

controls scheduled for implementation by 2005.

### III. Opening of the Public Comment Period

The EPA is opening a comment period for 30 days to take comment on Maryland's August 20, 2001 RACM submittal. EPA is proposing to approve Maryland's SIP revision for RACM, which was submitted on August 20, 2001, as a supplement to its one hour attainment demonstration for the Philadelphia area. EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

### IV. Proposed Action

EPA is proposing to approve the RACM analysis submitted by the State of Maryland on August 20, 2001 as a supplement to its one hour attainment demonstration for the Philadelphia area. This revision is being proposed under a procedure called parallel processing, whereby EPA proposes rulemaking action concurrently with the state's procedures for amending its regulations. If the proposed revision is substantially changed in areas other than those identified in this action, EPA will evaluate those changes and may publish another supplemental notice of proposed rulemaking. If no substantial changes are made other than those areas cited in this action, EPA will publish a Final Rulemaking Notice on the revisions. The final rulemaking action by EPA will occur only after the SIP revision has been adopted by Maryland and submitted formally to EPA for incorporation into the SIP.

### V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve 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). This rule also does 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), nor will it 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 proposes to approve 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 proposed 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 proposed 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 proposed rule regarding Maryland's RACM analysis for the Philadelphia area does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: August 31, 2001.

**Donald S. Welsh,**

*Regional Administrator, Region III.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[MD125-3079; FRL-7051-8]

### Approval and Promulgation of Air Quality Implementation Plans; Maryland; One-Hour Ozone Attainment Demonstration Plan for the Baltimore Ozone Nonattainment Area

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

**ACTION:** Supplemental notice of proposed rulemaking.

**SUMMARY:** EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Maryland. This revision submits an analysis and determination that there are no additional reasonably available control measures (RACM) available to advance the area's attainment date after adoption of all Clean Air Act (Act) required measures. On December 16, 1999, EPA proposed to approve, and to disapprove in the alternative, the attainment demonstration State implementation plan (SIP) for the Baltimore severe ozone nonattainment area (the Baltimore area). The intended effect of this action is to propose approval of a RACM analysis submitted by the State of Maryland. This action is being taken in accordance with the Clean Air Act.

**DATES:** Written comments must be received on or before October 9, 2001.

**ADDRESSES:** Written comments may be mailed to David L. Arnold, Chief, Air Quality Planning and Information Services, 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 the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland 21224.

**FOR FURTHER INFORMATION CONTACT:** Christopher Cripps, (215) 814-2179. Or by e-mail at [cripps.christopher@epa.gov](mailto:cripps.christopher@epa.gov).  
**SUPPLEMENTARY INFORMATION:**

## I. Background

### A. What Previous Proposed Actions Have Been Taken on the Attainment Demonstration SIP Revisions?

On December 16, 1999, we proposed approval of the attainment demonstration for the Baltimore area, which was submitted on April 29, 1998 (64 FR 70397). We supplemented our December 16, 1999 proposed action on July 28, 2000 (65 FR 46383) and July 16, 2001 (66 FR 36964).

### B. When Did Maryland Submit the RACM Analysis?

On August 20, 2001, the State of Maryland (Maryland) submitted the RACM analysis (Maryland SIP Revision Number 01-08) for the Baltimore area as a SIP revision.

## II. Analysis of the Maryland Submittal

### A. What Are The requirements for Reasonably Available Control Measures (RACM)?

Section 172(c)(1) of the Act requires SIPs to contain reasonably available control measures (RACM) as necessary to provide for attainment. EPA has previously provided guidance interpreting the RACM requirements of section 172(c)(1). ( See 57 FR 13498, 13560, April 16, 1992.) In that guidance, EPA indicates that potentially available control measures, which would not advance the attainment date for an area, would not be considered RACM under the Act. EPA concludes that a measure would not be reasonably available if it would not advance attainment. EPA's guidance also indicates that states should consider all potentially available measures to determine whether they are reasonably available for implementation in the area, including whether or not they would advance the attainment date. Further, the guidance calls for states to indicate in their SIP submittals whether measures considered are reasonably available or not, and if so the measures must be adopted as RACM.

Finally, EPA indicated that states could reject potential RACM measures either because they would not advance the attainment date, would cause substantial widespread and long-term adverse impacts, or for various reasons related to local conditions, such as economics or implementation concerns. The EPA also issued a recent memorandum on this topic, "Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas." John S. Seitz, Director, Office of Air Quality Planning and Standards. November 30, 1999. Web site: <http://www.epa.gov/ttn/oarpg/t1pgm.html>.

### B. How Does this Submission Address the RACM Requirement?

The analysis submitted by Maryland on August 20, 2001, as a supplement to its attainment demonstration SIP for the Baltimore area, addresses the RACM requirement. Maryland has considered a variety of potential stationary/area source controls such as limits on area source categories not covered by a control technique guideline (CTG) (e.g., motor vehicle refinishing, and surface/cleaning degreasing); rule effectiveness improvements; controls on major stationary sources of nitrogen oxides (NO<sub>x</sub>) beyond that required under reasonably available control technology (RACT); and other potential measures. Maryland considered a variety of potential mobile source control measures such as alternative fuel vehicles; bicycle and pedestrian improvements; early retirement of older motor vehicles; land use and development changes; transit improvements; employer based programs; congestion pricing for low occupancy vehicles; traffic flow improvements; outreach and education; parking restrictions; market-based/economic incentive-based program; low emission vehicle standards; and other measures such as trip reduction ordinances, value pricing and highway ramp metering.

The State has implemented measures which went beyond the Federally mandated controls, which were found to be cost effective and technologically feasible. Maryland has adopted and submitted rules for the following categories of area sources which go beyond the federally mandated controls. The following are examples and not an exhaustive list:

(1) Maryland has adopted, and EPA has SIP approved, a rule for motor vehicle refinishing. The rule includes volatile organic compound (VOC) content limits for motor vehicle

refinishing coatings, application standards and storage and house keeping work practices. This rule goes beyond the Federal rule in content limits, and sets application and work practices standards.

(2) Maryland has adopted, and EPA has SIP approved, a rule for control of VOC emissions from screen printing on plywood used for signs, and untreated sign paper.

(3) Maryland has adopted, and EPA has SIP approved, a rule for control of VOC emissions from screen printing, lithographic printing, drying ovens, adhesive application, and laminating equipment used to produce a credit card or similar plastic card product.

(4) Maryland has adopted, and EPA has SIP approved, a rule for control of VOC emissions from "digital imaging"—printers that use a computer driven machine to transfer an electronically stored image onto the substrate through the use of inks, toners, or other similar color graphic materials via ink jet, electrostatic, and spray jet technologies.

(5) Maryland has adopted, and EPA has SIP approved, a rule for control of VOC emissions from cold and vapor degreasing that includes requirements that go beyond the applicable CTG. Maryland restricts the vapor pressure of solvents used to 1 mm Hg at 20 C (0.019 psia) or less for and cold degreasing, including cold or vapor degreasing at: service stations; motor vehicle repair shops; automobile dealerships; machine shops; and any other metal refinishing, cleaning, repair, or fabrication facility.

(6) Maryland has adopted, and EPA has SIP approved, a rule for control of VOC and NO<sub>x</sub> emissions by banning open burning activities from June 1 through August 31 of each year.

(7) Maryland has adopted, and EPA has approved Maryland's rule for control of VOC emissions from lithographic printing.

Maryland has also adopted and submitted rules for additional "beyond RACT" reductions in NO<sub>x</sub> emissions as follows:

(1) Maryland has adopted, and EPA has SIP approved, a rule to implement Phase II NO<sub>x</sub> controls under the Ozone Transport Commission's (OTC) Memorandum of Understanding (MOU). This rule established a fixed cap on ozone-season NO<sub>x</sub> emissions from specified major point sources of NO<sub>x</sub>. The rule grants each source a fixed number of NO<sub>x</sub> allowances, applies state-wide, and required compliance starting during the 2000 ozone season. It reduces NO<sub>x</sub> emissions both inside and outside the Baltimore area.

(2) Maryland has adopted, and EPA has SIP approved, a rule to implement the NO<sub>x</sub> SIP call. The Maryland rule requires compliance commencing with the start of the 2003 ozone season. (This measure is identified as Phase II/III control under the OTC MOU on NO<sub>x</sub> control in the attainment demonstration).

Maryland has also adopted, and EPA has SIP approved, a rule requiring the sale of vehicles under the national low-emission vehicle program (NLEV).

Maryland has adopted into its post-1996 rate-of-progress plans through the attainment year of 2005 rule effectiveness improvements.

Maryland has considered a variety of potential mobile source control measures such as alternative fuel vehicles; bicycle and pedestrian improvements; early retirement of older motor vehicles; land use and development changes; transit improvements; employer based programs; congestion pricing for low occupancy vehicles; traffic flow improvements; outreach and education; parking restrictions; market-based/economic incentive-based programs; and other measures such as trip reduction ordinances, value pricing and highway ramp metering. Maryland determined that many of the considered measures were not to be RACM due to the potential for substantial widespread and long-term adverse impacts, or for various reasons related to local conditions, such as economics or implementation concerns. A large number of the considered measures were rejected on these grounds or on the grounds that they could not be implemented by 2005 much less any earlier. Some measures were rejected because they would not advance attainment because they had benefits outside the ozone season or would be sporadically implemented (not episodically) such as the "try transit week" items. A number of the potential RACM candidates are already programmed into the area's transportation plan as mitigation measures. As such, these measures pass the feasibility test. Maryland concluded these would not advance the attainment date because their emission benefits, even when aggregated with other potentially feasible measures, are small relative to the amount needed to attain the standard. These explanations are provided in further detail in the docket for this rulemaking.

The attainment demonstration for the Baltimore area contains modeling using the urban airshed model (UAM) which demonstrates that the Baltimore area cannot attain solely through reductions

in the Baltimore nonattainment area. The Baltimore area relies on background reductions of transported ozone to attain the 1-hour ozone standard. EPA established in the NO<sub>x</sub> SIP Call, promulgated on October 27, 1998 (63 FR 57356), the appropriate division of control responsibilities between the upwind and downwind States under the Act. In *Michigan v. EPA*, 213 F.3d 663 (D.C. Cir. 2000), the court upheld the NO<sub>x</sub> SIP Call on most issues, although a subsequent order of the court delays the implementation date to no later than May 31, 2004. EPA is moving forward to implement those portions of the rule that have been upheld, ensuring that most—if not all—of the emission reductions from the NO<sub>x</sub> SIP Call assumed in the 1-hour ozone attainment demonstration for the Baltimore area will occur. EPA's modeling to determine the region-wide impacts of the NO<sub>x</sub> SIP Call clearly shows that regional transport of ozone and its precursors is impacting nonattainment areas several states away, and this analysis was upheld by the court. Also, on January 18, 2000 (65 FR 2674), EPA promulgated a final rule on petitions filed pursuant to section 126 of the Act by eight Northeastern States, that sought to mitigate interstate transport of NO<sub>x</sub> emissions from a number of large electric generating units (EGUs) and large industrial boilers and turbines. Because the allocation of responsibility for transport was not made until late 1998 and early 2000, the prohibitions on upwind contributions under section 110(a)(2)(D) and section 126 could not be enforced prior to 2003 or 2004. The implementation of the control measures in states upwind of the Baltimore area that are needed to eliminate the significant contribution of sources in those states—will not ripen until 2003 or 2004 under the NO<sub>x</sub> SIP call or the section 126 petitions.

As previously stated, the Baltimore attainment demonstration contains UAM modeling which demonstrates that the Baltimore area cannot attain solely through reductions in the Baltimore nonattainment area. The Baltimore area relies on background reductions of transported ozone to attain the 1-hour ozone standard. To demonstrate attainment of the 1-hour ozone standard, the modeling required the Baltimore area to achieve emissions levels on the order of 224 tons per day of VOC emissions and 323 tons per day of NO<sub>x</sub>. To reach these emissions levels, emission reductions (relative to the 1990 base year) of 152 tons per day of NO<sub>x</sub> and 120 tons per day of VOC are necessary in the Baltimore area. Any

potential reductions from the remaining potential RACM measures in aggregate are small compared to the 2005 attainment demonstration reductions (plus the addition of the Tier 2/Sulfur benefits) that will be reached by the 2005 attainment date. Thus, EPA concludes that no additional measures could advance the attainment date for the Baltimore area prior to full implementation of all upwind and local controls scheduled for implementation by 2005.

### III. Opening of the Public Comment Period

The EPA is opening a comment period for 30 days to take comment on Maryland's August 20, 2001 RACM submittal. EPA is proposing to approve Maryland's SIP revision for RACM, which was submitted on August 20, 2001, as a supplement to its one-hour attainment demonstration for the Baltimore area. EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

### IV. Proposed Action

EPA is proposing to approve the RACM analysis submitted by the State of Maryland on August 20, 2001 as a supplement to its one-hour ozone attainment demonstration for the Baltimore area.

### V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve 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). This proposed rule also does 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), nor will it 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 proposes to approve 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 proposed 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 proposed 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 proposed rule regarding Maryland's RACM analysis for the Baltimore area does not impose an information collection burden under the

provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: August 31, 2001.

**Donald S. Welsh,**

*Regional Administrator, Region III.*

[FR Doc. 01-22619 Filed 9-6-01; 8:45 am]

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

#### 42 CFR Part 431

[CMS-2128-P]

RIN 0938-AL06

#### Medicaid Program; Continue To Allow States an Option Under the Medicaid Spousal Impoverishment Provisions To Increase the Community Spouse's Income When Adjusting the Protected Resource Allowance

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Proposed rule.

**SUMMARY:** Section 1924 of the Social Security Act (the "Act") sets forth provisions designed to afford financial protection against impoverishment to a non-institutionalized spouse of an institutionalized individual. These provisions contain several formulas to provide this protection and specify how income and resources of spouses separated by institutionalization will be treated for purposes of determining the institutionalized spouse's Medicaid eligibility and calculating the amount the institutionalized spouse must contribute towards the cost of his or her institutional care. This proposed rule would implement certain provisions of section 1924 of the Act, which provides for fair hearings for an increase in the community spouse resource allowance.

**DATES:** We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on November 6, 2001.

**ADDRESSES:** In commenting, please refer to file code CMS-2128-P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. Mail written comments (one original and three copies) to the

following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-2128-P, P.O. Box 8016, Baltimore, MD 21244-8016.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and three copies) to one of the following addresses: Room 443-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5-16-03, 7500 Security Boulevard, Baltimore, MD 21244-1850.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section. **FOR FURTHER INFORMATION CONTACT:** Roy Trudel, (410) 786-3417.

#### **SUPPLEMENTARY INFORMATION:**

*Inspection of Public Comments:* Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone (410) 786-0626 or (410) 786-7195.

### I. Background

#### A. Statutory Basis

Title XIX of the Social Security Act (the Act), "provid[es] federal financial assistance to States that choose to reimburse certain costs of medical treatment for needy persons." *Harris v. McRae*, 448 U.S. 297, 301 (1980). Under section 1902(a)(17) of the Act, each participating State must develop a plan containing "reasonable standards \* \* \* for determining eligibility for and the extent of medical assistance." *Schweiker v. Gray Panthers*, 453 U.S. 34, 36 (1981). Section 1902(a)(17)(B) of the Act states that those State standards must "provide for taking into account only such income and resources as are, as determined in accordance with standards prescribed by the Secretary, available to the applicant or recipient."

Section 1924 of the Act requires a State with a Medicaid program to use special rules for the treatment of income and resources of married institutionalized individuals who have