

[FR Doc. 03-4508 Filed 2-26-03; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[MD 128-3097a; FRL-7450-4]

#### Approval and Promulgation of Air Quality Implementation Plans; Maryland; Revisions to Regulations for Permits, Approvals and Registration and Related Regulations

**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 amend provisions to Maryland's regulations for Permits, Approvals, and Registration and related changes to its regulations for General Emission Standards, Prohibitions, and Restrictions, and Volatile Organic Compounds from Specific Processes. EPA is approving these revisions in accordance with the requirements of the Clean Air Act.

**DATES:** This rule is effective on April 28, 2003 without further notice, unless EPA receives adverse written comment by March 31, 2003. 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:** Comments should be mailed to Harold A. Frankford, Office of Air Programs, Air Protection Division, Mailcode 3AP20, 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, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; and the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

**FOR FURTHER INFORMATION CONTACT:** Harold A. Frankford, (215) 814-2108, or by e-mail at [frankford.harold@epa.gov](mailto:frankford.harold@epa.gov).

**SUPPLEMENTARY INFORMATION:**

### I. Background

On November 1, 2001, the Maryland Department of the Environment (MDE) submitted formal revisions to its State Implementation Plan (SIP). The SIP revision consists of amendments to the Code of Maryland (COMAR) Regulations 26.11.02, Permits, Approvals, and Registration that were adopted from 1995 through 1999 and related amendments under COMAR 26.11.06, General Emission Standards, Prohibitions, and Restrictions, and COMAR 26.11.19, Volatile Organic Compounds from Specific Processes.

The MDE has submitted all regulations under COMAR 26.11.02 for SIP approval except those relating to part 70 permits and those relating to fees. The MDE's November 1, 2001 submittal includes a table (Table 1 of the submittal) which clearly indicates those regulations under COMAR 26.11.02 that are not to be considered as part of the SIP revision request. COMAR 26.11.02 was amended in its entirety in 1995 to include part 70 requirements. The non-part 70 requirements of COMAR 26.11.02 are substantially the same as those already approved by EPA as SIP revisions. This rulemaking action approving the November 1, 2001 SIP revision request by MDE does not make substantial amendments to the SIP's provisions of COMAR 26.11.02 already approved by EPA. Similarly, the related amendments made to COMAR 26.11.06, General Emission Standards, Prohibitions, and Restrictions, and COMAR 26.11.19, Volatile Organic Compounds from Specific Processes that are the subject of this rulemaking action do not change the substantive SIP requirements of those regulations previously approved by EPA. The specific amendments being approved by this rulemaking action are discussed in the next section of this document.

### II. Summary of the SIP Revisions

EPA is approving the SIP revisions submitted by the MDE on November 1, 2001. A description of each revision is provided in A-E of this section.

#### A. The May 1995 Amendments

On April 11, 1995, the MDE adopted several amendments to its Code including the repeal of Regulations .01-.21 and the adoption of new Regulations .01-.19 under COMAR 26.11.02 Permits, Approvals, and Registration, an amendment to Regulation .06, Volatile Organic Compounds under COMAR 26.11.06, General Emission Standards, Prohibitions, and Restrictions, and an amendment to Regulation .02 Applicability, Determining Compliance,

Reporting and General Requirements under COMAR 26.11.19, Volatile Organic Compounds from Specific Processes. All of these amendments were effective on May 8, 1995.

The repeal of Regulations .01-.21 and the adoption of new Regulations .01-.19 under COMAR 26.11.02 Permits, Approvals, and Registration did not substantially change the requirements of COMAR 26.11.02. Rather, when it re-codified and reformatted these regulations, the MDE made several simple wording changes to clarify the text, correct typographical errors, and make wording changes to the text of these SIP regulations to clarify their requirements in light of the adoption of non-SIP permitting regulations to satisfy the requirements of 40 CFR part 70. The MDE's November 1, 2001 submittal specifically indicates that Regulations .01B., .02D., .04C.(2), .11C., and .15 regarding definitions and requirements related to part 70 Permits are not being requested for approval and incorporation into the SIP.

The amendment to Regulation .06, Volatile Organic Compounds under COMAR 26.11.06, General Emission Standards, Prohibitions, and Restrictions clarifies that the hearing required by 26.11.06.06 E(4)e satisfies the requirement for public comment or hearing under COMAR 26.11.02.09-.14.

The amendment to Regulation .02 Applicability, Determining Compliance, Reporting and General Requirements under COMAR 26.11.19, Volatile Organic Compounds from Specific Processes clarifies that upon approval of a reasonably available control technology (RACT) standard for a major stationary source of volatile organic compounds (VOCs) that does not have a permit to operate, the MDE will require the source to apply for a permit under COMAR 26.11.02.13 and will issue a permit to operate that includes the RACT requirements.

#### B. The June 1997 Amendments

On May 20, 1997, the MDE adopted revisions to Regulations .01, .06, .10, .11, .12, .14, .16 and .19 under COMAR 26.11.02 Permits, Approvals, and Registration. These amendments were effective June 16, 1997. The MDE's November 1, 2001 submittal specifically states that the amendments to Regulations .16 and .19 of COMAR 26.11.02 are not being requested for approval and incorporation into the SIP. The MDE's November 1, 2001 submittal also specifically states that the definition of the term "acid rain source" found at COMAR 26.11.02.01B(1) is not being requested for SIP approval.

The amendment to .01, Definitions clarifies the definition of the term "complete application" at paragraph .01B(13). The amendment to Regulation .06, Denial of Applications for State Permits and Approvals corrects typographical errors and omissions that occurred when COMAR 26.11.02 was reorganized.

The amendments to Regulation .10, Sources Exempt for Permits to Construct and Approvals provide that the following sources may construct or modify without first obtaining, and having in current effect, a permit to construct:

(1) Commercial bakery ovens with a rated heat input capacity of less than 2 MMBtu/hour;

(2) Breweries with an annual beer production less than 60,000 barrels;

(3) Municipal solid waste landfills that have a design capacity of less than 500,000 tons of municipal solid waste and that are not major sources;

(4) Gasoline storage tanks with a capacity of 2000 gallons or less; and

(5) Sheet-fed letter or lithographic printers with a cylinder width less than 18 inches.

The amendments to Regulation .11, Procedures for Obtaining Permits to Construct Certain Significant Sources clarify application procedures for sources subject to COMAR 26.11.02. The amendments to Regulation .12, Procedures for Obtaining Approvals of PSD Sources and NSR Sources and Permits to Certain 100-Ton Sources clarify those provisions of COMAR 26.11.02 that apply to these sources and state that a permit to construct a lead source is required for sources that will discharge 5 tons per year or more of lead or lead compounds measured in elemental lead. The amendments to Regulation .14, Procedures for Obtaining State Permit to Operate and Permits to Construct Certain Sources and Permits to Construct Control Equipment on Existing Sources clarify the applicability of COMAR 26.11.02 for any source or activity not listed in Regulations .11A. or .12.

### C. The September 1997 Amendments

On August 18, 1997, the MDE adopted amendments to Regulation .10, Sources Exempt for Permits to Construct and Approvals under COMAR 26.11.02 Permits, Approvals, and Registration. These amendments were effective September 22, 1997. The amendments to Regulation .10, Sources Exempt for Permits to Construct and Approvals lowers the size of the stationary internal combustion engine (ICE) exempted from permit to construct requirements for sources that operate more than 2000

hours/year. The old version of the regulation exempted a stationary ICE of less than 1000 brake horsepower (HP) from the permit to construct requirements. Under the revised regulation, a stationary ICE of less than 500 HP and those between 500 and 1000 HP that operate less than 2,000 hours/year are exempted from the permit to construct requirements. For sources that install more than one ICE over a five-year period, the exemptions do not apply if the total potential to emit emissions from the engines installed over the five-year period meets or exceeds the major source threshold as defined in COMAR 26.11.02.01.C.

### D. The May 4, 1998 Amendments

On April 9, 1998, the MDE adopted amendments to Regulation .09 Sources Subject to Permits to Construct and Operate under COMAR 26.11.02, Permits, Approvals, and Registration; and to Regulations .02, Applicability, Determining Compliance, Reporting and General Requirements and Regulation .15 Paint, Resin and Adhesive Manufacturing and Adhesive Application under COMAR 26.11.19, Volatile Organic Compounds from Specific Processes. These amendments were effective May 4, 1998.

The amendments to Regulation .09, Sources Subject to Permits to Construct and Operate under COMAR 26.11.02, Permits, Approvals, and Registration corrects a mis-reference that occurred when COMAR 26.11.02 was restructured. The amendment clarifies that obtaining a Prevention of Significant Deterioration (PSD) permit or New Source Review (NSR) permit is separate from obtaining a general construction permit. Obtaining approval of a PSD or NSR permit does not relieve a person from also obtaining all permits to construct required under COMAR 26.11.02.

Although they were included in Maryland's November 1, 2001 SIP revision submittal, the MDE had also formally submitted the very same amendments to COMAR 26.11.19, Volatile Organic Compounds from Specific Processes, Regulations .02, Applicability, Determining Compliance, Reporting and General Requirements and .15, Paint, Resin and Adhesive Manufacturing and Adhesive Application, as separate formal SIP revision requests. EPA has already approved the revision to Regulation .02 on February 3, 2003 (68 FR 5228) and the revision to Regulation .15 on October 28, 1999 (64 FR 57989).

### E. The March 22, 1999 Amendments

On March 2, 1999, the MDE adopted amendments to Regulation .10, Sources Exempt for Permits to Construct and Approvals under COMAR 26.11.02, Permits, Approvals, and Registration. These amendments were effective March 22, 1999. The amendments establish a de minimus level for construction permits so that sources which emit very small amounts of air pollution do not have to obtain air quality permits to construct. In addition, the amendments clarify the exemption list of Regulation .10, Sources Exempt for Permits to Construct and Approvals under COMAR 26.11.02 to exempt space heaters below a certain size from the requirement to obtain a permit to construct.

The amended version of Regulation .10C exempts space heaters using gaseous fuels or No. 1 or No. 2 fuel oil with a heat input less than 1,000,000 Btu (1.06 gigajoules) per hour from first obtaining, and having in current effect, a permit to construct prior to construction or modification. The amended version of Regulation .10 includes a new paragraph .10X., Other Installations, which allows an installation to construct or modify or cause to be constructed or modified without first having to obtain, and having in current effect, a permit to construct if:

(1) The installation is not subject to any source-specific State or Federal emission standard;

(2) The expected uncontrolled emissions are less than 1 ton per calendar year of each pollutant for which there is a Federal ambient air quality standard or which is a Class II toxic air pollutant, as defined in COMAR 26.11.15.01B(5); and

(3) The emissions contain not more than 1 pound per day of a Class I toxic air pollutant, as defined in COMAR 26.11.15.01B(4).

### III. Final Action

EPA is approving the amendments to COMAR 26.11.02, Permits, Approvals, and Registration that were adopted from 1995 through 1999 and related amendments under COMAR 26.11.06, General Emission Standards, Prohibitions, and Restrictions, and COMAR 26.11.19, Volatile Organic Compounds from Specific Processes as submitted by MDE on November 1, 2001 as formal revisions to the Maryland SIP.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment given that these revisions

became effective in Maryland from 1995 through 1999 and do not substantially revise the already SIP-approved provisions of these regulations. 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 amendments to COMAR 26.11.02, Permits, Approvals, and Registration that were adopted from 1995 through 1999 and related amendments under COMAR 26.11.06, General Emission Standards, Prohibitions, and Restrictions, and COMAR 26.11.19, Volatile Organic Compounds from Specific Processes submitted by MDE on November 1, 2001, if adverse comments are filed. This rule will be effective on April 28, 2003 without further notice unless EPA receives adverse comment by March 31, 2003. 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. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

#### IV. Statutory and Executive Order Reviews

##### A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or

significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General

of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

##### C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 28, 2003. 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 approving amendments to COMAR 26.11.02, Permits, Approvals, and Registration that were adopted from 1995 through 1999 and related amendments under COMAR 26.11.06, General Emission Standards, Prohibitions, and Restrictions, and COMAR 26.11.19, Volatile Organic Compounds from Specific Processes as submitted by Maryland on November 1, 2001 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, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 4, 2003.

**Thomas C. Voltaggio,**

*Acting 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)(182) to read as follows:

##### § 52.1070 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(182) Revisions to the Code of Maryland Administrative Regulations (COMAR) under COMAR 26.11.02, Permits, Approvals, and Registration

that were adopted from 1995 through 1999 and related amendments under COMAR 26.11.06, General Emission Standards, Prohibitions, and Restrictions, and COMAR 26.11.19, Volatile Organic Compounds from Specific Processes on November 1, 2001 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of November 1, 2002 from the Maryland Department of the Environment (MDE) transmitting revisions to COMAR 26.11.02, 26.11.06 and 26.11.19.

(B) The following new provisions of COMAR 26.11.02 (Permits, Approvals and Registration), effective May 8, 1995, replacing COMAR 26.11.02.01 through 26.11.02.16, as amended effective through April 26, 1993:

(1) COMAR 26.11.02.01A; 26.11.02.01B(2), (3), (7) through (9), (11) through (14), (17) through (21), (23) through (28), (34) through (36), (38), (40), (41), (43) through (45), (47), (48), (51) through (53), and (55); and 26.11.02.01C.

(2) COMAR 26.11.02.02 (except .02D), .03, .04 (except .04C(2)), .05 through .10, .11 (except .11C), and .12 through 14.

(C) Revision to COMAR 26.11.06.06E(4)(g), effective May 8, 1995.

(D) Revision to COMAR 26.11.19.02G(3)(b), effective May 8, 1995.

(E) Revisions to COMAR 26.11.02.01B(13), .06B (introductory paragraph) and .06B(5), .10O(2), .10Q(7), .10U, .10V, .11A(1), .12A(1) and (2), .14A(1); addition of 26.11.02.10O(13) and (14), .10W, .11A(2) and .12A(3); removal of 26.11.02.14A(2)—existing .14A(3) is renumbered as .14A(2), effective June 16, 1997.

(F) Revision to COMAR 26.11.02.10E, effective September 22, 1997.

(G) Revision to COMAR 26.11.02.09C, effective May 4, 1998.

(H) Revisions to COMAR 26.11.02.10C, .10V and .10W; addition

of COMAR 26.11.02.10X, effective March 22, 1999.

(ii) Additional Material.—Remainder of the State submittal pertaining to the revisions listed in paragraph (c)(182)(i) of this section.

**§ 52.1113 [Reserved]**

3. Section 52.1113 is reserved.

[FR Doc. 03-4510 Filed 2-26-03; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[CA 269-0382a; FRL-7451-6]

**Revisions to the California State Implementation Plan, Mojave Desert Air Quality Management District**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the Mojave Desert Air Quality Management District (MDAQMD) portion of the California State Implementation Plan (SIP). These revisions concern Oxides of Nitrogen (NO<sub>x</sub>) emissions from Portland cement kilns. We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** This rule is effective on April 28, 2003 without further notice, unless EPA receives adverse comments by March 31, 2003. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

**ADDRESSES:** Mail comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support document (TSD) at

our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B-102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Mojave Desert Air Quality Management District, 14306 Park Avenue, Victorville, California 92392.

A copy of the rule may also be available via the Internet at <http://www.arb.ca.gov/drdb/drdbtxt.htm>. Please be advised that this is not an EPA website and may not contain the same version of the rule that was submitted to EPA.

**FOR FURTHER INFORMATION CONTACT:** Charnjit Bhullar, EPA Region IX, (415) 972-3960.

**SUPPLEMENTARY INFORMATION:** Throughout this document, "we," "us" and "our" refer to EPA.

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**I. The State's Submittal**

*A. What Rule Did the State Submit?*

Table 1 lists the rule we are approving with the date that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

| Local agency | Rule # | Rule title                  | Adopted | Submitted |
|--------------|--------|-----------------------------|---------|-----------|
| MDAQMD ..... | 1161   | Portland Cement Kilns ..... | 3/25/02 | 6/18/02   |

On July 23, 2002, this rule submittal was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

*B. Are There Other Versions of This Rule?*

MDAQMD adopted an earlier version of this rule on October 22, 2001, and CARB submitted it to us on November 8, 2001. We published approval of this

previous version of Rule 1161 into the SIP on January 2, 2002 (67 FR 19).

*C. What Is the Purpose of the Submitted Rule Revisions?*

Rule 1161 applies to cement manufacturing operations within the Federal ozone non-attainment area