Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards is inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded under the Instruction that there are no factors in this case that limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, under figure 2–1, paragraph (34)(g) of the Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation because it is a regulation establishing a safety zone.

A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES**.

List of Subjects 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T14–173 to read as follows:

§ 165.T14–173 Safety Zone; Agat Bay and adjacent waters, GU.

(a) *Location.* The following areas, within the Guam Captain of the Port Zone (See 33 CFR 3.70–15), from the surface of the water to the ocean floor, are a safety zone:

(1) All waters bounded by a circle with a 300-meter radius on the surface and a 2750-meter radius underwater, centered at 13°23′42″ N and 144°35′00″ E (NAD 1983);

(2) All waters bounded by a circle with a 300-meter radius on the surface and a 2750-meter radius underwater, centered at 13°27′42″ N and 144°38′30″ E.

(b) *Effective Dates.* This rule is effective beginning September 15, 2008, through September 17, 2008, daily between the hours of 8 a.m. and 11:59 p.m.

(c) *Enforcement Period.* This rule will be enforced from 8 a.m. through 11:59 p.m., each day, from September 15, 2008, through September 17, 2008.

(d) *Regulations.* The general regulations governing safety zones contained in 33 CFR 165.23 apply. Entry into, transit through or anchoring within this zone is prohibited unless authorized by the Captain of the Port or a designated representative thereof.

(e) *Enforcement.* Any Coast Guard commissioned, warrant, or petty officer, and any other Captain of the Port representative permitted by law, may enforce this temporary safety zone.

(f) *Waiver.* The Captain of the Port may waive any of the requirements of this rule for any person, vessel, or class of vessel upon finding that application of the safety zone is unnecessary or impractical for the purpose of maritime security.

Dated: September 3, 2008.

T. Sparks,

Captain, U.S. Coast Guard, Captain of the Port Guam.

[FR Doc. E8–21549 Filed 9–11–08; 4:15 pm]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2005–MD–0013; FRL–8714–5]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Amendments to the Control of Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Maryland Department of the Environment (MDE). This revision pertains to amendments to the regulations for the control of incinerators. This action is being taken under the Clean Air Act (CAA or the Act).

DATES: *Effective Date:* This final rule is effective on October 15, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2005–MD–0013. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy 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. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers, (215) 814–2308, or by e-mail at *powers.marilyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On January 31, 2006 (70 FR 5033), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. The NPR proposed approval of the amendments to regulations .01 and .05 under COMAR 26.11.08 Control of Incinerators. The formal SIP revision was submitted by the MDE on October 31, 2005 (#05–06). Other specific requirements of the SIP revision and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. On March 2, 2006, EPA received an adverse comment on its January 31, 2006 NPR. A summary of the comment submitted and EPA's response is provided in Section II of this document.

II. Summary of Public Comments and EPA Responses

Comment: A commenter submitted test results from the following pollutants: visible emissions, particulate matter, carbon monoxide, nitrogen oxides, sulfur dioxide, hydrogen chloride, metals (cadmium, mercury, and lead), dioxins, and furans concerning human and animal crematories. The test results show that the emissions of nearly all the tested pollutants increased when the operating temperature was raised. From the test results, the commenter indicates that there is no benefit to the higher operating temperatures required in many states. The commenter indicates that the test results also demonstrate that crematories are capable of low emissions without the use of additional control equipment.

Response: This rulemaking is limited to the amendments of .01 and .05 under COMAR 26.11.08 Control of Incinerators. These amendments define the term ''crematory'' and clarify that crematories are subject to the 0.1 grain loading particulate matter requirement. This rulemaking does not address visible emissions or emissions of carbon monoxide, nitrogen oxides, sulfur dioxide, hydrogen chloride, metals, dioxins, and furans. Comments regarding emissions of these pollutants are not relevant to this rulemaking. EPA is required to respond only to comments relevant to the rulemaking. *See,* e.g., *Whitman* v. *American Trucking Ass'n.,* 531 U.S. 457, 471 (2001). To the extent that the comment addresses a pollutant relevant to this rulemaking, such as particulate matter, the commenter appears to be challenging the State's decision to regulate crematories in the particular manner it has chosen. The CAA is based upon ''cooperative federalism,'' which contemplates that each State will develop its own SIP, and that States retain a large degree of flexibility in choosing which sources to control and to what degree. EPA must approve a State's plan if it meets the minimum requirements of the CAA. *Union Electric Co.* v. *EPA,* 427 U.S. 246, 264–266 (1976). The comment therefore presents no basis for EPA disapproving the proposed SIP revision.

III. Final Action

EPA is approving Maryland's SIP revision submitted on October 31, 2005. The SIP revision clarifies that crematories are subject to the particulate matter requirements of COMAR 26.11.08 by amending the definitions in section .01 and the emissions requirements in section .05.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- 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);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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 action 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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action 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 November 14, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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 a Maryland SIP revision that amends COMAR 26.11.08 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, Reporting and recordkeeping requirements.

Dated: August 29, 2008.

Donald S. Welsh,

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. In (52.1070, the table in paragraph (c) is amended by revising the entries for COMAR 10.18.08.01 and 10.18.08.05 to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE MARYLAND SIP

Code of Maryland administrative regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR § 52.1100
*	*	*	*	*
COMAR 10.18.08/26.11.08	Control of Incinerators			
10.18.08/26.11.08.01	Definitions	9/12/05	9/15/08 [Insert page number where the document begins].	Definition of "crematory" is added.
*	*	*	*	*
10.18.08/26.11.08.05	Particulate Matter	9/12/05	9/15/08 [Insert page number where the document begins].	Sections .05A(3) and .05B(2)(a) are revised.
*	*	*	*	*

* * * * *

[FR Doc. E8–21310 Filed 9–12–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2008–0333; FRL–8714–4]

Approval and Promulgation of Air Quality Implementation Plans; Virginia, Reasonably Available Control Technology (RACT) for Norfolk Southern Corporation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia removing a nitrogen oxide (NO_X) reasonably available control technology (RACT) permit from the Virginia SIP for sources located at the Norfolk Southern Railway Company—East End Shops' facility located in Roanoke, Virginia, which have permanently shut down. This action is being taken under the Clean Air Act (CAA).

DATES: *Effective Date:* This final rule is effective on October 15, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2008–0333. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy 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. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Ellen Wentworth, (215) 814–2034, or by e-mail at *wentworth.ellen@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On May 27, 2008 (73 FR 30340), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Virginia. The NPR proposed approval of the removal of a NO_X RACT permit from the Virginia SIP for sources located at the Norfolk Southern Railway Company—East End Shops' facility, in Roanoke, Virginia which have permanently shut down. The formal SIP revision was submitted by the Virginia Department of Environmental Quality (VADEQ) on February 11, 2008.

II. Summary of SIP Revision

On February 11, 2008, the Commonwealth of Virginia submitted a revision to its SIP which requested the removal of NO_X RACT permit No. 20468, issued to the Norfolk Southern Railway Company—East End Shops' facility in Roanoke, Virginia, from the Virginia SIP. Since the time of EPA's approval of the NO_X RACT requirements for NO_X RACT-subject sources at this facility (70 FR 21621, April 27, 2005), many sources, including those that had previously been subject to the NO_X RACT requirements of 9 VAC 5–40 via permit No. 20468, were permanently shut down. As a result, the VADEQ requested that EPA remove NO_X RACT permit No. 20468 from the Virginia SIP since it was no longer applicable. The SIP revision consisted of mutual shut down agreements between the VADEQ and the Norfolk Southern Railway Company—