

determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under Figure 2-1, paragraph 32(e), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found not to have a significant effect on the environment. A written "Categorical Exclusion Determination" is not required for this proposed rule.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g); section 117.255 also issued under the authority of Pub. L. 102-587, 106 Stat. 5039.

2. Section 117.723(f) is revised to read as follows:

§ 117.723 Hackensack River.

* * * * *

(f) Except as provided in paragraph (a)(1) of this section, the draw of the S46 Bridge, at mile 14.0, in Little Ferry shall open on signal after a twenty four hour advance notice is given by calling the number posted at the bridge.

* * * * *

Dated: February 5, 1999.

R.M. Larrabee,

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

[FR Doc. 99-3942 Filed 2-17-99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD27-1-6150; FRL-6303-8]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Reasonably Available Control Technology Requirements for Major Sources of Nitrogen Oxides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing conditional limited approval of a State Implementation Plan (SIP) revision submitted by the State of Maryland. This revision to Maryland's Regulations requires all major sources of nitrogen oxides (NO_x) to implement reasonably available control technology (RACT) and was submitted to comply with the NO_x RACT requirements of the Clean Air Act (the Act). Also, Maryland's regulations are being amended by adding three definitions and amending the definition for "fuel burning equipment." The intended effect of this action is to propose conditional limited approval of the Maryland NO_x RACT regulation, and also to propose full approval of the new and revised definitions submitted by the State of Maryland.

DATES: Written comments must be received on or before March 22, 1999.

ADDRESSES: Written comments may be mailed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Carolyn M. Donahue, (215) 814-2095, at the above EPA Region III address, or via e-mail at donahue.carolyn@epa.gov. While information may be requested via e-mail, any comments must be submitted in writing to the EPA Region III address above.

SUPPLEMENTARY INFORMATION:

I. Background

On July 11, 1995, the Maryland Department of the Environment (MDE)

submitted a revision to its State Implementation Plan (SIP) for the control of NO_x emissions from major sources. The revision consisted of a new version of Code of Maryland Regulations (COMAR) Title 26, Subtitle 11, Chapter 09 "Control of Fuel Burning Equipment and Stationary Internal Combustion Engines," Regulation 26.11.09.08 "Control of NO_x Emissions from Major Stationary Sources," which repealed and replaced the existing version of COMAR 26.11.09.08 (hereafter Regulation .08). The new Regulation .08 requires major NO_x sources in ozone nonattainment areas classified as moderate and above and/or located in the Ozone Transport Region (OTR) to comply with RACT requirements by May 31, 1995. Section B of COMAR 26.11.09.01 "Definitions," has been amended to include definitions for the terms "annual combustion analysis," "space heater" and "system" used in Regulation .08. Also, the definition for "fuel burning equipment" has been expanded to include stationary internal combustion engines and stationary combustion turbines.

Section 182 of the Act defines a major NO_x source as one that emits or has the potential to emit 25 or more tons of NO_x per year (TPY) in any ozone nonattainment area classified as severe, or 50 or more TPY located in any ozone nonattainment area classified as serious. For any area in the OTR classified as attainment or marginal nonattainment, §§ 182 and 184 of the Act define a major stationary source of NO_x as one that emits or has the potential to emit 100 or more TPY. Section 182 requires that RACT on major stationary sources of NO_x be implemented by no later than May 31, 1995.

The major source size is determined by its location, the classification of that area, and whether it is located in the OTR, which is established by the Act. The Baltimore nonattainment area and Cecil County are classified as severe nonattainment areas. Calvert, Charles, Frederick, Montgomery and Prince George's Counties are classified as serious ozone nonattainment areas. The remaining counties in Maryland are classified as marginal or in attainment but are located in the OTR and therefore are treated as if they are classified as moderate nonattainment areas.

II. Summary of Maryland's SIP Revision

Maryland submitted this SIP revision, establishing definitions and standards for operation of major NO_x sources, on June 8, 1993, and submitted two sets of amendments on July 11, 1995. Maryland

adopted the new Regulation .08 on April 13, 1993. Regulation .08 became effective on May 10, 1993. Maryland adopted the first set of amendments on May 24, 1994. These amendments became effective June 20, 1994. Maryland adopted the second set of amendments on April 13, 1995. The second set of amendments became effective on May 8, 1995.

COMAR 26.11.09.01 Definitions

COMAR 26.11.09.01, "Definitions," has been revised to add the terms "annual combustion analysis," "space heater," and "system" which are used in Chapter 09, "Control of Fuel Burning Equipment and Stationary Internal Combustion Engines." Also, the definition for "fuel burning equipment" has been expanded to include stationary internal combustion engines and stationary combustion turbines.

COMAR 26.11.09.08 Control of NO_x Emissions From Major Stationary Sources

COMAR 26.11.09.08.A Applicability

Section A establishes the applicability of this regulation to owners or operators of an installation that is located at a premises that has a total potential to emit: 25 or more TPY in Baltimore City, Anne Arundel, Baltimore, Carroll, Harford, Howard Counties (the Baltimore severe nonattainment area) and Cecil County (part of the Philadelphia-Wilmington-Trenton severe nonattainment area), 50 or more TPY in Calvert, Charles, Frederick, Montgomery, and Prince George's Counties (the Maryland portion of the Washington, DC serious nonattainment area), or 100 or more TPY in Allegany, Caroline, Dorchester, Garrett, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Washington, Wicomico, or Worcester Counties.

Sections B through G of Regulation .08 apply to an owner or operator of a major NO_x source installation, except for those sources covered under §§ H and J, that meets the NO_x emission standards in § C of this regulation or is required to submit a RACT determination to MDE. Section H of this regulation applies to owners or operators of a space heater, which is defined in COMAR 26.11.09.01 as fuel burning equipment that consumes more than 60% of its annual fuel use between October 31 of one year and March 31 of the next. Section J applies to an owner or operator of fuel burning equipment with a rated heat input capacity of 100 million British thermal units (MMBtu) per hour or less. Sources subject to § H are not subject to § J. Except for a source

or modification which is subject to new source review and/or prevention of significant deterioration (NSR/PSD) and, therefore, subject to lowest achievable emission rate (LAER) and/or best available control technology (BACT) requirements, a person subject to this regulation may not construct a new or replace an existing NO_x source after May 8, 1995, unless the source meets RACT as determined by MDE and approved by EPA.

COMAR 26.11.09.08.B NO_x Control Requirements

All major sources of NO_x, except those provided for in §§ H and J, are required to notify MDE that each installation will comply by meeting the emission standards of § C, or submit a proposal with technical and economic support documentation for a case-by-case RACT determination and a schedule to implement RACT no later than May 31, 1995. In cases where the owner elects to comply with the presumptive limits of § C, the owner or operator is required to submit: (1) Stack testing or continuous emission monitoring (CEM) data to support that the source or unit already is in compliance with the applicable limit, or (2) a plan for compliance. The plan for compliance must include the control method, equipment purchase dates, construction dates and a compliance date not later than May 31, 1995.

Notification to MDE and submittal of a RACT proposal and schedule must have been made no later than July 1, 1993 by persons who own electric generating plant equipment subject to Title IV, Phase I of the Act. RACT proposals must include: (1) Identification of combustion modifications, fuel conversions, or other modifications to be implemented, (2) data and costs to support the proposed RACT standard, (3) a demonstration that shows why the proposed standard is RACT for the particular installation, the expected emissions reduction, and any available emissions data for existing operating installations, and (4) baseline NO_x emissions for the installation established with CEM data or stack test data taken during steady state operation. By February 15, 1994, owners of sources subject to this regulation, other than electric generating plant equipment subject to Title IV, must have submitted a RACT proposal that identified combustion modifications, fuel conversions, or other equipment or process modifications or adjustments to reduce NO_x emissions, and data that support the proposed RACT standard.

COMAR 26.11.09.08.C Emission Standards

Maryland's proposed NO_x RACT regulation contains presumptive emission limits for major stationary sources of NO_x as follows: for gas fired wall and tangential units, 0.2 pounds of NO_x per million British thermal units (lbs/MMBtu) input; for oil/gas fired wall and tangential units, 0.25 lbs/MMBtu input; for oil/gas fired cyclones, 0.43 lbs/MMBtu input; for dry bottom coal fired wall and tangential units, 0.38 lbs/MMBtu input; for wet bottom coal fired wall and tangential units, 1.0 lb/MMBtu input; and for wet bottom coal fired cyclones, 0.55 lbs/MMBtu. All emission limits are required to be met over a 24-hour averaging period.

EPA is proposing to approve the above emission limits as RACT for those categories of boilers and steam generators referenced in § C(2). The 24 hour-averaging period for determining compliance is consistent with protection of the short-term ozone NAAQS. EPA policy for NO_x RACT for four categories of utility boilers (wall- and tangential-fired—gas/oil, coal dry bottom), were set in the "NO_x Supplement to the General Preamble for Implementation of Title I" ("NO_x Supplement") (57 FR 55620, November 25, 1992). Emission limits for other source categories are RACT for NO_x if comparable to RACT for these certain utility boilers. Comparability is based upon emission reduction, cost and cost-effectiveness. EPA has determined that the limits set in this regulation for these same four categories of utility boilers as in the NO_x Supplement meet the requirement for RACT.

COMAR 26.11.09.08.D Emission Reduction Averaging (RACT Bubbles)

Section D allows sources to use an alternative method of compliance by achieving an overall source or system-wide NO_x emission reduction that is equivalent to reductions achieved had RACT been implemented on an individual installation basis. Section D permits MDE to allow the inclusion of sources outside Maryland in an emissions trade consistent with the policies of the EPA and the Ozone Transport Commission. A source proposing to average NO_x emissions must maintain records for at least 3 years to demonstrate continuous compliance with this regulation. Records must include daily hours of operation, total daily production or fuel use, and an estimate of the total daily emissions from the premises or system. Also, a RACT proposal that involves fuel switching must be consistent with

fuel switching policies established by EPA. EPA's fuel switching policy allows major coal fired facilities to switch to burning natural gas during the ozone season (the summer months) and switch back to coal for the rest of the year, provided that annual standards are met.

COMAR 26.11.09.08.E & F Compliance Date and Reporting Requirements

Major NO_x source owners or operators must have complied with RACT standards by May 31, 1995. Compliance with RACT requirements should be based on CEM data collected in accordance with COMAR 26.11.09.10 and .11, which are consistent with EPA approved methods. If the installation is stack tested, Method 7 must be used, and the results must be submitted to MDE within 45 days after test completion.

COMAR 26.11.09.08.G Establishing Enforceable RACT Standards

RACT for NO_x emissions must be established by MDE as a condition to a permit or order, or in a regulation promulgated by MDE. This provision requires that MDE submit each RACT determination to EPA for approval as a revision to the Maryland SIP.

COMAR 26.11.09.08.H Requirements for Space Heaters

Section H establishes that a space heater owner or operator must submit to MDE a list of the affected installations at each premises, the types of fuel used, the monthly fuel consumption for each installation for each calendar year beginning with 1989, and fuel use summaries demonstrating that the 60% requirement, as explained in the definition of space heater, is met. The owner or operator also must develop an operating and maintenance plan to minimize NO_x emissions, based on equipment vendors recommendations and subject to review by MDE, and must have implemented this plan by November 15, 1994. Operators are required to attend in-state training programs on NO_x reductions at least once every three years, and the owner must maintain a record of training attendance for each operator for no less than 6 years. These records should be made available to MDE upon request. EPA interprets "an operation and maintenance plan to minimize NO_x emissions based on recommendations from equipment vendors," as stated in § H(b), to mean only technically supportable operation and maintenance requirements that result in the equipment being operated, maintained and repaired in a manner that achieves the minimization of NO_x emissions.

Any fuel burning equipment that at any time after October 1, 1989 has not satisfied the conditions for a space heater, specified in COMAR 26.11.09.01.B(7), is subject to RACT as determined by MDE. The owner or operator of this equipment must submit a RACT proposal to MDE for approval not later than 60 days after the date when the equipment did not qualify as a space heater. Also, a space heater owner or operator must maintain monthly fuel consumption records on site for not less than 3 years, and must make these records available to MDE upon request.

COMAR 26.11.09.08.I General Requirements

Section I states that the owner or operator of a major NO_x source must provide emissions data, perform stack tests and identify cost effective control methods at the request of MDE. After implementing RACT according to this regulation, if a major NO_x source causes actual NO_x emissions of 1 or more tons per day, the owner must submit to MDE a description of NO_x emission reduction methods. This description must outline measures to reduce NO_x emissions beyond the level achieved by implementing RACT according to this regulation, and must consist of methods to reduce NO_x emissions by 25, 50, and 75% from base year emissions beyond what was required by RACT in case additional NO_x reductions are determined to be necessary by MDE. Also, except as provided in § H, a person subject to this regulation must maintain annual fuel use records on site for not less than 3 years, and must make these records available to MDE upon request.

COMAR 26.11.09.08.J Requirements for Fuel Burning Equipment With a Rated Heat Input Capacity of 100 MMBtu/hr or Less

Section J establishes that, by May 8, 1995, the owner or operator of fuel burning equipment with rated heat input capacity less than 100 MMBtu per hour must have submitted to MDE a list of each affected installation, the rated heat capacity of each installation, and the fuel used. Also, the monthly consumption of each fuel for each installation for calendar year 1990 through 1993, and the results of any stack tests performed must have been submitted to MDE. For installations burning coal or residual oil, this section requires the owner to have submitted to MDE a discussion of feasibility and cost of switching to gas or No. 2 fuel oil. The owner or operator must also have completed a combustion analysis by

May 15, 1995 and repeat this analysis annually, and operate the equipment at the optimum combustion level based on this analysis. From July 1, 1995 through January 1, 1996, combustion analyses were to be performed quarterly. Analysis and test results must be maintained for at least 2 years and be available to MDE and EPA upon request. Operators are also required to attend operator training on NO_x reductions sponsored by MDE, EPA or equipment vendors at least once every 3 years, and records of training program attendance must be maintained and available for at least 6 years. Based on data from the Gas Research Institute, the NO_x Implementation Workgroup, and the Council of Industrial Boiler Owners, MDE concluded that this section is acceptable as RACT for fuel burning equipment with a heat capacity of 100 MMBtu/hr or less. This is acceptable to EPA as RACT for these sources in Maryland.

III. EPA's Analysis

Emission Reduction Averaging

Section D does not specifically address most of the state program requirements established for a discretionary Economic Incentive Program (EIP) contained in 40 CFR Part 51 Subpart U. Section D therefore is not sufficient to establish a generic emissions trading program—a program under which each trading transaction does not have to be approved by EPA as a SIP revision—because among other things it does not specify procedures by which the alternative limits will be set. Such procedures must demonstrate how an emissions trading program achieves overall reductions equivalent to RACT implemented on a per unit basis. Section D is not clear whether each emissions trading plan must be submitted to EPA for approval as a SIP revision, which is required in the absence of an EPA approved generic emissions trading program. However, § D also establishes minimum record keeping requirements for sources complying through emissions trading not contained elsewhere in the Maryland SIP. Any trading plans submitted as a separate SIP revisions do not need to be authorized by any prior portion of the SIP as far as approval by EPA is concerned. As a condition of this rulemaking, Maryland must revise the trading provision in this regulation to comply with a discretionary EIP or submit all emission trading plans as individual SIP revisions.

CEM Requirements

Section F does not clearly define which sources must use CEM and which must stack test to demonstrate compliance, but the applicability and record keeping requirements described in COMAR 26.11.01.10 and .11 pertain to this regulation. However, COMAR 26.11.01.11, referenced in § F to address CEM requirements, has not been submitted for inclusion in the Maryland SIP. Except for those sources in an emissions trading program which are covered under the record keeping provisions of § D, the record keeping requirements by which sources will demonstrate compliance with this regulation are not established. Maryland must either submit COMAR 26.11.01.11 to EPA for approval or revise § F in the NO_x RACT rule to clearly explain the reporting and record keeping requirements.

In a November 7, 1996 policy memo from Sally Shaver, Director, Air Quality Strategies and Standards Division of OAQPS, EPA issued guidance for approving state generic RACT regulations, like Maryland's, provided certain criteria are met. This guidance does not exempt any major source from RACT requirements but instead provides for a de minimis deferral of RACT only for the purposes of approving the state's generic RACT regulation. The de minimis deferral level is determined by using the 1990 NO_x emissions, excluding the utility boiler NO_x emissions. The remaining 1990 non-utility boiler emissions are then compared with the amount of non-utility NO_x emissions that have yet to have RACT approved into the SIP. Generally, EPA expects that all utility boiler RACTs will be approved prior to application of this de minimis deferral policy and possible conversion of the generic RACT conditional approval to full approval. EPA does not expect to defer more than 5% of the emissions calculated in this manner in order to fully approve Maryland's generic NO_x RACT regulation. In accordance with the November 1996 policy, EPA is requiring that all utility boiler RACT determinations be approved by EPA and all but a de minimis level of non-utility boiler RACT determinations be approved into the SIP before the limited approval can be converted to full approval. Full approval of a generic RACT regulation under this policy does not change the State's statutory obligation to implement RACT for all major sources. No major NO_x source is being exempted from RACT requirements through this policy or today's rulemaking.

Because EPA has not received SIP revisions of source-specific RACT determinations for all major sources of NO_x subject to RACT under the Act, EPA can at best, according to the November 7, 1996 policy memorandum, propose conditional limited approval of the NO_x RACT generic rule. In support of this proposed rulemaking, the State committed in a letter dated October 29, 1998 to submit, as SIP revisions, RACT determinations for all sources subject to NO_x RACT within 12 months of EPA's final conditional approval of the generic rule.

IV. Proposed Action

Because of the deficiencies discussed above, EPA cannot grant full approval of Maryland's NO_x RACT rule. EPA is proposing conditional limited approval of COMAR 26.11.09.08 "Control of NO_x Emissions from Major Stationary Sources," and is proposing full approval of COMAR 26.11.09.01 "Definitions" which were both submitted on June 8, 1993 with amendments submitted on July 11, 1995 as revisions to the Maryland SIP.

Terms of and Rationale for Conditional Approval

EPA cannot grant full approval of Maryland's NO_x RACT rule because not every major NO_x source is covered by the presumptive limits in § C or RACT provisions in §§ H and J. Maryland has the option to submit individual RACT determinations as SIP revisions, thus the RACT rule will not be approvable until all of its components are approvable. Therefore, EPA is proposing conditional approval of Maryland's NO_x RACT regulations, based on the State's commitment to submit for approval into the SIP, the case-by-case RACT proposals for all sources subject to RACT requirements currently known to MDE. Maryland submitted this commitment in a letter to EPA, dated October 29, 1998.

To fulfill the condition of this approval the State of Maryland must, by no later than 12 months after the effective date of EPA's final conditional approval of the generic NO_x RACT regulation:

1. Certify that it has submitted case-by-case RACT SIPs for all sources subject to the RACT requirements currently known to the Department, or demonstrate that the emissions from any remaining subject sources represent a de minimis level of emissions (as described above);
2. Either submit COMAR 26.11.01.11 to EPA for approval, or revise § F to clearly explain the reporting and record

keeping requirements in COMAR 26.11.09.08;

3. Change § D to unambiguously require all emissions trading plans and proposals be submitted as individual SIP revisions, or meet all the requirements of a discretionary EIP.

Once EPA has determined that the State has met these conditions, EPA shall remove the conditional nature of its approval and the Maryland NO_x regulation SIP revision will, at that time, retain limited approval status. Should the State fail to meet the conditions specified above, the final conditional limited approval of the Maryland NO_x RACT regulation SIP revision shall convert to a disapproval.

Rationale for Also Proposing Limited Approval

While EPA does not believe that the Maryland generic NO_x RACT regulation satisfies the Act's RACT requirements as discussed previously in this notice, EPA is also proposing limited approval of the Maryland generic RACT regulation on the basis that it strengthens the Maryland SIP. After Maryland has fulfilled the conditions of this rule and once EPA has approved all of the case-by-case RACT proposals as SIP revisions, the limited approval will convert to full approval.

EPA is proposing conditional limited approval of the Maryland NO_x RACT regulation, COMAR 26.11.09.08. EPA is proposing conditional limited approval of this SIP revision based upon the commitment made by Maryland to submit all the case-by-case RACT proposals for sources it is currently aware of as being subject to the major source RACT regulations. In a letter dated October 29, 1998, Maryland committed to submitting all RACT determinations for the major NO_x sources in the State, submitting COMAR 26.11.01.11, and revising the trading rule in COMAR 26.11.09.08.D.

V. Administrative Requirements

A. Executive Orders 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by

consulting. E.O. 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is "economically significant," as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a

description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule will not have a significant impact on a substantial number of small entities because conditional and limited approvals of SIP submittals under sections 110 and 301, and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, EPA certifies that this

proposed disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new federal requirement.

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed approval action of Maryland's NO_x RACT rule does not include a Federal mandate that may result in estimated annual costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and record keeping requirements.

Authority: 42 U.S.C. 7401-7671q.

Dated: February 9, 1999.

W. Michael McCabe,

Regional Administrator, Region III.

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BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL-6301-7]

RIN 2060-AG12

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.