

maintained for 3 years and made available for review by the State. The reporting requirements are approvable.

### III. Proposed Action

EPA is proposing full approval of Maryland's NO<sub>x</sub> RACT regulation found at COMAR 26.11.09.01 and 26.11.09.08 which was submitted as a SIP revision by the Maryland Department of the Environment on September 8, 2000.

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. Written comments must be received on or before November 9, 2000. EPA calls your attention to the November 9, 2000 deadline date for submittal of comments on this proposed action to grant full approval of this SIP revision submitted by the State of Maryland. The EPA is providing a shortened time period for comment for two reasons. As an initial matter, this revision is non-controversial and EPA does not expect comment. Maryland's NO<sub>x</sub> RACT requirements are consistent with the RACT requirements adopted by other states and do provide provisions for sources to apply for an alternative RACT determination. Moreover, this SIP revision is necessary for full approval of the attainment demonstration SIP for the Metropolitan Washington, D.C. ozone nonattainment area. The EPA is currently under an obligation to complete rulemaking by November 15, 2000 fully approving the attainment demonstration for the Metropolitan Washington, D.C. ozone nonattainment area or, in the alternative, proposing a federal implementation plan.

### IV. 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. 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 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

(Public Law 104-4). For the same reason, this proposed rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This proposed rule will 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), 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 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 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 rule, which proposes approval of Maryland's NO<sub>x</sub> RACT regulation, 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, Reporting and recordkeeping requirements.

Dated: October 13, 2000.

**Thomas Voltaggio,**

*Acting Regional Administrator, Region III.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[MD104-3057; FRL-6888-2]

### Approval and Promulgation of Air Quality Implementation Plans; Maryland; Nitrogen Oxides Reduction and Trading Program

**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 on April 27, 2000. This revision responds to the EPA's regulation entitled, "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone," otherwise known as the "NO<sub>x</sub> SIP Call." This revision establishes and requires a nitrogen oxides (NO<sub>x</sub>) allowance trading program for large electric generating and industrial units, and reductions for cement kilns and stationary industrial combustion engines, beginning in 2003. The intended effect of this action has two purposes. EPA is proposing to approve the Maryland's NO<sub>x</sub> Reduction and Trading Program because it meets the requirements of the NO<sub>x</sub> SIP Call that will significantly reduce ozone transport in the eastern United States. In addition, EPA is proposing to approve the Maryland's NO<sub>x</sub> Reduction and Trading Program because it supports the one-hour attainment demonstration plans for the Baltimore, Metropolitan Washington, D.C. and Philadelphia-Wilmington-Trenton ozone nonattainment areas.

**DATES:** Written comments must be received on or before November 9, 2000.

**ADDRESSES:** Written comments may be mailed to David L. Arnold, Chief, Ozone & 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 Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland 21224.

**FOR FURTHER INFORMATION CONTACT:** Cristina Fernandez, (215) 814-2178, or by e-mail at fernandez.cristina@epa.gov.

**SUPPLEMENTARY INFORMATION:** On April 27, 2000, the Maryland Department of the Environment (MDE) submitted a revision to its SIP to meet the requirements of the NO<sub>x</sub> SIP Call. The revision consists of the adoption of two new chapters COMAR 26.111.29 NO<sub>x</sub> Reduction and Trading Program and COMAR 26.11.30 Polices and Procedure Relating to Maryland's NO<sub>x</sub> Reduction and Trading Program.

The information in this section is organized as follows:

#### I. EPA's Action

- A. What action is EPA proposing today?
- B. Why is EPA proposing this action?
- C. What are the general NO<sub>x</sub> SIP Call requirements?
- D. What is EPA's NO<sub>x</sub> budget and allowance trading program?
- E. What guidance did EPA use to evaluate Maryland's submittal?

#### II. Maryland's NO<sub>x</sub> Reduction and Trading Program

- A. When did Maryland submit the SIP revision to EPA in response to the NO<sub>x</sub> SIP Call?
- B. What is the Maryland's NO<sub>x</sub> Budget Trading Program?
- C. What is the result of EPA's evaluation of Maryland's program?

#### III. Proposed Action

- A. NO<sub>x</sub> SIP Call Requirements
- B. One-Hour Attainment Demonstration Plans

#### IV. Administrative Requirements

##### I. EPA's Action

###### A. What Action Is EPA Proposing Today?

EPA is proposing to approve the Maryland's SIP revision concerning the adoption of its NO<sub>x</sub> Reduction and Trading Program, submitted on April 27, 2000.

###### B. Why Is EPA Proposing This Action?

EPA is proposing this action for two purposes. Maryland's NO<sub>x</sub> Reduction and Trading Program regulations meet the requirements of the NO<sub>x</sub> SIP Call. In addition, Maryland's NO<sub>x</sub> Reduction and Trading Program regulations are part of the one-hour ozone attainment demonstration plans for the serious and severe ozone nonattainment areas of the State of Maryland. The one-hour attainment demonstration plans for the

Baltimore, Metropolitan Washington, D.C. and Philadelphia-Wilmington-Trenton ozone nonattainment areas rely on the NO<sub>x</sub> reductions associated with the NO<sub>x</sub> Reduction and Trading Program in 2003 and beyond. Therefore, EPA is proposing full approval of Maryland's NO<sub>x</sub> Reduction and Trading Program for two reasons. First, because it meets the requirements of the NO<sub>x</sub> SIP Call, and secondly as a strengthening measure for the one-hour ozone attainment plans for Baltimore, Metropolitan Washington, D.C. and Philadelphia-Wilmington-Trenton ozone nonattainment areas.

###### C. What Are the General NO<sub>x</sub> SIP Call Requirements?

On October 27, 1998, EPA published a final rule entitled, "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone," otherwise known as the "NO<sub>x</sub> SIP Call." See 63 FR 57356. The NO<sub>x</sub> SIP Call requires 22 States and the District of Columbia to meet statewide NO<sub>x</sub> emission budgets during the five month period between May 1 and October 1 in order to reduce the amount of ground level ozone that is transported across the eastern United States.

EPA determined state-wide NO<sub>x</sub> emission budgets for each affected jurisdiction to be met by the year 2007. EPA identified NO<sub>x</sub> emission reductions by source category that could be achieved by using cost-effective measures. The source categories included were electric generating units (EGUs), non-electric generating units (non-EGUs), area sources, nonroad mobile sources and highway sources. However, the NO<sub>x</sub> SIP Call allowed states the flexibility to decide which source categories to regulate in order to meet the statewide budgets. In the NO<sub>x</sub> SIP Call notice, EPA suggested that imposing statewide NO<sub>x</sub> emissions caps on large fossil-fuel fired industrial boilers and electricity generating units would provide a highly cost effective means for States to meet their NO<sub>x</sub> budgets. In fact, the state-specific budgets were set assuming an emission rate of 0.15 pounds NO<sub>x</sub> per million British thermal units (lb. NO<sub>x</sub>/mmBtu) at EGUs, multiplied by the projected heat input (mmBtu) from burning the quantity of fuel needed to meet the 2007 forecast for electricity demand. See 63 FR 57407. The calculation of the 2007 EGU emissions assumed that an emissions trading program would be part of an EGU control program. The NO<sub>x</sub> SIP Call state budgets also assumed

on average a 30% NO<sub>x</sub> reduction from cement kilns, a 60% reduction from industrial boilers and combustion turbines, and a 90% reduction from internal combustion engines. The non-EGU control assumptions were applied at units where the heat input capacities were greater than 250 mmBtu per hour, or in cases where heat input data were not available or appropriate, at units with actual emissions greater than one ton per day.

To assist the states in their efforts to meet the SIP Call, the NO<sub>x</sub> SIP Call final rulemaking notice included a model NO<sub>x</sub> allowance trading regulation, called "NO<sub>x</sub> Budget Trading Program for State Implementation Plans," (40 CFR part 96), that could be used by states to develop their regulations. The NO<sub>x</sub> SIP Call notice explained that if states developed an allowance trading regulation consistent with the EPA model rule, they could participate in a regional allowance trading program that would be administered by the EPA. See 63 FR 57458-57459.

There were several periods during which EPA received comments on various aspects of the NO<sub>x</sub> SIP Call emissions inventories. On March 2, 2000, EPA published additional technical amendments to the NO<sub>x</sub> SIP Call in the **Federal Register** (65 FR 11222). The March 2000 final rulemaking established the inventories upon which Maryland's final budget is based.

On March 3, 2000, the D.C. Circuit issued its decision on the NO<sub>x</sub> SIP Call ruling in favor of EPA on all the major issues. *Michigan v. EPA*, 213 F.3d 663 (D.C. Cir. 2000). The Court denied petitioners' requests for rehearing or rehearing *en banc* on July 22, 2000. However, the Court ruled against EPA on four narrow issues. The Court remanded certain matters for further rulemaking by EPA. EPA expects to publish a proposal that addresses the remanded portion of the NO<sub>x</sub> SIP Call Rule. Any additional emissions reductions required as a result of a final rulemaking on that proposal will be reflected in the second phase portion (Phase II) of the State's emissions budget. Maryland may be required to submit SIP revisions to address any revisions to the NO<sub>x</sub> SIP Call Rule.

###### D. What Is EPA's NO<sub>x</sub> Budget and Allowance Trading Program?

EPA's model NO<sub>x</sub> budget and allowance trading rule, 40 CFR part 96, sets forth a NO<sub>x</sub> emissions trading program for large EGUs and non-EGUs. A state can voluntarily choose to adopt EPA's model rule in order to allow sources within its borders to participate

in regional allowance trading. The October 27, 1998 **Federal Register** notice contains a full description of the EPA's model NO<sub>x</sub> budget trading program. See 63 FR 57514—57538 and 40 CFR part 96. In general, air emissions trading uses market forces to reduce the overall cost of compliance for pollution sources, such as power plants, while maintaining emission reductions and environmental benefits. One type of market-based program is an emissions budget and allowance trading program, commonly referred to as a “cap and trade” program.

In an emissions budget and allowance trading program, the state or EPA sets a regulatory limit, or emissions budget, in mass emissions from a specific group of sources. The budget limits the total number of allocated allowances during a particular control period. When the budget is set at a level lower than the current emissions, the effect is to reduce the total amount of emissions during the control period. After setting the budget, the state or EPA then assigns, or allocates, allowances to the participating entities up to the level of the budget. Each allowance authorizes the emission of a quantity of pollutant, e.g., one ton of airborne NO<sub>x</sub>.

At the end of the control period, each source must demonstrate that its actual emissions during the control period were less than or equal to the number of available allowances it holds. Sources that reduce their emissions below their allocated allowance level may sell their extra allowances. Sources that emit more than the amount of their allocated allowance level may buy allowances from the sources with extra reductions. In this way, the budget is met in the most cost-effective manner.

*E. What Guidance Did EPA Use To Evaluate Maryland's Submittal?*

The final NO<sub>x</sub> SIP Call rule included a model NO<sub>x</sub> budget trading program regulation. See 40 CFR part 96. EPA used the model rule and 40 CFR 51.121–51.122 to evaluate Maryland's NO<sub>x</sub> Reduction and Trading Program.

**II. Maryland's NO<sub>x</sub> Reduction and Trading Program**

A. When Did Maryland Submit the SIP Revision to EPA in Response to the NO<sub>x</sub> SIP Call?

On April 27, 2000, the Maryland Department of the Environment submitted a revision to its SIP to meet the requirements of the NO<sub>x</sub> SIP Call.

*B. What Is the Maryland's NO<sub>x</sub> Reduction and Trading Program?*

Maryland's SIP revision to meet the requirements of the NO<sub>x</sub> SIP Call

consists of the adoption of two new chapters COMAR 26.11.29—NO<sub>x</sub> Reduction and Trading Program and COMAR 26.11.30—Policies and Procedure Relating to Maryland's NO<sub>x</sub> Reduction and Trading Program. The regulations under COMAR 26.11.29 and COMAR 26.11.30 affect electric generating units, non-electric generating units, cement manufacturing facilities, and large internal combustion engines.

Chapter COMAR 26.11.29—NO<sub>x</sub> Reduction and Trading Program is divided into fifteen new regulations: (.01) Definitions; (.02) Incorporation by Reference; (.03) Scope and Applicability; (.04) General Requirements for Affected Trading Sources; (.05) NO<sub>x</sub> Allowance Allocations; (.06) Compliance Supplement Pool; (.07) Allowance Banking; (.08) Emission Monitoring; (.09) Requirements for New Sources and Set-Aside Pool; (.10) Reporting; (.11) Record Keeping; (.12) End-of-Season Reconciliation; (.13) Compliance Certification; (.14) Penalties; (.15) Requirements for Affected Nontrading Sources.

The Code of Maryland Regulations (COMAR) 26.11.30—Policies and Procedure Relating to Maryland's NO<sub>x</sub> Reduction and Trading Program is divided into nine new regulations: (.01) Scope and Applicability; (.02) Definitions; (.03) Procedures Relating to Compliance Accounts; (.04) Procedures Relating to General Accounts; (.05) Allowance Banking; (.06) Allowance Transfers; (.07) Early Reductions; (.08) Opt-in Procedures; (.09) Allocation of Allowances.

Maryland's NO<sub>x</sub> Reduction and Trading Program establishes and requires a NO<sub>x</sub> allowance trading program for large electric generating and industrial units, and reductions for cement kilns and stationary industrial combustion engines.

The regulations under COMAR 26.11.29 and COMAR 26.11.30 establish a NO<sub>x</sub> cap and allowance trading program for the ozone seasons of 2003 and beyond. The State of Maryland voluntarily chose to follow EPA's model NO<sub>x</sub> budget and allowance trading rule, 40 CFR part 96, that sets forth a NO<sub>x</sub> emissions trading program for large EGUs and non-EGUs. Because Maryland's NO<sub>x</sub> Reduction and Trading Program is based upon EPA's model rule, Maryland sources are allowed to participate in the interstate NO<sub>x</sub> allowance trading program that EPA will administer for the participating states. The State of Maryland has adopted regulations that are substantively identical to 40 CFR part 96. Therefore, pursuant to 40 CFR

51.121(p)(1), Maryland's SIP revision is automatically approved as satisfying the same portion of the State's NO<sub>x</sub> emission reduction obligations Maryland projects such regulations will satisfy.

Under COMAR 26.11.29 and COMAR 26.11.30, Maryland allocates NO<sub>x</sub> allowances to the EGUs and non-EGUs units that are affected by these requirements. The NO<sub>x</sub> trading program applies to all fossil fuel fired EGUs with a nameplate capacity greater than 25 MW or more that sell any amount of electricity to the grid as well as any non-EGUs that have a heat input capacity equal to or greater than 250 mmBtu per hour. Each NO<sub>x</sub> allowance permits a source to emit one ton of NO<sub>x</sub> during the seasonal control period. NO<sub>x</sub> allowances may be bought or sold. Unused NO<sub>x</sub> allowances may also be banked for future use, with certain limitations. Source owners will monitor their NO<sub>x</sub> emissions by using systems that meet the requirements of 40 CFR part 75, subpart H, and report resulting data to EPA electronically. Each budget source complies with the program by demonstrating at the end of each control period that actual emissions do not exceed the amount of allowances held for that period. However, regardless of the number of allowances a source holds, it cannot emit at levels that would violate other federal or state limits, for example, reasonably available control technology (RACT), new source performance standards, or Title IV (the Federal Acid Rain program).

Maryland's NO<sub>x</sub> Reduction and Trading Program establishes requirements for cement manufacturing facilities and stationary internal combustion engines. These sources are subject to NO<sub>x</sub> reduction requirements but do not participate in the NO<sub>x</sub> trading program.

Maryland's submittal does not rely on any additional reductions beyond the anticipated Federal measures in the mobile and area source categories.

Maryland's submittal demonstrates that the NO<sub>x</sub> emission budgets established by EPA (65 FR11222) will be met as follows:

Source category	EPA 2007 NO <sub>x</sub> budget emissions (tons/season)	Maryland 2007 NO <sub>x</sub> budget emissions (tons/season)
EGUs .....	14,656	14,656
Non-EGUs .....	12,585	12,513
Area Sources ....	4,448	4,448
Non-road Sources .....	20,026	20,026

Source category	EPA 2007 NO <sub>x</sub> budget emissions (tons/season)	Maryland 2007 NO <sub>x</sub> budget emissions (tons/season)
Highway Sources .....	30,183	30,183
Total .....	81,898	81,826

### C. What Is the Result of EPA's Evaluation of Maryland's Program?

EPA has evaluated Maryland's April 27, 2000 SIP submittal and finds it approvable. The Maryland NO<sub>x</sub> Reduction and Trading Program is consistent with EPA's guidance and meets the requirements of the NO<sub>x</sub> SIP Call. EPA finds the NO<sub>x</sub> control measures in the Maryland's NO<sub>x</sub> Reduction and Trading Program approvable. The April 27, 2000 submittal will strengthen Maryland's SIP for reducing ground level ozone by providing NO<sub>x</sub> reductions beginning in 2003. Furthermore, Maryland's NO<sub>x</sub> Reduction and Trading Program is necessary to fulfill a requirement of the one-hour ozone attainment plans for the serious and severe nonattainment areas of Maryland. The attainment demonstration plans for the Baltimore, Metropolitan Washington, D.C. and Philadelphia-Wilmington-Trenton ozone nonattainment areas rely on the NO<sub>x</sub> reductions associated with the NO<sub>x</sub> Reduction and Trading Program in 2003 and beyond. EPA finds that Maryland's submittal is fully approvable because it meets the requirements of the NO<sub>x</sub> SIP Call and it is a strengthening measure for the one-hour ozone attainment plans for the Baltimore, Metropolitan Washington, D.C. and Philadelphia-Wilmington-Trenton ozone nonattainment areas.

### III. Proposed Action

#### A. NO<sub>x</sub> SIP Call Requirements

EPA is proposing to approve the Maryland's SIP revision consisting of its NO<sub>x</sub> Reduction and Trading Program, which was submitted on April 27, 2000. EPA finds that Maryland's submittal is fully approvable because it meets the requirements of the NO<sub>x</sub> SIP Call.

#### B. One-Hour Attainment Demonstration Plans

EPA is proposing to approve the Maryland's SIP revision concerning the adoption of the NO<sub>x</sub> Reduction and Trading Program, which was submitted on April 27, 2000. EPA finds that Maryland's submittal is fully approvable because it is a strengthening measure for the Maryland's one-hour ozone

attainment plans for its serious and severe ozone nonattainment areas, namely the Baltimore (severe), Metropolitan Washington, D.C. (serious) and Philadelphia-Wilmington-Trenton (severe) ozone nonattainment areas.. 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. These comments will be considered before taking final action. EPA calls your attention to the November 9, 2000 deadline date for submittal of comments on this proposed action to approve this SIP revision submitted by the State of Maryland. The EPA is providing a shortened time period for comment for two reasons. As an initial matter, these revisions are non-controversial and EPA does not expect comment as Maryland's regulations incorporate by reference much of the federal rule found at 40 CFR Part 96 for implementation of the NO<sub>x</sub> SIP call. Moreover, this SIP revision is necessary for full approval of the attainment demonstration SIP for the Metropolitan Washington, D.C. ozone nonattainment area. The EPA is currently under an obligation to complete rulemaking by November 15, 2000 fully approving the attainment demonstration for the Metropolitan Washington, D.C. ozone nonattainment area or, in the alternative, proposing a federal implementation plan.

### IV. 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. This proposed 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 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). For the same reason, this proposed rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This proposed

rule will 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), because it 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 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 approving the Maryland NO<sub>x</sub> Reduction and Trading Program 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

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

Dated: October 12, 2000.

**Bradley M. Campbell,**

*Regional Administrator, Region III.*

[FR Doc. 00-26904 Filed 10-18-00; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[MD107-3059; FRL-6888-1]

#### Approval and Promulgation of Air Quality Implementation Plans; Maryland; New Source Review Regulations

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to grant limited approval of a State Implementation Plan (SIP) revision submitted by the State of Maryland pursuant to the requirements of the Clean Air Act (CAA). This revision requires major new sources and major modifications to existing sources of volatile organic compounds (VOCs), and nitrogen oxides (NO<sub>x</sub>) to meet certain new source review permitting requirements if they are proposing to locate or are located within the State of Maryland. These NSR requirements apply not only in those portions of Maryland designated as ozone nonattainment areas, but throughout the State of Maryland as the entire state is located within the Ozone Transport Region (OTR). The intended effect of this action is two-fold. First, it withdraws the rulemaking action proposing limited approval/disapproval of Maryland's NSR regulations published by EPA on May 25, 1994. Secondly, it proposes limited approval of Maryland's NSR regulations as Maryland has amended those regulations to correct the deficiencies noted in EPA's May 25, 1994 proposal.

**DATES:** Comments must be received on or before November 9, 2000.

**ADDRESSES:** Comments may be mailed to Makeba Morris, Chief, Permits and Technical Assessment Branch, Mailcode 3AP11, 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 at the Maryland Department of the

Environment, 2500 Broening Highway, Baltimore, Maryland 21224.

**FOR FURTHER INFORMATION CONTACT:**

Perry R. Pandya, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103, (215) 814-2167.

**SUPPLEMENTARY INFORMATION:**

#### I. New Source Requirements and Maryland's SIP Revision

The CAA requires that all states submit revisions to their State Implementation plans (SIPs) requiring major new and major modified sources to meet certain new source review (NSR) requirements if they are located (or are proposing to locate) in areas designated nonattainment for a pollutant, or, in the case of VOC or NO<sub>x</sub> sources, in the OTR. This requirement for a SIP revision applies to Maryland, which currently has areas designated nonattainment for ozone (a pollutant formed under certain meteorological conditions from precursor VOC and NO<sub>x</sub> emissions). Additionally, the entire State of Maryland is located within the OTR.

On June 8, 1993, Maryland submitted a revision to its SIP requiring new major sources and major modifications of VOCs and NO<sub>x</sub> to meet certain NSR requirements. On May 25, 1994, EPA proposed limited approval/disapproval of that SIP revision (59 FR 26994). At that time, EPA identified a number of deficiencies with Maryland's NSR regulations which the state would have to correct in order for EPA to grant final approval of its NSR regulations. The only comments submitted pursuant to EPA's May 25, 1994 proposal came from the State of Maryland.

On September 25, 2000, the State of Maryland submitted a revision to its SIP which consists of amendments to its NSR regulations. Those amendments were made to satisfy the deficiencies cited by EPA in its May 25, 1994 proposal.

EPA has determined that Maryland's NSR regulations, as amended and submitted on September 25, 2000, correct those deficiencies. For a detailed analysis of the deficiencies and how they were corrected, please refer to the Technical Support Documents in the Administrative Record. Therefore, EPA has determined that the NSR regulations submitted by the State of Maryland as a SIP revision on June 8, 1993 in conjunction with the amendments to those regulations submitted as a SIP revision on September 25, 2000 satisfy the CAA and its associated NSR regulations and policies.

A detailed description of federal NSR requirements, Maryland's NSR regulations, the deficiencies of the those regulations, and specific corrections that Maryland had to make to those NSR regulations were provided in EPA's May 25, 1994 proposed rulemaking notice (59 FR 26994) and shall not be restated here. Maryland's only amendments to its NSR regulations, as submitted on September 25, 2000, were those necessary to address the deficiencies cited by EPA in its May 25, 1994 proposed rulemaking notice. Rather than proceed to final action, however, given the length of time that has transpired since that proposed action, EPA believes it is prudent to withdraw the May 25, 1994 proposed limited approval/disapproval and to re-propose limited approval of Maryland's NSR regulations.

#### II. Why EPA is Proposing Limited Versus Full Approval of Maryland's NSR Regulations

Although the following explanation for EPA proposing limited approval was provided in the May 25, 1994 proposal, given that EPA is re-proposing limited approval at this time, it is being restated here.

The Code of Maryland Regulations at COMAR 26.11.17.04E provides that emissions reductions achieved by shutting down an existing source or permanently curtailing productions or operating hours below baseline levels are creditable if the reductions are permanent, quantifiable, and federally enforceable, and only if such reductions occurred on or after January 1, 1991. However, existing EPA regulations also provide that if a state does not have an EPA-approved attainment demonstration, then post-January 1, 1991 reductions achieved by a shutdown or curtailment of production or operating hours are only creditable if the state is current in its attainment planning obligations. See 54 FR 27286 (June 28, 1989). EPA's current rules also require that even in nonattainment areas with approved attainment demonstrations, only those shutdown or curtailment credits generated after the date of permit application are creditable. See 40 CFR part 51, appendix S.

Maryland's revised NSR regulation affirmatively allows persons seeking to build new major sources or major modifications to take credit for emission reductions resulting from shutdowns or curtailments of production or operating hours if those shutdowns or curtailments occurred after January 1, 1991. Because Maryland's regulation allows persons seeking to construct new