

remedial amendment period that applies to the plan pursuant to §§ 1.401(b)-1 and 1.401(b)-1T for changes under TRA '97.

Approved: July 24, 1998.

**Michael P. Dolan,**

*Deputy Commissioner of Internal Revenue.*

**Donald C. Lubick,**

*Assistant Secretary of the Treasury.*

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BILLING CODE 4830-01-U

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 117

[CGD07-98-055]

#### Drawbridge Operation Regulations; Biscayne Bay, Miami, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

**SUMMARY:** Notice is hereby given that the Coast Guard has issued a temporary deviation to the regulation governing the operation of the East Venetian Causeway Drawbridge across Biscayne Bay, between Miami and Miami Beach, at Miami Beach, Dade County, Florida. This deviation allows the drawbridge owner or operator to close the bridge from 5 p.m. until 8 a.m. daily. The draw will open each hour on the hour from 8 a.m. to 5 p.m., daily. The draw shall open at any time for public vessels of the United States, State and local vessels used in public safety, vessels in distress where a delay would endanger life or property, commercial vessels engaged in rescue or emergency salvage operations, and vessels seeking shelter from severe weather. This temporary deviation is issued to allow the bridge owner to safely conduct necessary repairs to the drawbridge.

**DATES:** This deviation is effective from 8 a.m. on August 21 until 5 p.m. on October 19, 1998.

**FOR FURTHER INFORMATION CONTACT:** Mr. Brodie Rich, Project Manager, Seventh Coast Guard District, Bridge Section at (305) 536-5117.

#### SUPPLEMENTARY INFORMATION:

#### Background and Purpose

The East Venetian Causeway Drawbridge across Biscayne Bay between Miami and Miami Beach, has a vertical clearance of 5.8 feet above mean high water (MHW) and 8 feet above mean low water (MLW) measured at the fenders in the closed position. On August 12, 1998, the State of Florida

Department of Transportation requested a deviation from the current operating schedule in 33 CFR 117.269. This temporary deviation was requested to allow necessary repairs to the drawbridge and relieve concerns by the Venetian Isle residents that the leafs of the drawbridge might get caught in the open-to-navigation position, thereby stranding residents on the islands while the West Venetian Drawbridge over the Intracoastal Waterway is being replaced. The District Commander has granted a temporary deviation from the operating requirements listed in 33 CFR 117.269 governing the East Venetian Causeway Bridge across Biscayne Bay in accordance with the provisions of 33 CFR 117.35(a) for the purpose of conducting repairs to the drawbridge. Under this deviation, the East Venetian Causeway Drawbridge need open only on the hour from 8 a.m. to 5 p.m., daily. At all other times, the drawbridge may remain in the closed position. The deviation is effective for a period of 60 days beginning on August 21, 1998 and ending on October 19, 1998.

Dated: August 24, 1998.

**Norman T. Saunders,**

*Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.*

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 117

[CGD11-98-012]

#### Drawbridge Operation Regulations; Sacramento River, Sacramento and Yolo Counties, CA, Union Pacific "I" Street Railroad Bridge

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

**SUMMARY:** Notice is hereby given that the Coast Guard has issued a temporary deviation to the regulations governing the opening of the Union Pacific "I" Street Railroad swing bridge over the Sacramento River in Sacramento, CA. The deviation specifies that the bridge need not open for vessels from 6 a.m. Monday, September 14 through 10 p.m. Wednesday, September 16, 1998. The purpose of this deviation is to allow the Union Pacific Railroad and its contractors to perform preventative maintenance on the hydraulic system on the bridge.

**DATES:** Effective period of the deviation is 6 a.m. Monday September 14, 1998

through 10 p.m. Wednesday September 16, 1998.

#### FOR FURTHER INFORMATION CONTACT:

Mr. Jerry Olmes, Bridge Administrator, Eleventh Coast Guard District, Building 50-6 Coast Guard Island, Alameda, CA 94501-5100, telephone (510) 437-3515.

**SUPPLEMENTARY INFORMATION:** The Coast Guard anticipates that the economic consequences of this deviation will be minimal. The Coast Guard has contacted local marine interests to determine dates when the 3-day closure would have less of an impact to the marine public. The Union Pacific Railroad initially wanted to close the bridge in late August, but a local cruise company requested the work be delayed until after Labor Day, when commercial and recreational activity is less. The Railroad agreed that while maintenance was needed, they would delay repairs until after Labor Day. With advance notice, vessel operators can plan their transits accordingly.

This deviation from the normal operating regulations in 33 CFR 117.189 is authorized in accordance with the provisions of 33 CFR 117.35.

Dated: August 21, 1998.

**Thomas H. Collins,**

*Vice Admiral, U.S. Coast Guard, Commander Eleventh Coast Guard District.*

[FR Doc. 98-23898 Filed 9-3-98; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[MD003-3024a, MD025-3024a, MD066-3024a; FRL-6148-9]

#### Approval and Promulgation of Air Quality Implementation Plans; Maryland; Conditional Limited Approval of Major VOC Source RACT and Minor VOC Source Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

**SUMMARY:** EPA is conditionally and limitedly approving State Implementation Plan (SIP) revisions submitted by the State of Maryland. These revisions pertain to Maryland's major source volatile organic compound (VOC) reasonably available control technology (RACT) regulation and minor VOC source requirements. The RACT regulation applies to major VOC sources that are not covered by Maryland's category specific VOC RACT regulations. The minor source requirements apply to smaller VOC

sources that are not covered by RACT regulations.

**DATES:** This direct final rule is effective on November 3, 1998 without further notice, unless EPA receives adverse comment by October 5, 1998. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Comments may be mailed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, 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:** Maria A. Pino, (215) 814-2181, at the EPA Region III address above, or via e-mail at pino.maria@epa.gov. While information may be requested via e-mail, any comments must be submitted in writing to the EPA Region III address above.

**SUPPLEMENTARY INFORMATION:**

**Background—State Submittals**

On April 5, 1991, the State of Maryland formally submitted amendments to its air quality regulations to EPA as a SIP revision. Among the amendments submitted were revisions to COMAR 26.11.06.06, Maryland's minor VOC source requirements. Also included in Maryland's April 5, 1991 SIP revision request was the addition of COMAR 26.11.19.02G, which requires RACT for major sources of VOC that are not covered by Maryland's category specific VOC RACT regulations. Throughout the remainder of this notice, COMAR 26.11.19.02G shall be termed Maryland's generic major source VOC RACT regulation. All other amendments submitted to EPA in Maryland's April 5, 1991 SIP revision request have been approved into Maryland's SIP through separate rulemaking actions. (See 58 FR 63085, 59 FR 60908 and 60 FR 2018.) This rulemaking action only pertains to the portion of Maryland's April 5, 1991 submittal related to the addition of COMAR 26.11.19.02G, Maryland's generic major VOC source RACT regulation, and revisions to COMAR

26.11.06.06, Maryland's minor VOC source requirements.

On June 8, 1993, the State of Maryland again submitted amendments to its air quality regulations to EPA as a SIP revision. The June 8, 1993 submittal establishes statewide applicability for Maryland's generic major source VOC RACT regulation and category specific VOC RACT regulations, lowers the applicability threshold for VOC RACT regulations, expands the geographic applicability of Maryland's minor VOC source requirements, and corrects deficiencies in Maryland's Stage I Vapor Recovery regulation. This rulemaking action pertains only to the amendments contained in Maryland's June 8, 1993 submittal related to its generic major VOC source RACT regulation and its minor VOC source regulations, COMAR 26.11.19.02G and COMAR 26.11.06.06, respectively. All other regulations contained in the June 8, 1993 submittal were the subject of a separate rulemaking action. (See 60 FR 2018.)

On July 12, 1995, the Maryland Department of the Environment submitted additional amendments to its air quality regulations to EPA as a SIP revision. The July 12, 1995 submittal contained amendments to the definition of the term "major stationary source of VOC" and Maryland's generic major source VOC RACT regulation, COMAR 26.11.19.01B(4) and 26.11.19.02G, respectively. The revisions lowered the major source threshold for the Maryland portion of the Washington, DC ozone nonattainment area, Calvert, Charles, Frederick, Montgomery, and Prince George's Counties, and required RACT on these newly defined major sources.

As required by 40 CFR 51.102, the State of Maryland has certified that public hearings with regard to these proposed revisions were held in Maryland on October 11, 1990 in Annapolis, Maryland, on November 17, 18, and 20, 1992 in Frederick, Centreville, and Columbia, Maryland respectively, and on December 15, 1994 in Baltimore, Maryland.

**EPA Rulemaking History**

On March 1, 1996, EPA proposed conditional approval of Maryland's April 5, 1991 and June 8, 1993 revision submittals pertaining to COMAR 26.11.19.02G and COMAR 26.11.06.06 (61 FR 8009). Approval was conditioned on the State of Maryland certifying that it has determined and imposed RACT for all the major VOC sources covered by the VOC RACT regulation and submitted those enforceable RACT determinations to EPA as SIP revisions. That certification was to be made by the

Maryland Department of the Environment by no later than one year from the date EPA promulgated final conditional approval of the SIP revision. If the State failed to do so, that final conditional approval would have converted to a disapproval. Because proposed conditional approval does not comply with EPA's generic RACT policy, described below, EPA must withdraw its March 1, 1996 proposed conditional approval. No public comments were received on this proposal. Therefore, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will withdraw its March 1, 1996 proposed conditional approval.

**EPA's Generic RACT Policy**

On November 7, 1996, Ms. Sally L. Shaver, Director of EPA's Air Quality Strategies & Standards Division signed a memorandum entitled, "Approval Options for Generic RACT Rules Submitted to meet the non-CTG VOC RACT Requirement and Certain NOx RACT Requirements." This policy memorandum sets out the different options available to EPA for rulemaking on generic RACT SIPs, and circumstances under which each rulemaking option would be appropriate. According to this policy, full approval cannot be granted until the State has submitted and EPA has approved RACT rules for sources covering all but a de minimis level of emissions. When this is not the case, EPA's generic RACT policy provides that EPA should propose limited approval of the generic RACT rule because it strengthens the SIP and at the same time EPA should propose conditional approval based upon the State's commitment to (1) submit for approval into the SIP, the case-by-case RACT proposals for all sources subject to the RACT requirements, and (2) certify that it has submitted case-by-case RACT proposals for all sources subject to the RACT requirements currently known to the State or demonstrate that the emissions from any remaining subject sources represent a de minimis level of emissions. The rationale for the conditional limited approval is described in detail below.

**EPA's Analysis of the SIP Revisions**

Clean Air Act Requirements: To comply with the RACT provisions of the Act, Maryland was required to expand its RACT regulations to apply statewide. It had to adopt all RACT regulations for all VOC sources for which EPA has published a Control Techniques Guideline (CTG) and all major non-CTG

VOC sources (so-called generic VOC sources) with the potential to emit  $\geq$  25 tons per year (TPY) in Cecil County and the Baltimore nonattainment area and  $\geq$  50 TPY in the remainder of the State. These major non-CTG sources are subject to Maryland's generic major source VOC RACT regulation.

*State Submittals:* Maryland's generic major source VOC RACT regulation, COMAR 26.11.19.02G, was originally submitted to EPA on April 5, 1991 to comply with the RACT Fix-up requirements of section 182(a)(2) of the Act. COMAR 26.11.19.02G required RACT for sources in the Baltimore and the Maryland portion of pre-enactment Washington DC nonattainment areas with the potential to emit  $\geq$  100 TPY of VOC and which were not subject to COMAR 26.11.11, 26.11.13, or 26.11.19.03—.15, Maryland's category-specific VOC RACT regulations.

In its June 1993 submittal, Maryland revised its generic major source VOC RACT regulation to comply with the RACT Catch-up provisions of section 182(b)(2) of the Act. The regulation was revised to make it applicable statewide and to apply to "major stationary sources of VOC" rather than to VOC sources that have the potential to emit  $\geq$  100 TPY. The term "major stationary source of VOC," COMAR 26.11.19.01B(4), is defined as any stationary source with the potential to emit: (a) 25 TPY of VOC or more in the City of Baltimore and Anne Arundel, Baltimore, Carroll, Cecil, Harford, and Howard Counties, and (b) 50 TPY in the remainder of the State. Approval of the addition of this term to Maryland's SIP was the subject of a separate rulemaking action. (See 60 FR 2018.)

Furthermore, Maryland revised COMAR 26.11.19.02G to require non-CTG generic VOC sources to notify Maryland by August 15, 1993 if they are major sources subject to RACT. Under Maryland's regulation, these sources were required to submit a written RACT proposal and schedule for compliance by November 15, 1993. These sources must comply with RACT, as determined by Maryland, by no later than May 15, 1995. Upon Maryland's approval of a RACT proposal, the regulation requires the State to either amend the source's permit to operate to incorporate the RACT conditions, adopt a regulation that reflects the RACT requirement, or issue an order that includes the RACT requirement. Finally, COMAR 26.11.19.02G states that Maryland will submit all RACT determinations to EPA for approval via the federal rulemaking process for incorporation into the SIP.

With Maryland's July 1995 submittal, the major sources threshold for the

Maryland portion of the Washington, DC ozone nonattainment area was lowered to 25 TPY of VOC. The term "major stationary source of VOC," COMAR 26.11.19.01B(4), was revised to mean any stationary source with the potential to emit: (a) 25 TPY of VOC or more in the City of Baltimore and Anne Arundel, Baltimore, Calvert, Carroll, Cecil, Charles, Frederick, Harford, Howard, Montgomery, and Prince George's Counties, and (b) 50 TPY in the remainder of the State.

In addition, Maryland revised COMAR 26.11.19.02G to require non-CTG generic VOC sources with potential emissions between 25 and 50 TPY in Calvert, Charles, Frederick, Montgomery, and Prince George's Counties to notify Maryland by January 20, 1995 if they are major sources subject to RACT. Under Maryland's regulation, these sources were required to submit a written RACT proposal and schedule for compliance by March 20, 1995. These sources were required to comply with RACT, as determined by Maryland, by no later than May 15, 1995.

On May 13, 1998 (63 FR 26462), EPA approved Maryland's July 12, 1995 revision to the definition of the term "major stationary source of VOC," COMAR 26.11.19.01B(4), in a direct final rulemaking. This approval was effective on July 13, 1998.

Maryland's minor VOC source regulation, COMAR 26.11.06.06, was also submitted as part of Maryland's RACT Fix-ups. (See 58 FR 50307.) This regulation was applicable in the Baltimore and the Maryland portion of the pre-enactment Washington DC nonattainment areas. This regulation exempted sources which were subject to other VOC regulations, including RACT as established by Maryland pursuant to COMAR 26.11.19.02G.

Maryland amended COMAR 26.11.06.06A (Applicability) to expand the applicability of COMAR 26.11.06.06C-E (VOC-Water Separators, VOC Disposal, and Exceptions) statewide. Additionally, Maryland's minor source regulation, COMAR 26.11.06.06B (Control of VOC from Installations), was revised to add new requirements for sources located in Cecil County and the counties which were added to the Maryland portion of the Washington, DC nonattainment area, namely Calvert, Charles, and Frederick Counties. Sources in these newly regulated areas, Calvert, Cecil, Charles, and Frederick Counties, are required to reduce their VOC emissions by 85 percent overall. Finally, COMAR 26.11.06.06A was revised to exempt sources "subject to the provisions of"

Maryland's generic major source VOC RACT regulation, COMAR 26.11.19.02G, from the requirements of COMAR 26.11.06.06. Thus, sources subject to COMAR 26.11.19.02G, which have not yet had a RACT determination approved by Maryland, are not subject to any VOC emission standard.

*EPA's Evaluation:* Through revisions made to Maryland's minor source VOC regulation, COMAR 26.11.06.06, its geographic applicability was expanded, resulting in the regulation of sources which were previously not regulated. However, other specific amendments to COMAR 26.11.06.06, found at 26.11.06.06A, narrowed the applicability of COMAR 26.11.06.06B such that certain sources in Maryland's pre-enactment nonattainment areas that were previously subject to COMAR 26.11.06.06B are no longer covered by any enforceable emissions limit until such time as Maryland approves RACT standards for them pursuant to the requirements its generic major VOC RACT regulation, COMAR 26.11.19.02G. This results in a lapse of coverage for previously regulated non-CTG generic sources major VOC sources in the State of Maryland.

Maryland's generic major source VOC RACT regulation, COMAR 26.11.19.02G, requires all case-by-case, category-specific or source-specific RACT requirements to be submitted as SIP revisions to EPA. It does not, itself, contain enforceable RACT standards for these major non-CTG VOC sources. Because COMAR 26.11.19.02G does not, in and of itself, fully satisfy the Act's requirements requiring for RACT on all major VOC sources, it is not unconditionally approvable. The Act's major source RACT requirements will be fully satisfied only when EPA approves, as SIP revisions, actual RACT standards for all subject sources in Maryland.

#### **EPA's Rulemaking Determination**

EPA has evaluated Maryland's generic major source VOC RACT regulation and its minor VOC source regulations for consistency with the Act and EPA regulations, and has found that they do not fully comply with the Act's major source RACT requirements. Therefore, EPA is conditionally approving the SIP revisions based upon Maryland meeting its commitment to submit case-by-case RACT SIP revisions to EPA, no later than twelve months from the effective date of EPA's final conditional approval of the Maryland generic major VOC source RACT regulation and its minor VOC source regulations, for all sources it has identified as being subject to the major source RACT requirements.

Maryland submitted its commitment in a letter to EPA dated February 7, 1996. Once the State has satisfied this condition, EPA shall remove the conditional status of its approval and the Maryland generic major VOC source RACT regulation and its minor VOC source regulations SIP revision will, for the time being, retain its limited approval status. EPA is limitedly approving the Maryland generic major VOC source RACT regulation and its minor VOC source regulations SIP revision on the basis that its approval will strengthen the SIP. The limited approval shall be converted to full approval once EPA has approved each of Maryland's case-by-case RACT proposals as SIP revisions. This conditional limited approval action is action that is being taken under section 110 of the Clean Air Act.

#### **Terms of and Rationale for Conditional Approval**

EPA's rulemaking includes conditional approval of Maryland's VOC regulations SIP revision, based upon the State's commitment to submit for approval into the SIP, the case-by-case RACT proposals for all sources subject to the RACT requirements currently known to MDE. The State submitted this commitment in a letter to EPA dated February 7, 1996. The case-by-case RACT proposals must be submitted by a date certain that is no later than 12 months after the effective date of EPA's final conditional approval.

Therefore, to fulfill the condition of this approval the State must, by no later than 12 months after the effective date of EPA's final conditional approval of the generic major source VOC RACT regulation and its minor VOC source regulations: (1) Certify that it has submitted case-by-case RACT proposals for all sources subject to the RACT requirements currently known to MDE; or (2) demonstrate that the emissions from any remaining subject sources represent a de minimis level of emissions, as defined below. Once EPA has determined that the State has satisfied this condition, EPA shall remove the conditional nature of its approval and the Maryland VOC regulations SIP revision will, at that time, retain limited approval status. Should the State fail to meet the condition specified above, the final conditional limited approval of the Maryland VOC RACT regulation SIP revision shall convert to a disapproval.

Even after the conditional status of EPA's approval of the Maryland RACT regulation is removed, MDE must still continue to submit, and have EPA approve into the Maryland SIP, RACT

requirements for the remaining de minimis amount of emissions. Therefore, removal of the conditional status to limited approval status in no way changes MDE's statutory obligation to implement RACT for all major sources.

#### **Definition of De Minimis**

For states with a generic major source VOC RACT regulation intended to regulate all non-CTG VOC sources, de minimis is determined by comparing the total 1990 emissions of all non-CTG VOC major sources in the State, where a CTG had not been issued at the time of the state submittal of the generic VOC RACT regulation with the total emissions of those non-CTG VOC sources subject to the generic RACT where these source-specific RACTs have not yet been approved by EPA. For example, while not applicable to the Maryland generic RACT submittal, since EPA has issued CTGs for shipbuilding and repair and wood furniture coatings in August 1996 and May 1996, respectively, EPA's de minimis procedure for a state submittal subsequent to August 1996 would require that all RACTs for those CTG category sources and for shipbuilding and repair and wood furniture coating be approved and that the de minimis procedure as described in this notice apply only to those VOC emissions from sources that are neither CTG sources or shipbuilding or wood furniture sources. The VOC emissions from these remaining major sources are still subject to the RACT requirement, but EPA can lift the conditional status of its approval of the state generic RACT rule prior to SIP approval for those sources that represent a de minimis amount of VOC emissions.

In Maryland's case, the generic major VOC source RACT regulation was originally submitted in April 1991. At that time, the regulation was applicable in the Baltimore and the Maryland portion of the pre-enactment Washington, DC, nonattainment areas. In June 1993, Maryland submitted revisions to the generic major VOC source RACT regulation to make it applicable statewide. No post-1990 CTGs were issued prior to June 1993. Therefore, the VOC emissions from all non-CTG source category are included in the pool of total VOC emissions used to determine whether the amount of emissions remaining is de minimis.

#### **Rationale for Limited Approval**

The current Maryland SIP does not contain a general requirement that all major sources must implement RACT, nor does it have a provision requiring

sources in Calvert, Cecil, Charles, and Frederick Counties to reduce their VOC emissions by 85 percent overall. While EPA does not believe that the Maryland generic major source VOC RACT regulation and minor VOC source requirements satisfy the Act's RACT requirements as discussed previously in this notice, EPA is also granting limited approval of these VOC regulations on the basis that they strengthen the Maryland SIP. Once EPA has approved all of the case-by-case RACT proposals as SIP revisions, the limited approval will convert to full approval.

EPA's review of this material indicates that conditional limited approval is warranted. Further discussion and details of this rulemaking action can be found in the accompanying technical support document (TSD) prepared by EPA in support of this rulemaking. Copies of the TSD may be obtained, upon request, from the EPA Regional office listed in the ADDRESSES section of this notice. EPA is approving this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse or critical comments be filed. This rule will be effective November 3, 1998 without further notice unless the Agency receives adverse comments by October 5, 1998.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on the proposed rule. Only 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 rule will be effective on November 3, 1998 and no further action will be taken on the proposed rule.

#### **Final Action**

EPA is conditionally and limitedly approving the Maryland major source VOC RACT regulation and minor source VOC regulations, COMAR 26.11.19.02G and COMAR 26.11.06.06 respectively. EPA is conditionally and limitedly approving these SIP revisions based upon the commitment made by Maryland to submit all the case-by-case RACT proposals for sources it is currently aware of as being subject to

the major source RACT regulations. On February 7, 1996, Maryland submitted a letter to EPA committing to: (1) complete submission of the SIP revisions required by COMAR 26.11.19.02G containing RACT determinations for the major VOC sources in the State that are subject to the RACT rule, and (2) provide a written statement to EPA that, to the best of its knowledge, it has completed submission of the SIP revisions described above within one year of the effective date of the final conditional limited approval of the Maryland generic major source VOC RACT regulation.

Note that through its July 1995 SIP revision, Maryland lowered the major source threshold for the Maryland portion of the Washington, DC ozone nonattainment area to 25 TPY from the Clean Air Act required threshold of 50 TPY. Thus, more sources are considered major in this nonattainment area than required under the Act. In serious ozone nonattainment areas such as the Washington, DC area, section 182 of the Act requires RACT on sources with the potential to emit 50 TPY or more. Therefore, when determining whether Maryland has met the conditions of this rule, only sources with the potential to emit 50 TPY or more in the Washington, DC area will be considered. However, in order for Maryland to take credit for emission reductions from RACT on any 25–50 TPY sources in the Washington, DC area to meet other requirements of the Act, RACT regulations for these sources must be submitted to EPA as SIP revisions and approved into Maryland's SIP.

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.

### Administrative Requirements

#### A. Executive Orders 12866 and 13045

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review. The final rule is not subject to E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks," because it is not an "economically significant" action under E.O. 12866.

#### B. Regulatory Flexibility Act

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 and conditional approvals of SIP submittals under section 110 and subchapter I, part D of the CAA 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, I certify 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 CAA, 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.

#### C. Unfunded Mandates

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.

#### D. Submission to Congress and the General Accounting Office

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).

#### E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action, EPA's conditional limited approval of revisions to the Maryland State Implementation Plan pertaining to Maryland's major VOC source RACT and minor VOC source requirements, COMAR 26.11.19.02G and COMAR 26.11.06.06, must be filed in the United States Court of Appeals for the appropriate circuit by November 3, 1998. 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, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

Dated: August 12, 1998.

**W. Michael McCabe,**

*Regional Administrator, Region III.*

40 CFR part 52 is amended as follows:

**PART 52—[AMENDED]**

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

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

**Subpart V—Maryland**

2. Section 52.1070 is amended by adding paragraphs (c) (133), (134), and (135) to read as follows:

**§ 52.1070 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(133) Limited approval of revisions to the Maryland State Implementation Plan submitted on April 5, 1991 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of April 5, 1991 from the Maryland Department of the Environment transmitting additions to Maryland's State Implementation Plan, pertaining to volatile organic compound regulations in Maryland's air quality regulations, Code of Maryland Administrative Regulations (COMAR) 26.11.

(B) Addition of COMAR 26.11.19.02G, Control of Major Sources of Volatile Organic Compounds, pertaining to major VOC source RACT requirements, adopted by the Secretary of the Environment on March 9, 1991 and effective on May 8, 1991.

(ii) Additional Material.

(A) Remainder of the April 5, 1991 Maryland State submittal pertaining to COMAR 26.11.19.02G.

(134) Limited approval of revisions to the Maryland State Implementation Plan submitted on June 8, 1993 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of June 8, 1993 from the Maryland Department of the Environment transmitting additions and deletions to Maryland's State Implementation Plan, pertaining to volatile organic compound regulations in Maryland's air quality regulations, Code of Maryland Administrative Regulations (COMAR) 26.11.

(B) Revisions to COMAR 26.11.06.06, Volatile Organic Compounds, pertaining

to minor source VOC requirements, adopted by the Secretary of the Environment on March 26, 1993, and effective on April 26, 1993.

(1) Amendments to COMAR 26.11.06.06A, Applicability.

(2) Amendments to COMAR 26.11.06.06B, Control of VOC from Installations.

(C) Revisions to COMAR 26.11.19.02G, Control of Major Stationary Sources of Volatile Organic Compounds, pertaining to major VOC source RACT requirements, adopted by the Secretary of the Environment on March 26, 1993, and effective on April 26, 1993.

(ii) Additional Material.

(A) Remainder of the June 8, 1993 Maryland State submittal pertaining to COMAR 26.11.06.06A, COMAR 26.11.06.06B, and COMAR 26.11.19.02G.

(135) Limited approval of revisions to the Maryland State Implementation Plan submitted on July 12, 1995 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of July 12, 1995 from the Maryland Department of the Environment transmitting additions and deletions to Maryland's State Implementation Plan, pertaining to volatile organic compound regulations in Maryland's air quality regulations, Code of Maryland Administrative Regulations (COMAR) 26.11.

(B) Revisions to COMAR 26.11.19.02G, Control of Major Stationary Sources of Volatile Organic Compounds, pertaining to major VOC source RACT requirements, adopted by the Secretary of the Environment on April 13, 1995, and effective on May 8, 1995.

(ii) Additional Material.

(A) Remainder of the July 12, 1995 Maryland State submittal pertaining to COMAR 26.11.19.02G.

3. Section 52.1073 is amended by adding paragraph (e) to read as follows:

**§ 52.1073 Approval status.**

\* \* \* \* \*

(e) Conditional limited approval of revisions to the Maryland State Implementation Plan, pertaining to Maryland's major VOC source RACT and minor VOC source requirements, COMAR 26.11.19.02G and COMAR 26.11.06.06, submitted on April 5, 1991, June 8, 1993, and July 12, 1995 by the Maryland Department of the Environment.

4. Section 52.1072 is amended by adding paragraph (d) to read as follows:

**§ 52.1072 Conditional approval.**

\* \* \* \* \*

(d) Revisions to the Maryland State Implementation Plan pertaining to Maryland's major VOC source RACT and minor VOC source requirements, COMAR 26.11.19.02G and COMAR 26.11.06.06, submitted on April 5, 1991, June 8, 1993, and July 12, 1995 by the Maryland Department of the Environment are conditionally approved. Maryland must meet the following conditions by no later than 12 months after the publication of the final conditional rulemaking. These conditions are: Maryland certify that it has submitted case-by-case RACT proposals for all sources subject to the RACT requirements; or demonstrate that the emissions from any remaining subject sources represent a de minimis level of emissions, as defined in the final rulemaking notice.

(i) Additional Material.

(A) Letter of February 7, 1996 from the Maryland Department of the Environment agreeing to meet certain conditions by no later than 12 months after the publication of the final conditional rulemaking. These conditions are: Maryland submit case-by-case RACT proposals for all sources subject to the RACT requirements; Maryland certify that, to the best of its knowledge, there are no other sources subject to the RACT requirements.

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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[CA 20-7-0084a FRL-6138-8]

**Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Bay Area Air Quality Management District**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action on revisions to the California State Implementation Plan. The revisions concern rules from the Bay Area Air Quality Management District (BAAQMD). The rules control particulate matter (PM) emissions from sources of open burning and visible emissions. This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of PM in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). Thus, EPA is finalizing the approval of