

Given the imminence of the effective date, seeking prior public comment on this temporary delay would have been impractical, as well as contrary to the public interest in the orderly promulgation and implementation of regulations.

Signed at Washington, DC, this 7th day of February, 2001.

Raymond J. Uhalde,

Deputy Assistant Secretary, Employment and Training Administration.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD105-3054; FRL-6916-6]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Approval of Opacity Recodifications and Revisions To Visible Emissions Requirements COMAR 26.11.06.02

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Maryland State Implementation Plan (SIP). The revisions include the recodification of Maryland's general opacity regulations as well as the addition of procedures whereby a source may apply for and be granted a federally enforceable alternative visible emission standard. EPA is approving these revisions to Maryland's SIP in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on April 13, 2001 without further notice, unless EPA receives adverse written comment by

March 14, 2001. If EPA receives such comments, it 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: Written comments should be mailed to Mr. Denis Lohman, Acting Chief, Technical Assessment Branch, Mailcode 3AP22, 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; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Ruth E. Knapp, (215) 814-2191, or by e-mail at knapp.ruth@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Summary of the SIP Revision

On March 21, 1991 and November 5, 1997, the State of Maryland submitted formal revisions to its State Implementation Plan (SIP). The SIP revisions consist of a recodification of Maryland's general opacity regulations and the addition of procedures whereby a source may apply for and receive a federally enforceable alternative visible emission standard. In the 1991 submittal, Maryland recodified all of its general opacity regulations as part of the State Air and Radiation Management Administration's (ARMA) transfer from the Department of Health and Mental Hygiene (DHMH) to the Maryland Department of the Environment (MDE).

As a result, the applicable citations have been revised from COMAR 10.18.06.02 and .03 to COMAR 26.11.06.02. In addition, Maryland has recodified its provisions governing control of particulate matter from materials handling and construction by separating the applicable visible emissions provisions from the applicable particulate matter control provisions. As a result, Maryland has revised the citation of the particulate matter provisions related to materials handling and construction from COMAR 10.18.06.03D(1) to COMAR 26.11.06.03D, while moving the applicable visible emissions provisions from COMAR 10.18.06.03D(2) to COMAR 26.11.06.02C(3). In the 1997 submittal, Maryland revised COMAR 26.11.06.02B to include specific procedures by which a source may apply for and be granted a federally enforceable alternative visible emission standard. On February 6, 1998, Maryland also submitted an additional provision, COMAR 26.11.06.02A(1)(j) [General Exceptions—Emissions at Federal Facilities] as a SIP revision. EPA will act upon this SIP revision request in a separate rulemaking action.

On November 3, 1992 (57 FR 49651), EPA approved the general COMAR recodification scheme as a revision of the Maryland SIP (See, 40 CFR 52.1070(c)(90)). However, that action did not include the recodification of Maryland's general opacity and the aforementioned particulate matter control provisions. EPA is now approving these revised COMAR citations of Maryland's general opacity and particulate matter control provisions as a revision of the Maryland SIP. There are no substantive revisions to the wording of these SIP provisions. The revised citations are summarized below:

Provision title/Subject matter	Current SIP citation	Revised SIP citation
• General Exceptions—Open fires (except salamanders)	10.18.06.02D(2)	26.11.06.02A(1)(b)
• General Exceptions—Fugitive emissions from iron and steel production installations	10.18.06.02D(3)	26.11.06.02A(1)(c)
• General Exceptions—Fugitive emissions from metallurgical, slot-type, byproduct coke ovens	10.18.06.02D(4)	26.11.06.02A(1)(d)
• General Exceptions—Fugitive emissions from skull cracker oxygen lancing	10.18.06.02D(6)	26.11.06.02A(1)(f)
• General Exceptions—Emissions during start-up and process modifications, or occasional cleaning of control equipment	10.18.06.02C	26.11.06.02A(2)
• Visible Emission Standards—Areas I, II, V and VI	10.18.06.02A	26.11.06.02C(1)
• Visible Emission Standards—Areas III, and IV	10.18.06.02B	26.11.06.02C(2)
• Visible emissions beyond the property lot line from any act of materials handling or construction—Areas I, II, V, and VI only	10.18.06.03D	26.11.06.02C(3)

The provisions now found at COMAR 26.11.06.02A(1)(e), (g), (h), and (i) were not part of the SIP when they were found at COMAR 10.18.06.02C, and

therefore are not being addressed in this action to approve the recodification of SIP provisions action. In conjunction with this approval action, EPA is

replacing SIP provision COMAR 10.18.01.08 [Exceptions—Case by Case] with the provisions in COMAR 26.11.06.02B which includes the

procedures by which a source may apply for and be granted a federally enforceable alternative visible emissions standard.

EPA is approving the revisions submitted on November 5, 1997, which consist of the procedures by which a source may apply for and be granted a federally enforceable alternative visible emission limit on a case-by-case basis. As discussed above, the SIP-approved general visible emission standards for the entire State of Maryland are found in 26.11.06.02C. The regulation specifies the standards within defined geographical areas. In Areas I, II, V, and VI, a person may not cause or permit the discharge of emissions from any installation, other than water in an uncombined form, which is greater than 20 percent opacity. In Areas III and IV, a person may not cause or permit the discharge of emissions from any installation or building, other than water in an uncombined form, which is visible to human observers. Also, in Areas I, II, V, and VI, a person may not cause or permit, from any act of materials handling or construction, visible emissions beyond the lot line of the property on which the emissions originate. The procedures by which a source may apply for and be granted a federally enforceable alternative visible emission limit on a case-by-case basis are contained in 26.11.06.02B, Case-by-Case Exception to Visible Emissions Standards. Those procedures are specific and require that a source must submit an application for an alternative standard which includes the following information: a description of the installation and air pollution controls, process information, a demonstration that all other applicable regulations are met when visible emissions occur, and a demonstration that it is an economic burden to attain the existing visible emission standard. The regulation requires the use of an MDE—issued document which lays out the criteria to be used to determine if it is an economic burden to meet the existing visible emission limit. The source's application must include the federally-approved and enforceable methods to be used demonstrate that it is in compliance with all applicable regulations when visible emissions occur and also to demonstrate that it can attain an alternative visible emission standard in conjunction with all other applicable air pollution control requirements. After providing the above information, a public comment period will be provided for all interested parties to review and comment upon the source's application prior to the granting an alternative

standard. If the application is approved, the source will be granted an alternative visible emission standard for up to a five year period, and the alternative standard may be renewed. The alternative visible emissions standard is to be contained in an order issued by the MDE pursuant to 26.11.06.02B. The order is to require and specify the federally-approved and enforceable test methods and procedures to be used to demonstrate that the source is in compliance with the alternative visible emission standard and all other applicable requirements. The order may contain any conditions or requirements necessary to insure continuous compliance with the alternative standard. An approved alternative visible emissions standard, applied for and granted in accordance with all of the SIP-approved procedures contained in 26.11.06.02B, Case-by-Case Exception to Visible Emissions Standards shall be federally enforceable.

In two instances, an alternative visible emission standard may be granted without going through the application process. Exceptions may be granted without going through the process when the application of the requirement to a residential building housing two or fewer families creates undue economic hardship on the individuals residing in it, or if the equipment being used has its primary way of transferring heat by a radiant method.

The procedures contained in the case-by-case visible exception in COMAR 26.11.06.02B are not applicable to the following sources or situations because they do not have limits as provided under 26.11.06.02C: Burning wood in fireplaces; open fires (except salamanders) permitted under provisions of COMAR 26.11.07.03, .04, and .05.; fugitive emissions from iron and steel production installations in compliance with COMAR 26.11.10.03B; fugitive emissions from metallurgical, slot-type, byproduct coke ovens in compliance with COMAR 26.11.10.03C; fugitive emissions from skull cracker oxygen lancing in compliance with COMAR 26.11.10.04C.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revisions if adverse comments are filed. This rule will be effective on April 13, 2001 without further notice unless EPA receives adverse comment by March 14, 2001. If EPA receives adverse comment, EPA

will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

II. Final Action

EPA is approving the recodifications which revise the citations regarding opacity and control of particulate matter from materials handling and construction from COMAR 10.18.06.02 and .03D to COMAR 26.11.06.02 and .03D. EPA is also approving the revisions to COMAR 26.11.06.02B which provide procedures whereby a source may apply for and be granted a federally enforceable alternative visible emission standard.

III. Administrative Requirements

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. 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 (Public Law 104-4). For the same reason, this 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 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 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 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 April 13, 2001. 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 regarding recodifications to Maryland's opacity regulations and approval of procedures for granting an alternative visible emission standard 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, Incorporation by reference, Particulate matter.

Dated: November 30, 2001.

Bradley M. Campbell,
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 paragraph (c)(152) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(152) Revisions to the Maryland Regulations governing visible emissions submitted on March 21, 1991 and November 5, 1997 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letters from the Maryland Department of the Environment dated March 21, 1991 and November 5, 1997 submitting revisions to the Maryland State Implementation Plan.

(B) Document entitled "Procedures To Be Used To Evaluate An Application For An Alternative Visible Emissions Standard Under COMAR 26.11.06.02B".

(C) Code of Maryland Administrative Regulations (COMAR) 10.18.06.02 (General Emission Standards, Prohibitions, and Restrictions—Visible Emissions), Sections 10.18.06.02A(1), .02A(1)(a), .02A(2), and .02C(1) and (2), effective December 3, 1984.

(D) Recodified COMAR 26.11.06.02 (General Emission Standards, Prohibitions, and Restrictions—Visible Emissions), Sections 26.11.06.02A(1) [General paragraph], .02A(1)(a) through (d) and (f), .02A(2), and .02C(1) through (3), effective August 1, 1988.

(E) COMAR 26.11.06.02B (Visible Emissions—Case-by-Case Exception to the Visible Emissions Standards).

(1) COMAR 10.18.06.02B(1)(a) through (d), .02B(2)(a), .02B(4)(a) and (b), and .02B(5)(a) and (b), effective December 3, 1984. This rule replaces COMAR 10.18.01.08. [Recodified as COMAR 26.11.06.02B, effective August 1, 1988.]

(2) COMAR 26.11.06.02B(2)(b) through (e) and .02 B(4)(c), effective July 3, 1995.

(F) Recodified COMAR 26.11.06.03D (Particulate Matter from Materials Handling and Construction), effective August 1, 1988.

(ii) Additional Material.

(A) Remainder of the March 21, 1991 submittal (MD91-01) as it pertains to the recodification of COMAR 26.11.06.02 and 26.11.06.03D.

(B) Remainder of the November 5, 1997 submittal (MD97-02).

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD107-3062; FRL-6922-8]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maryland. This SIP revision amends the requirements for major new sources and major modifications to existing sources of volatile organic compounds (VOCs), and nitrogen oxides (NO_x) to meet certain new source review (NSR) 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). EPA is fully approving Maryland's NSR program in the Maryland portion of the Metropolitan Washington, DC Ozone Nonattainment Area and throughout the State of Maryland with the exception of the Baltimore Ozone Nonattainment Area and the Maryland portion (Cecil County) of the Philadelphia-