

2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects**

*40 CFR Part 52*

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

*40 CFR Part 60*

Air pollution control, Aluminum, Ammonium sulfate plants, Beverages, Carbon monoxide, Cement industry, Coal, Copper, Dry cleaners, Electric power plants, Fertilizers, Fluoride, Gasoline, Glass and glass products, Grains, Graphic arts industry, Household appliances, Insulation, Intergovernmental relations, Iron, Lead, Lime, Metallic and nonmetallic mineral processing plants, Metals, Motor vehicles, Natural gas, Nitric acid plants, Nitrogen dioxide, Paper and paper

products industry, Particulate matter, Paving and roofing materials, Petroleum, Phosphate, Plastics materials and synthetics, Reporting and recordkeeping requirements, Sewage disposal, Steel, Sulfur oxides, Tires, Urethane, Vinyl, Waste treatment and disposal, Wool, Zinc.

Dated: September 22, 2004.

**Kerrigan G. Clough,**

*Acting Regional Administrator, Region 8.*

■ 40 CFR part 52 is amended to read as follows:

**PART 52—[AMENDED]**

■ 1. The authority citation for part 52 continues to read as follows:

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

**Subpart JJ—North Dakota**

■ 2. Section 52.1820 is amended by adding paragraph (c)(33) to read as follows:

**§ 52.1820 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(33) Certain revisions to the North Dakota State Implementation Plan and Air Pollution Control Rules as submitted by the Governor with a letter dated April 11, 2003. The revisions affect portions of North Dakota Administrative Code (N.D.A.C.) regarding general provisions and

emissions of particulate matter and sulfur compounds.

(i) Incorporation by reference.

(A) Revisions to the North Dakota Air Pollution Control Rules as follows:

(1) Chapter 33–15–01, N.D.A.C., General Provisions, sections 33–15–01–04, 33–15–01–17, and 33–15–01–18, effective March 1, 2003.

(2) Chapter 33–15–05, N.D.A.C., Emissions of Particulate Matter Restricted, sections 33–15–05–02 and 33–15–05–04 and subsection 33–15–05–03.3, effective March 1, 2003.

(3) Chapter 33–15–06, N.D.A.C., Emissions of Sulfur Compounds Restricted, sections 33–15–06–01 and 33–15–06–03, effective March 1, 2003.

■ 40 CFR part 60 is amended to read as follows:

**PART 60—[AMENDED]**

■ 1. The authority citation for part 60 continues to read as follows:

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

**Subpart A—General Provisions**

■ 2. In § 60.4, amend the table in paragraph (c) by revising the entries for subparts “AAAA” and “CCCC” and by removing footnote 1 to read as follows:

**§ 60.4 Address.**

\* \* \* \* \*

(c) \* \* \*

**DELEGATION STATUS OF NEW SOURCE PERFORMANCE STANDARDS [(NSPS) FOR REGION VIII]**

Subpart	CO	MT	ND	SD	UT	WY
AAAA—Small Municipal Waste Combustors .....		(*)	(*)			(*)
CCCC—Commercial and Industrial Solid Waste Incineration Units .....		(*)	(*)			(*)

(\*) Indicates approval of State regulation.

\* \* \* \* \*

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BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52 and 81**

[MD160–3113; FRL–7821–1]

**Approval and Promulgation of Air Quality Implementation Plans; Maryland; Redesignation of Kent and Queen Anne’s Counties Ozone Nonattainment Area to Attainment and Approval of the Area’s Maintenance Plan**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a redesignation request and a State Implementation Plan (SIP) submitted by

the State of Maryland. The SIP revision establishes a maintenance plan for Kent and Queen Anne’s Counties that provides requirements for continued attainment of the one-hour ozone National Ambient Air Quality Standard (NAAQS) for the next 10 years. EPA is approving the revision to the Maryland SIP in accordance with the requirements of the Clean Air Act (CAA).

**EFFECTIVE DATE:** This final rule is effective on November 22, 2004.

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

Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; and Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

**FOR FURTHER INFORMATION CONTACT:** Rose Quinto, (215) 814-2182, or by e-mail at [quinto.rose@epa.gov](mailto:quinto.rose@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On August 2, 2004 (69 FR 46124), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. The NPR proposed approval of Maryland's redesignation request and a SIP revision that establishes a maintenance plan for the Kent and Queen Anne's Counties that provides requirements for continued attainment for the one-hour ozone NAAQS for the next 10 years. The formal SIP revision was submitted by the Maryland Department of the Environment (MDE) on February 9, 2004. Other specific requirements of Maryland's redesignation request, SIP revision for the maintenance plan, and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR. However, an erratum was found on page 46127 of the NPR, where the motor vehicle emissions budget (MVEB) for NO<sub>x</sub> was in error for the period from 2002 until 2014. The correct MVEB for NO<sub>x</sub> is 7.7 tons per day (tpd) instead of 2.92 tpd NO<sub>x</sub> (refer to Tables 1 and 2 in the NPR).

**II. Final Action**

EPA is approving the ozone maintenance plan for Kent and Queen Anne's Counties in Maryland submitted on February 9, 2004, because it meets the requirements of section 175A. In addition, EPA is redesignating Kent and Queen Anne's Counties to ozone attainment because EPA has determined that the provisions of section 107(d)(3)(E) of the CAA for redesignation have been met. Kent and Queen Anne's Counties nonattainment area is subject to the CAA's requirements for marginal ozone nonattainment areas until and unless it is redesignated to attainment.

**III. Statutory and Executive Order Reviews**

**A. General Requirements**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For

this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (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. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**B. Submission to Congress and the Comptroller General**

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

**C. Petitions for Judicial Review**

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 20, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action pertaining to Maryland's redesignation request and maintenance plan for Kent and Queen Anne's counties, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects**

**40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

**40 CFR Part 81**

Air pollution control, National parks, Wilderness areas.

Dated: September 20, 2004.  
**Thomas C. Voltaggio,**  
*Acting Deputy Regional Administrator,*  
*Region III.*

■ 40 CFR parts 52 and 81 are amended as follows:

**PART 52—[AMENDED]**

■ 1. The authority citation for part 52 continues to read as follows:  
 Authority: 42 U.S.C. 7401 *et seq.*

**Subpart V—Maryland**

■ 2. Section 52.1070 is amended by adding paragraph (c)(187) to read as follows:

**§ 52.1070 Identification of plan.**

\* \* \* \* \*  
 (c) \* \* \*  
 (187) The Ozone Redesignation and Maintenance Plan for Kent and Queen Anne's Counties nonattainment area submitted on February 4, 2004 by the Maryland Department of the Environment:  
 (i) Incorporation by reference.  
 (A) A letter dated February 9, 2004 from the Maryland Department of the Environment transmitting Maryland's State Implementation Plan pertaining to the redesignation request for the Kent and Queen Anne's Counties Ozone Nonattainment Area.  
 (B) SIP Revision 03–15, Redesignation Request for Kent and Queen Anne's

Counties Ozone Nonattainment Area, February 4, 2004.  
 (ii) Additional Material—Remainder of the State submittals pertaining to the revisions listed in paragraph (c)(187)(i) of this section.

**PART 81—[AMENDED]**

■ 1. The authority citation for Part 81 continues to read as follows:  
 Authority: 42 U.S.C. 7401 *et seq.*  
 ■ 2. Section 81.321 is amended by revising the ozone table entry for Kent and Queen Anne's Counties to read as follows:

**§ 81.321 Maryland.**

\* \* \* \* \*

**MARYLAND—OZONE (1-HOUR STANDARD)**

Designated area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
* * * * *				
Kent County and Queen Anne's County Area				
Kent County .....	October 21, 2004	Attainment.		
Queen Anne's County .....	October 21, 2004	Attainment.		
* * * * *				

<sup>1</sup> This date is October 18, 2000, unless otherwise noted.

\* \* \* \* \*  
 [FR Doc. 04–23584 Filed 10–20–04; 8:45 am]  
 BILLING CODE 6560–50–P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 660**

[Docket No. 04076201–4279–02; I.D. 060204F]

RIN 0648–AR97

**Fisheries off West Coast States and in the Western Pacific; Coastal Pelagic Species Fisheries; Annual Specifications**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.  
**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule to implement the annual harvest guideline for Pacific mackerel in the U.S. exclusive economic zone (EEZ) off the Pacific coast. The Coastal Pelagic Species (CPS) Fishery Management Plan (FMP) and its implementing regulations

require NMFS to set an annual harvest guideline for Pacific mackerel based on the formula in the FMP. This action adopts allowable harvest levels for Pacific mackerel off the U.S. Pacific coast.

**DATES:** This action becomes effective November 22, 2004.

**ADDRESSES:** The report *Stock Assessment of Pacific Mackerel with Recommendations for the 2004–2005 Management Season* may be obtained from Rodney R. McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802. An regulatory impact review/regulatory analysis may be obtained at this same address.

**FOR FURTHER INFORMATION CONTACT:** Tonya L. Wick, Southwest Region, NMFS, (562) 980–4036.

**SUPPLEMENTARY INFORMATION:** The CPS FMP, which was implemented by a final rule published in the **Federal Register** on December 15, 1999 (64 FR 69888), divides management unit species into the categories of actively managed and monitored. Harvest guidelines of actively managed species (Pacific sardine and Pacific mackerel) are based on formulas applied to current biomass estimates. Biomass estimates are not

calculated for species that are only monitored (jack mackerel, northern anchovy, and market squid).

At a public meeting each year, the biomass for each actively managed species is reviewed by the Pacific Fishery Management Council's (Council) CPS Management Team (Team). The biomass, harvest guideline, and status of the fisheries are then reviewed at a public meeting of the Council's CPS Advisory Subpanel (Subpanel). This information is also reviewed by the Council's Scientific and Statistical Committee (SSC). The Council reviews reports from the Team, Subpanel, and SSC, then, after providing time for public comment, makes its recommendation to NMFS. The annual harvest guideline and season structure is published by NMFS in the **Federal Register** as soon as practicable before the beginning of the appropriate fishing season. The Pacific mackerel season begins on July 1 of each year and ends on June 30 the following year.

The Team and Subpanel meetings took place at the Long Beach, CA, office of the NMFS, Southwest Region, on May 18 and 19, 2004 (69 FR 23730, April 20, 2004, and 69 FR 24585, May 4, 2004). The SSC meeting took place in