its decision; not on some record that the agency hopes will exist in the future.

Response 2: Section 182(b)(1)(A) of the Act requires states to submit their 15% SIP revisions by November, 1993. Section 182(b)(1)(C) of the Act provides the following general rule for creditability of emissions reductions towards the 15% requirement:

> Emissions reductions are creditable toward the 15 percent required, to the extent they have actually occurred, as of [November, 1996], from the implementation of measures required under the applicable implementation plan, rules promulgated by the Administrator, or a permit under Title V.

This provision further indicates that certain emissions reductions are not creditable, including reductions from certain control measures required prior to the 1990 Amendments.

This creditability provision is ambiguous. Read literally, it provides that although the 15% SIPs are required to be submitted by November 1993, emissions reductions are creditable as part of those SIPs only if "they have actually occurred, as of [November 1996]." This literal reading renders the provision internally inconsistent. Accordingly, EPA believes that the provision should be interpreted to provide, in effect, that emissions reductions are creditable "to the extent they will have actually occurred, as of [November, 1996], from the implementation of [the specified measures]" (the term "will" is added). This interpretation renders the provision internally consistent.

Section 182(b)(1)(C) of the Act explicitly includes as creditable reductions those resulting from "rules promulgated by the Administrator". This provision does not state the date by which those measures must be promulgated, i.e., does not indicate whether the measures must be promulgated by the time the 15% SIPs were due (November, 1993), or whether the measures may be promulgated after this due date.

Because the statute is silent on this point, EPA has discretion to develop a reasonable interpretation, under *Chevron U.S.A. Inc.* v. *NRDC*, 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984). EPA believes it is reasonable to interpret section 182(b)(1)(C) of the Act to credit reductions from federal measures as long as those reductions are expected to occur by November, 1996, even if the federal measures are not promulgated by the November 1993 due date for the 15% SIPs.

EPA's interpretation is consistent with the congressionally mandated schedule for promulgating regulations for consumer and commercial products, under section 182(e) of the Act. This provision requires EPA to promulgate regulations controlling emissions from consumer and commercial products that generate emissions in nonattainment areas. Under the schedule, by November, 1993— the same date that the states were required to submit the 15% SIPs—EPA was to issue a report and establish a rulemaking schedule for consumer and commercial products. Further, EPA was to promulgate regulations for the first set of consumer and commercial products by November 1995. It is reasonable to conclude that Congress anticipated that reductions from these measures would be creditable as part of the 15% SIPs, as long as those reductions were to occur by November 1996.

Crediting reductions from federal measures promulgated after the due date for the 15% SIPs is also sensible from an administrative standpoint. Crediting the reductions allows the states to accurately plan to meet the 15% reduction target from the appropriate level of state and federal measures. Not crediting such reductions would mean that the states would have to implement additional control requirements to reach the 15% mark; and that SIPs would result in more than a 15% level of reductions once the federal measures in question were promulgated and implemented. At that point in time, the state may seek to eliminate those additional SIP measures on grounds that they would no longer be necessary to reach the 15% level. Such constant revisions to the SIP to demonstrate 15% is a paper exercise that exhausts both the states' and EPA's time and resources.

The fact that EPA cannot determine precisely the amount of credit available for federal measures not yet promulgated does not preclude granting the credit. The credit can be granted as long as EPA is able to develop reasonable estimates of the amount of VOC reductions from the measures EPA expects to promulgate. EPA believes that it is able to develop reasonable estimates, particularly because it has already proposed and taken comment on the measures at issue, and expects to promulgate final rules by the spring of 1998. Many other parts of the SIP, including state measures, typically include estimates and assumptions concerning VOC amounts, rather than actual measurements. For example, EPA's document to estimate emissions, "Compilation of Air Pollutant Emission Factors," January 1995, AP–42, provides emission factors used to estimate emissions from various sources and source processes. AP–42 emission factors have been used, and continue to be used, by states and EPA to determine base year emission inventory figures for sources and to estimate emissions from sources where such information is needed. Estimates in the expected amount of VOC reductions are commonly made in air quality plans, even for those control measures that are already promulgated. Moreover, the fact that EPA is occasionally delayed in its rulemaking is not an argument against granting credits from these measures. The measures are statutorily required, and states and citizens could bring suit to enforce the requirements that EPA promulgate them. If the amount of credit that EPA allows the state to claim turns out to be greater than the amount EPA determines to be appropriate when EPA promulgates the federal measures, EPA intends to take appropriate action to require correction of any shortfall in necessary emissions reductions that may occur.

The above analysis focuses on the statutory provisions that include specific dates for 15% SIP submittal (November 1993) and implementation (November 1996). These dates have expired, and EPA has developed new dates for submittal and implementation. EPA does not believe that the expiration of the statutory dates, and the development of new ones, has implications for the issue of whether reductions from federal measures promulgated after the date of the 15% SIP approval may be counted toward those 15% SIPs. Although the statutory dates have passed, EPA believes that the analysis described above continues to be valid.

Comment 3: CAC commented that EPA cannot ignore the November 15, 1996 statutory deadline simply because the deadline is now behind us. It contends that EPA's and states' unlawful delays have prevented compliance with the November 15, 1996 deadline and that EPA cannot now jettison the statutory deadlines by substituting the "as soon as practicable" test; rather, CAC states EPA must require compliance with an "as soon as possible" test and fix a compliance deadline. The commenter cited various court decisions in an effort to support its formulation of the "as soon as possible" test.

Response 3: The case law cited by the commenter considers various circumstances, such as failure by EPA to promulgate rules on the statutorily mandated deadline or to take action on

state failures to make SIP submissions on the statutorily mandated deadline. *See, e.g., Natural Resources Defense Council* v. *EPA*, 22 F.3d 1125 (D.C. Cir. 1994), *Natural Resources Defense Council* v. *Train*, 510 F.2d 692 (D.C. Cir. 1975). These cases articulate various formulations of the standards by which the courts establish new deadlines. EPA believes that its formulation of the standard by which States must achieve the 15% reductions—"as soon as practicable"—is generally consistent with the case law.

Further, EPA believes that Pennsylvania has demonstrated that it has met this standard. The notice of proposed rulemaking, the TSD, and other documents in the record establish that implementation of various 15% measures including the I/M program is as soon as practicable. The main reasons for the delays in the development and implementation of Pennsylvania's 15% SIP relate to its enhanced I/M plan. Most recently, these enhanced I/M delays were closely associated with the enactment, in November, 1995, of the National Highway Systems Designation Act (NHSDA). The NHSDA afforded states the opportunity to revise their I/M plans in a manner that would be treated as meeting certain EPA requirements on an interim basis. The NHSDA provided additional time for the Commonwealth and EPA to develop and process the revised I/M plans. The Commonwealth acted expeditiously in developing and implementing a revised enhanced I/M program. However, the delays in developing and implementing the NHSDA I/M program rendered impossible achieving the 15% reduction target by the end of 1996.

Moreover, EPA has reviewed other VOC SIP measures that are at least theoretically available to Pennsylvania, and has concluded that implementation of any such measures that might be appropriate would not accelerate the date of achieving the 15% reductions.

EPA agrees with the commenter that in this particular case, a fixed deadline is appropriate. Accordingly, EPA will establish November 15, 1999, as the date by which the 15% measures must be implemented to the extent necessary to generate the required amount of reductions.

Comment 4: Any further delays in implementing VOC control measures, including most prominently, enhanced I/M, must not be tolerated. For I/M, EPA's deadline must require implementation in the shortest time in which it is logistically possible to get the testing systems up and running. The National Highway Designation Act does not mention the 15% plan or authorize any delay of the achievement of the 15% emission reduction. Furthermore, missing the November 15, 1996 deadline unlawfully rewards states for failure to meet the deadline by giving them increased credits under national programs such as the Tier I Federal Motor Vehicle Control Program. CAC argues that such an approach unlawfully delays the achievement of clean air by allowing the states to reduce their own emission control efforts by the amount of the post-November 1996 fleet turnover benefits. Consequently, EPA must deny the post-November 1996 Tier I credit and require states to adopt emission reductions to compensate for post-1996 VMT growth.

CAC further argues that EPA cannot delay the section 182(b)(1) requirement for states to account for growth in the 15% plans to the post-1996 rate-of-progress plans. Particularly because the post-1996 plans involve potential NO_X substitution that is not permitted in the VOC-only 15% plans.

Response 4: EPA disagrees with the comment. The National Highway Systems Designation Act was enacted by Congress in November of 1995. Section 348 of this statute provided states renewed opportunity to satisfy the Act's requirements related to the network design for I/M programs. States were not only granted the flexibility to enact test-and-repair programs, but were provided additional time to develop those programs and to submit proposed regulations for interim SIP approval. Pennsylvania moved rapidly to propose I/M regulations on March 16, 1996, and to submit to EPA a SIP containing those regulations, under the authority granted by the NHSDA.

Under the terms of the 15% requirement in section 182(b)(1)(A)(I) of the Act, the SIP must—

> provide for [VOC] emission reductions, within 6 years after the date of enactment of the Clean Air Act Amendments of 1990, of at least 15 percent from baseline emissions, accounting for any growth in emissions after [1990].

EPA interprets this provision to require that a specific amount of VOC reductions occur, and has issued guidance for computing this amount. The Commonwealth, complying with this guidance, has determined the amount of the required VOC reductions needed to meet the 15% goal. It is no longer possible for the Commonwealth to implement measures to achieve this level of reduction as the November 15, 1996 date provided under the 15% provisions has passed. Accordingly, EPA believes that the Commonwealth will comply with the statutory mandate as long as Pennsylvania achieves the requisite level of reductions on an as-soon-as-practicable basis after 1996. In computing the reductions, EPA believes it acceptable for states to count reductions from federal measures, such as vehicle turnover, that occur after November 15, 1996, as long as they are measures that would be creditable had they occurred prior to that date. These measures result in VOC emission reductions as directed by Congress in the Act; therefore, these measures should count towards the achievement —however delayed—of the 15% VOC reduction goal.

EPA does not believe states are obligated, as part of the 15% SIP, to implement further VOC reductions to offset increases in VOC emissions due to post-1996 growth. As noted above, the 15% requirement mandates a specific level of reductions. By counting the reductions that occur through measures implemented pre- and post-1996, SIPs may achieve this level of reductions. Although section 182(b)(1)(A)(I), quoted above, mandates that the SIPs account for growth after 1990, the provision does not, by its terms, establish a mechanism for how to account for growth, or indicate whether, under the present circumstances, post-1996 growth must be accounted for. EPA believes that its current requirements for the 15% SIPs meet section 182(b)(1)(A)(I). In addition, although post-1996 VOC growth is not offset under the 15% SIPs, such growth must be offset in the post-1996 plans required for serious and higher classified areas to achieve 9% in VOC reductions every three years after 1996 (until the attainment date). The fact that these post-1996 SIPs may substitute NO_X reductions for VOC reductions in the 1996–1999 period does not undermine the integrity of the 15% SIPs. Allowing NO_X substitution is fully consistent with the public health-based goals of the Act.

Under EPA's approach, post-1996 growth will be accounted for in the plans that Congress intended to take account of such growth—the post-1996 "rate of progress" SIPs. To shift the burden of accounting for such growth to the 15% plans, as the commenters would have EPA do, would impose burdens on states above and beyond what Congress contemplated would be imposed by the 15% requirement (which was intended to have been achieved by November 1996). In the current situation, where it is clearly impossible to achieve the target level of VOC reductions (a 15% reduction taking into account growth through November 1996) by November 1996, EPA believes that its approach is a reasonable and

appropriate one. It will still mean that post-1996 growth is taken into account in the SIP revisions Congress intended to take into account such growth and it means that the target level of VOC reductions will be achieved as soon as practicable. Once the post-1996 rate of progress plans are approved and implemented, areas will have achieved the same level of progress that they were required to have achieved through the combination of 15% and rate of progress requirements as was originally intended by Congress.

Comment 5: EPA cannot approve SIPs if the state has failed to demonstrate approvability. In this regard, EPA has not been able to verify Pennsylvania's mobile source emission reduction credits but has stated that it has no reason to believe that Pennsylvania's methodology is flawed and is therefore approving the Philadelphia 15% plan. CAC stated that an absence of information requires disapproval.

Response 5: EPA believes Pennsylvania has demonstrated that it has appropriately modeled its mobile source program benefits, through proper use of EPA's MOBILE emissions factor estimation model, combined with state vehicle miles of travel estimates. Due to the sheer magnitude the modeling task (i.e. the large number of modeling scenarios needed to compile inventories and evaluate emissions benefits) Pennsylvania faced when developing mobile source inventories and modeling the benefits of various mobile source programs, the Commonwealth utilized a post-processor model to run the numerous MOBILE modeling scenarios needed to characterize these emissions. It is not practical to submit the hundreds or even thousands of modeling input and output runs needed to evaluate the mobile source-related portions of the 15% rate-of-progress SIP.

Pennsylvania instead submitted to EPA a list of the variables and assumptions utilized in its MOBILE modeling analysis, along with sample model input and output scenarios. Additionally, the Commonwealth submitted a demonstration of how the post-processor utilized MOBILE to generate composite index factors for use in determining mobile source emission factors for the Philadelphia area. Finally, the Commonwealth tallied mobile source emissions in summary tables for various programs, by county, etc. to present the results of its analysis.

While the SIP does not contain sufficient data to reconstruct the analysis and, therefore, to independently verify the Commonwealth's claims stemming from the mobile source emissions analysis, EPA believes the Commonwealth's modeling methodology is sound. However, EPA has deferred the specific results of that modeling, in part, to the Commonwealth.

Comment 6: EPA has pointed out information gaps in the Pennsylvania submittal, including the finding that Pennsylvania did not follow standard guidance and methodologies for projecting growth in the 1996 inventory. EPA has also stated that there is a potential double counting issue related to emission credits but that it is not conditioning the approval of the Philadelphia 15% plan on these issues. CAC argued that these deficiencies speak to the heart of the calculation of the target emission reduction level and whether the claimed emission reductions are sufficient to meet that level. Therefore, although CAC believes that the Philadelphia 15% plan should be disapproved, at a minimum, it argues that the resolution of these deficiencies should be made additional conditions that the Commonwealth must satisfy for the 15% plan approval.

Response 6: EPA has acknowledged the potential double counting of emission reductions in the Philadelphia 15% plan as part of its honest effort to credibly account for activities associated with the operation of the Pennsylvania emissions bank. The use of Bureau of Economic Analysis (BEA) growth factors, recommended by EPA guidance, did not contemplate the net effect on emissions accounting where there is an operational emissions bank. Since most states in the nation do not have approved emissions bank, this was not an issue of widespread concern or discussion. Pennsylvania's use of the BEA growth factors and the operation of an emissions bank are both permitted by EPA. The effect of the combined use of the BEA growth factors and the operation of the emissions bank is, however, uncertain. EPA shall address this issue in subsequent air quality plans for Pennsylvania.

III. Creditable Measures

The control measures described below are creditable toward the rate of progress requirements of the Act. Pennsylvania takes emission credit toward the 15% requirement through implementation of the following required programs: (1) Federal reformulated gasoline, (2) reformulated gasoline—nonroad, (3) I/M FMVCP/Tier I, and (4) Stage II vapor recovery. Pennsylvania also takes emission credit toward the 15% requirement through the implementation of the following programs: (1) Federal architectural and industrial maintenance coating regulation (national rule), (2) treatment, storage and disposal facility (TSDF) controls (hazardous waste rule with air emission reductions), (3) autobody refinishing national rule, (4) consumer and commercial products national rule, and (5) facility shutdowns/over control.

Further details regarding EPA's review of the Commonwealth's control measures are contained in the TSD for this rulemaking action.

Summary of Creditable Emission Reductions for the Philadelphia Ozone Nonattainment Area (tons/day)

Required reduction for the Philadelphia area	123.64
Creditable Reductions:	
Shutdown credits	1.83
AIM Coatings Rules	7.28
Consumer/Commercial Products	6.58
TSDF Controls	9.35
Autobody refinishing	6.30
Stage II vapor recovery	17.02
Federal Reformulated gasoline	26.48
Reformulated gasoline—nonroad	0.59
FMVCP (Tier I)	1.08
Inspection and Maintenance (I/M)	49.74
Total	126.24

IV. Conditions for Approval

EPA has evaluated this submittal for consistency with the Act, applicable EPA regulations, and EPA policy. In the March 11, 1997 proposed rulemaking notice, EPA listed five conditions, which Pennsylvania is required to meet, within 12 months of the final rulemaking notice, in order to obtain approval of the Philadelphia 15% plan and 1990 VOC emission inventory. These conditions are:

(1) Reconcile the 1990 VOC emissions inventory with all the appendices, tables and narratives throughout the 15% document, wherever emissions are cited;

(2) After establishing consistent figures as described in 1) above, provide sample calculations for point source 1990, 1990 adjusted, and 1996 projected emissions showing how each of these figures were obtained. The level of documentation must be equivalent to that required for approval of a 1990 emissions inventory as described in the emission inventory documents at the beginning of this technical support document;

(3) Provide additional documentation for the emissions for those sources categories where credit is claimed (shutdowns, TSDFs);

(4) Provide a written commitment to remodel the I/M program as implemented in the Philadelphia

nonattainment area in accordance with EPA guidance (December 23, 1996 memo entitled "Modeling 15% VOC Reductions from I/M in 1999—Supplemental Guidance); and

(5) Fulfill the conditions listed in the I/M SIP rulemaking notice (proposed October 3, 1996, 61 FR 51638; final rule, January 28, 1997, 62 FR 4004) and summarized here as: (a) geographic coverage and program start dates, (b) program evaluation, (c) test types, test procedures and emission standards, (d) test equipment specifications, and (e) motorist compliance enforcement.

By its April 10, 1997 addendum, Pennsylvania has met conditions 1, 2, and 3. Although the full amount of emission reduction credit in some cases could not be substantiated with the Pennsylvania documentation, EPA is satisfied that the documentation supports the position that the amount of credits being approved now by EPA is adequately verified. The emission reductions from the enhanced I/M program that is subject to the National Highway Systems Designation Act with its extended deadlines are required in order for the required 15% emission reduction to be achieved in the Philadelphia nonattainment area. Under the National Highway Systems Designation Act of 1995, Pennsylvania's enhanced I/M program is receiving a conditional interim approval. As such, EPA can, at best, propose conditional interim approval of the Philadelphia 15% plan. In its April 10, 1997 letter, Pennsylvania agreed to meet conditions 4 and 5 that pertain to I/M within the required time frames.

As conditions 4 and 5 remain unfulfilled, EPA cannot grant full approval of the Philadelphia 15% rate-of-progress plan under section 110(k)(3) and Part D of the Clean Air Act. Instead, EPA is granting conditional interim approval of this SIP revision under section 110(k)(4) of the Act, because the Commonwealth must meet the specified conditions and supplement its submittal to satisfy the requirements of section 182(b)(1) of the Act regarding the 15 percent rate-of-progress plan, and because the Commonwealth must supplement its submittal and demonstrate it has achieved the required emission reductions. In addition, EPA is approving the 1990 VOC base year emissions inventory for the Philadelphia ozone nonattainment area, submitted with the 15% plan on September 27, 1996, with the exception of the revisions to the emissions for USX—Fairless (Bucks County) that were previously approved by EPA (April 9, 1996, 61 FR 15709). EPA is not taking any rulemaking action regarding the contingency plan submitted by Pennsylvania in response to the requirement of section 172(c)(9) of the Act. The contingency plan will be the subject of a separate rulemaking notice. EPA is also not taking any rulemaking action at this time with regard to the 1990 NO_X emission inventory submitted with the September 1996 15% plan. The 1990 NO_X emission inventory will also be the subject of a separate rulemaking notice.

The Commonwealth submitted the required written commitment to EPA on April 10, 1997. In addition, the Commonwealth submitted additional documentation to fully satisfy conditions 1 through 3 and the necessary written commitment to complete condition 4 in the time frame required.

The remaining unsatisfied conditions or portions of conditions must be satisfied by June 9, 1998.

Final Action

EPA is granting conditional interim approval of the Philadelphia 15% plan and approval of the 1990 VOC emission inventory as a revision to the Pennsylvania SIP. By today's action, EPA is granting approval to emission credits for the Philadelphia 15% plan on an interim basis, pending verification of the enhanced I/M Program's performance, pursuant to section 348 of the NHSDA. This interim approval of the 15% plan will expire at the end of the 18 month period, and will be replaced by appropriate EPA action based on the evaluation EPA receives concerning the program's performance. If the evaluation indicates a shortfall in emission reductions compared to the remodeling that the 15% plan is conditioned on, the Commonwealth will need to find additional emission credits. Failure of the Commonwealth to make up for an emission shortfall from the enhanced I/M program may subject the Commonwealth to sanctions and imposition of a Federal Implementation Plan. EPA has already approved the Pennsylvania enhanced I/M program on a conditional interim basis (January 28, 1997, 62 FR 4004). This approval of the Pennsylvania enhanced I/M program was taken under section 110 of the Act and, although the credits provided by this program may expire, the approval of the I/M regulations does not expire. As explained above, the credits provided by the enhanced I/M program on an interim basis for the 15% plan may be adjusted based on EPA's evaluation of the enhanced I/M program's performance.

Nothing in this action 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 the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action 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 (OMB) has exempted this regulatory 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 Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval 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 Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

Conditional approvals of SIP submittals 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 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 Act, preparation of a flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA

to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new federal requirement.

Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new federal requirement.

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated 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.

Under section 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by section 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 August 8, 1997. 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 the final conditional interim approval of the 15% plan for the Pennsylvania portion of the Philadelphia ozone nonattainment area and the approval of the 1990 VOC emission inventory (with the exception of the revisions to the inventory of emissions for selected sources at USX—Fairless) for the same area, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR part 52

Environmental protection, Air pollution control, Hydrocarbons, Ozone, Reporting and record keeping requirements.

Dated: May 30, 1997.

W. Michael McCabe,

Regional Administrator, Region III.

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. 7401–7671q.

SUBPART NN—PENNSYLVANIA

2. Section 52.2026 is amended by adding paragraph (c) to read as follows:

§ 52.2026 Conditional Approval.

* * * * *

(c) The Commonwealth of Pennsylvania's September 12, 1996 submittal for the 15 Percent Rate of Progress Plan (15% plan) for the Pennsylvania portion of the Philadelphia ozone nonattainment area, is conditionally approved based on certain contingencies, for an interim period. The condition for approvability is as follows:

Pennsylvania must meet the conditions listed in the January 28, 1997 conditional interim Inspection and Maintenance Plan (I/M) rulemaking notice, remodel the I/M reductions using the EPA guidance memo: "Modeling 15 Percent VOC Reductions from I/M in 1999—Supplemental Guidance", memorandum from Gay MacGregor and Sally Shaver, dated December 23, 1996.

3. Section 52.2036 is amended by adding paragraph (i) to read as follows:

§ 52.2036 1990 Base year Emission Inventory

* * * * *

(i) The 1990 VOC emission inventory for the Philadelphia ozone nonattainment area, submitted on September 12, 1996 by Pennsylvania Department of Environmental Protection, is approved, with the exception of the revisions to the emission inventory for those sources at United States Steel—Fairless that were approved in § 52.2036 (b) on April 9, 1996.

[FR Doc. 97–14987 Filed 6–6–97; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[UT–NHA–02; FRL–5834–9]

Approval and Promulgation of Air Quality Implementation Plans; Utah; Improved Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: EPA is granting interim approval of a State Implementation Plan (SIP) revision submitted by the State of Utah. This revision establishes and requires the implementation of an improved basic inspection and maintenance (I/M) program in Utah County. The intended effect of this action is to approve the State's proposed I/M program for an interim period to last 18 months, based upon the State's good faith estimate of the program's performance. This action is being taken under section 110 of the Clean Air Act and section 348 of the National Highway Systems Designation Act.

EFFECTIVE DATE: This final rule is effective on July 9, 1997.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the USEPA Region VIII (P2–A), 999 18th Street—Suite 500, Denver, Colorado 80202–2466. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Scott P. Lee, at (303) 312–6736 or via e-