require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation.

A preliminary ''Environmental Analysis Check List'' is available in the docket where indicated under **ADDRESSES.** Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.1122 to read as follows:

§ 165.1122 San Diego Bay, Mission Bay and their Approaches—Regulated navigation area.

(a) *Regulated navigation area.* The following area is a regulated navigation area (RNA): All waters of San Diego Bay, Mission Bay, and their approaches encompassed by a line commencing at Point La Jolla (32°51′06″ N, 117°16′42″ W); thence proceeding seaward on a line bearing 255° T to the outermost extent of the territorial seas; thence proceeding southerly along the outermost extent of the territorial seas to the intersection of the maritime boundary with Mexico; thence proceeding easterly, along the maritime boundary with Mexico to its intersection with the California coast; thence proceeding northerly, along the shoreline of the California coast—and including the inland waters of San Diego Bay and Mission Bay, California, shoreward of the COLREGS Demarcation Line—back to the point of origin. All coordinates reference 1983 North American Datum (NAD 83).

(b) *Definitions.* As used in this section—

COLREGS Demarcation Line means the line described at 33 CFR Sections 80.1104 or 80.1106.

Public vessel means a vessel that is owned or demise-(bareboat) chartered by the government of the United States, by a State or local government, or by the government of a foreign country and that is not engaged in commercial service.

Vessel means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water other than a public vessel.

(c) *Applicability.* This section applies to all vessels of 100 gross tons (GT) or more, including tug and barge combinations of 100 GT or more (combined), operating within the RNA, with the exception of public vessels, vessels not intending to cross the COLREGS Demarcation Line and enter San Diego Bay or Mission Bay, and any vessels exercising rights under principles of international law, including innocent passage or force majeure, within the area of this RNA. Vessels operating properly installed, operational, type approved AIS as denoted in 33 CFR 164.46 are exempted from making requests as required from this regulation.

(d) *Regulations.* (1) *Port Security Requirements.* No vessel to which this rule applies may enter, depart or move within San Diego Bay or Mission Bay unless it complies with the following requirements:

(i) Obtain permission to enter San Diego Bay or Mission Bay from the Captain of the Port or designated representative immediately upon entering the RNA. However, to avoid potential delays, we recommend seeking permission 30 minutes prior to entering the RNA.

(ii) Follow all instructions issued by the Captain of the Port or designated representative.

(iii) Obtain permission for any departure from or movement within the RNA from the Captain of the Port or designated representative prior to getting underway.

(iv) Follow all instructions issued by the Captain of the Port or designated representative.

(v) Reports may be made by telephone at 619–278–7033 (select option 2) or via VHF–FM radiotelephone on channel 16 (156.800 Mhz). The call sign for radiotelephone requests to the Captain of the Port or designated representative is ''Coast Guard Sector San Diego.''

(2) For purposes of the port security requirements in paragraph (d)(1) of this section, the Captain of the Port or designated representative means any official designated by the Captain of the Port, including but not limited to commissioned, warrant, and petty officers of the U.S. Coast Guard, and any U.S. Coast Guard patrol vessel. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(e) *Waivers.* (1) The Captain of the Port or designated representative may, upon request, waive any regulation in this section.

Dated: June 16, 2005.

K.J. Eldridge,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 05–13958 Filed 7–14–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[RME No. R03–OAR–2004–MD–0010; FRL–7939–3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Metropolitan Washington D.C. 1-Hour Ozone Attainment Plan, Rescinding of Earlier Rules Resulting in Removal of Sanctions and Federal Implementation Clocks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Maryland. This SIP revision is Maryland's attainment plan for the Metropolitan Washington, D.C. severe 1-hour ozone nonattainment area (the Washington area). Concurrently, EPA is proposing to rescind its earlier final rule which disapproved and granted a protective finding for Maryland's 1-hour ozone attainment plan for the Washington area. EPA is also proposing to rescind its earlier rule finding that the State of Maryland failed to submit one required element of a severe 1-hour ozone attainment plan, namely that for a penalty fee program. The intended effect of this action is to approve Maryland's 1-hour ozone attainment plan for the Washington area and to rescind earlier final rules due to changes in federal requirements. Upon final approval of these actions, the sanctions and Federal Implementation Plan (FIP) clocks, commenced by the two earlier rules, will be removed. These final actions are being taken under the Clean Air Act (CAA or the Act).

DATES: Written comments must be received on or before August 15, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03–OAR–2004–MD–0010 by one of the following methods:

A. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. Agency Website: *http://docket.epa.gov/rmepub/* RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

C. E-mail: *campbell.dave@epa.gov.*

D. Mail: R03–OAR–2004–MD–0010, David Campbell, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to RME ID No. R03–OAR–2004–MD–0010. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://docket.epa.gov/rmepub/,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov or e-mail. The EPA RME and the Federal regulations.gov websites are an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the RME index at *http://docket.epa.gov/rmepub/.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

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

SUPPLEMENTARY INFORMATION:

I. Background

On January 24, 2003 (68 FR 3410), EPA promulgated a final rule reclassifying the Washington area from serious to severe nonattainment for the 1-hour ozone national ambient air quality standard (NAAQS). That final rule established a deadline of March 1, 2004, by which time the District of Columbia, Maryland and Virginia were required to submit revisions to their respective SIPs to meet the additional requirements of severe ozone nonattainment areas found in section 182(d) of the CAA. Maryland did not submit the SIP revision required by section 182(d)(3) of the Act to implement the penalty fee provisions specified in section 185 of the Act. Therefore, on May 21, 2004 (69 FR 29236), EPA published a final rule, pursuant to section 179(a) of the CAA, finding that the State of Maryland had failed to submit a required SIP element, namely the section 185 penalty fee SIP revision for the Washington area. This rule commenced the 18-month and 24-month clocks for the imposition of the Act's section 179(a) sanctions, and the 24-month clock for the promulgation of a FIP for the missing SIP element.

On May 13, 2005 (70 FR 25719), EPA published a final rule disapproving Maryland's 1-hour ozone attainment plan for the Washington area. On May 13, 2005 (70 FR 25688), EPA also published a final rule approving all of the other SIP elements required of a severe 1-hour ozone nonattainment area's attainment plan, submitted by Maryland for the Washington area, including but not limited to all control measures, needed to fully satisfy the emissions reductions relevant to attainment of the 1-hour National Ambient Air Quality Standard (NAAQS) for ozone. Thus, the only basis for EPA's disapproval of Maryland's 1-hour ozone attainment plan for the Washington area was the lack of the fee program required under section 185 of the Act. Implicit in EPA's approval of all elements necessary for Maryland to have an approved plan for attainment of the 1-hour ozone NAAQS, other than the then-legally required section 185 penalty fee program, is the notion that once this single deficiency is corrected, EPA has an obligation to fully approve Maryland's 1-hour attainment plan for the Washington area. See 110(k)(3) of the Act (''the Administrator shall approve such submittal as a whole if it meets all the applicable requirements * * *''). EPA is undertaking this rulemaking in fulfillment of its statutory obligation.

On May 26, 2005 (70 FR 30592), EPA issued a final rule which retained an April 30, 2004 (69 FR 23951) final rule establishing that once the 1-hour ozone NAAQS is revoked for an area, the section 185 penalty fee program in SIPs will not be triggered for a failure of an area to attain the 1-hour ozone NAAQS by its 1-hour attainment date, and, that

States are no longer obligated to include the section 185 penalty fee program in their SIPs for nonattainment that had been classified as severe or extreme under the 1-hour ozone NAAQS but are not so classified under the 8-hour NAAQS for ozone. That May 26, 2005 final rule was effective June 27, 2005.

The 1-hour ozone NAAQS set forth in 40 CFR 50.9(a) will no longer apply to an area one year after the effective date of the designation of that area for the 8-hour ozone NAAQS pursuant to section 107 of the Act. (See 40 CFR 50.9(b); 69 FR at 23996, April 30, 2004.) The Washington area was designated nonattainment for the 8-hour ozone NAAQS effective June 15, 2004. (See 70 FR 23858, April 30, 2004.) The Washington area is not designated as extreme or severe under the 8-hour ozone standard. Therefore, the 1-hour ozone NAAQS set forth in 40 CFR 50.9(a) and the requirement for a section 185 penalty fee SIP revision no longer apply in the Washington area after June 15, 2005.

EPA believes that there is no legal basis to require Maryland to adopt and submit a SIP revision consisting of a section 185 penalty fee program, and have EPA approve such a SIP revision before it can approve Maryland's 1-hour ozone attainment plan for the Washington area. Because the section 185 penalty fee program is no longer a SIP element required for the Washington area under part D of Title I of the Act, EPA has no authority to subject Maryland to the sanctions established in section 179 of the Act due to its failure to submit the section 185 penalty fee SIP revision. The purpose of EPA's May 21, 2004 final rule (69 FR 29236) was to initiate the sanctions process for the failure to submit the then required section 185 penalty fee SIP revision. EPA concludes it lacks the necessary authority, and no longer has a legal basis for that May 21, 2004 final rule (69 FR 29236).

II. Proposed Action

EPA is proposing to approve Maryland's attainment plan for the Metropolitan Washington, DC severe 1-hour ozone nonattainment area. Concurrently, EPA is proposing to rescind its earlier final rule which disapproved and granted a protective finding for Maryland's 1-hour ozone attainment plan for the Washington area. EPA is also proposing to rescind its earlier rule finding that the State of Maryland failed to submit a required element of a severe 1-hour ozone attainment plan for a penalty fee program. As explained herein, the 1-hour ozone NAAQS no longer applies to the Washington area and there is no legal basis for EPA to require that Maryland have a section 185 penalty fee program in its SIP for the Washington area. Currently, the sanctions and FIP clocks commenced by the effective date of the May 21, 2004 (69 FR 29236) final rule finding that Maryland failed to submit the then-required section 185 penalty fee SIP element would mean that the 2:1 offset sanction would be imposed in the Maryland portion of the Washington area in December of 2005, and the highway funding sanction in June of 2006. The sanctions and FIP clocks commenced by the effective date of the May 13, 2005 (70 FR 25719) final rule disapproving Maryland's 1-hour ozone attainment plan for the Washington area solely for its lack of the then-required section 185 penalty fee SIP element would mean that these mandatory sanctions would be imposed in the Maryland portion of the Washington area in December 2006 and June 2007, respectively. By proposing to rescind both its May 21, 2004 (69 FR 29236) final rule finding that Maryland failed to submit the then required section 185 penalty fee SIP element, and its May 13, 2005 (70 FR 25719) final rule disapproving Maryland's 1-hour ozone attainment plan for the Washington area solely for its lack of the then-required section 185 penalty fee SIP element, EPA is also proposing to remove the sanctions and FIP clocks commenced by those two final rules.

Interested parties are invited to submit comments on this proposed action. Please note, however, that this proposed action neither re-opens nor solicits comment upon any of EPA's final rules referenced in this document, or issues/comments already addressed therein.

III. Statutory and Executive Order Reviews

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 Fed. Reg. 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, does not impose any additional enforceable duty beyond that required by state law, and relieves sources of an additional burden potentially placed on them by the sanction provisions of the Act, 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 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 requirement, 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 to approve Maryland's 1-hour ozone attainment plan for the Washington area, rescind two earlier final rules, and thereby remove sanctions and FIP clocks 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, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

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

Dated: July 8, 2005.

Richard J. Kampf,

Acting Regional Administrator, Region III.

[FR Doc. 05–13980 Filed 7–14–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[AMS–FRL–7937–2]

RIN 2060–AN19

Control of Emissions of Air Pollution From Diesel Fuel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to correct, amend, and revise certain provisions of the Highway Diesel Rule adopted on January 18, 2001 (66 FR 5002), and the Nonroad Diesel Rule on June 29, 2004 (69 FR 38958). First, it proposes minor corrections to clarify the regulations governing compliance with the diesel fuel standards. These minor corrections focus primarily on the Nonroad Rule, however, some may affect provisions contained in the Highway Rule that were overlooked at the time the Nonroad Rule was finalized. Second, it proposes amending the designate and track provisions to account for companies within the fuel distribution system that perform more than one function related to fuel production and/or distribution. This would alleviate the problem of inaccurate volume balances due to a company performing multiple functions. Finally, with respect to the generation of fuel credits, it proposes revising the regulatory text to allow refiners better access to early highway diesel fuel credits. The intention of this amendment is to help ensure a smooth transition to ultra low-sulfur diesel fuel nationwide.

We are publishing in the ''Rules and Regulations'' section of today's **Federal Register** a direct final rule that will correct several typographical errors, modify the designate and track regulations to account for companies that perform more than one function, and provide increased incentive for early compliance with the ultra low-sulfur diesel fuel requirements without further EPA action unless we receive adverse comment. We have explained our reasons for today's action in detail in the preamble to the direct final rule. If we receive adverse comment, we will withdraw the direct final rule prior to its effective date, and will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Written comments must be received by August 15, 2005. As explained in section II of the direct final rule, we do not expect to hold a public hearing, however, requests for a public hearing must be received by August 1, 2005. If we receive a request for a public hearing, we will publish information related to the timing and location of the hearing and the timing of a new deadline for public comments.

ADDRESSES: Comments: All comments and materials relevant to this action should be submitted to Public Docket No. OAR–2005–0134 by the date indicated under **DATES** above. Materials relevant to this rulemaking are in Public Docket at the following address: EPA Docket Center (EPA/DC), Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, except on government holidays. You can reach the Air Docket by telephone at (202) 566–1742 and by facsimile at (202) 566–1741. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

FOR FURTHER INFORMATION CONTACT: Tia Sutton, U.S. EPA, National Vehicle and Fuels Emission Laboratory, Assessment and Standards Division, 2000 Traverwood, Ann Arbor, MI 48105; telephone (734) 214–4018, fax (734) 214–4816, e-mail *sutton.tia@epa.gov* or Emily Green, see address above; telephone (734) 214–4639, fax (734) 214–4816, e-mail *green.emilya@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Regulated Entities

This action will affect companies and persons that produce, import, distribute, or sell highway and/or nonroad diesel fuel. Affected Categories and entities include the following:

Category	NAICS code [a]	Examples of potentially affected entities
Industry	324110	Petroleum refiners.
Industry	422710	Diesel fuel marketers and distributors.
Industry	484220	Diesel fuel carriers.

[a] North American Industry Classification System (NAICS)

This list is not intended to be exhaustive, but rather provides a guide regarding entities likely to be affected by this action. To determine whether particular activities may be affected by this action, you should carefully examine the regulations. You may direct questions regarding the applicability of this action as noted in **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of This Document and Send Comments?

See the direct final rule EPA has published in the ''Rules and Regulations'' section of today's **Federal Register** for information about accessing these documents. The direct final rule also includes detailed instructions for sending comments to EPA.

II. Summary of Rule

On January 18, 2004, we published the final Highway Rule (66 FR 5002) which is a comprehensive national program to greatly reduce emissions from diesel engines by integrating engine and fuel controls as a system to gain the greatest air quality benefits. Subsequently, we adopted the Nonroad Rule (69 FR 38958) on June 29, 2004 to amend the Highway Rule to include Nonroad equipment and fuel to further the goal of decreasing harmful emissions. After promulgation of these rules, we discovered several typographical errors and it also became evident that several additions or deletions were necessary to clarify portions of the regulations. This rule would correct those errors and serve to clarify the regulations to facilitate compliance.

Along with these minor clarifications, this rule would modify the text of the designate and track provisions to include provisions for companies that perform more than one function in the fuel system. For example, as these provisions are currently written, fuel