

Dated: October 12, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

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

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD107-3059; FRL-6888-1]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to grant limited approval of a State Implementation Plan (SIP) revision submitted by the State of Maryland pursuant to the requirements of the Clean Air Act (CAA). This revision requires major new sources and major modifications to existing sources of volatile organic compounds (VOCs), and nitrogen oxides (NO_x) to meet certain new source review permitting requirements if they are proposing to locate or are located within the State of Maryland. These NSR requirements apply not only in those portions of Maryland designated as ozone nonattainment areas, but throughout the State of Maryland as the entire state is located within the Ozone Transport Region (OTR). The intended effect of this action is two-fold. First, it withdraws the rulemaking action proposing limited approval/disapproval of Maryland's NSR regulations published by EPA on May 25, 1994. Secondly, it proposes limited approval of Maryland's NSR regulations as Maryland has amended those regulations to correct the deficiencies noted in EPA's May 25, 1994 proposal.

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

ADDRESSES: Comments may be mailed to Makeba Morris, Chief, Permits and Technical Assessment Branch, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103, and at the Maryland Department of the

Environment, 2500 Broening Highway, Baltimore, Maryland 21224.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

I. New Source Requirements and Maryland's SIP Revision

The CAA requires that all states submit revisions to their State Implementation plans (SIPs) requiring major new and major modified sources to meet certain new source review (NSR) requirements if they are located (or are proposing to locate) in areas designated nonattainment for a pollutant, or, in the case of VOC or NO_x sources, in the OTR. This requirement for a SIP revision applies to Maryland, which currently has areas designated nonattainment for ozone (a pollutant formed under certain meteorological conditions from precursor VOC and NO_x emissions). Additionally, the entire State of Maryland is located within the OTR.

On June 8, 1993, Maryland submitted a revision to its SIP requiring new major sources and major modifications of VOCs and NO_x to meet certain NSR requirements. On May 25, 1994, EPA proposed limited approval/disapproval of that SIP revision (59 FR 26994). At that time, EPA identified a number of deficiencies with Maryland's NSR regulations which the state would have to correct in order for EPA to grant final approval of its NSR regulations. The only comments submitted pursuant to EPA's May 25, 1994 proposal came from the State of Maryland.

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

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

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

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

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

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

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

major sources or major modifications in a nonattainment area for which EPA has not approved an attainment plan to take credit for shutdowns or curtailments which occurred prior to the date they filed their permit application, Maryland's NSR regulation appears not to conform with the existing EPA prohibition on the use of pre-application shutdown or curtailment credits in nonattainment areas for which EPA has not approved an attainment plan. This prohibition is found at 40 CFR 51.165(a)(3)(ii)(C)(2).

On July 23, 1996, EPA published in the **Federal Register** a comprehensive rulemaking which proposed significant changes to the current NSR rules. This proposed rulemaking is hereinafter referred to as the "NSR Reform Rulemaking." See 61 FR 38250. The NSR Reform Rulemaking proposes to revise regulations for the approval and promulgation of SIPs and the requirements for preparation, adoption, and submittal of implementation plans governing the NSR programs mandated by parts C and D of Title I of the CAA. Specifically, section VII. A. of EPA's NSR Reform Rulemaking, entitled "Emissions Credits Resulting From Source Shutdowns and Curtailments," proposes to eliminate the current restrictions on crediting of emissions reductions from source shutdowns and curtailments that occurred after 1990. In the NSR Reform Rulemaking, EPA proposes two different alternatives for eliminating the prior shutdown prohibition. The second of these alternatives, entitled "Shutdown Alternative 2," generally lifts the current offset restriction applicable to emissions reductions from source shutdowns and source curtailments for all nonattainment areas and all pollutants where such reductions occur after the base year of the emissions inventory used (or to be used) to meet the applicable provisions of part D of the CAA. See proposed section 51.165(a)(3)(ii)(C)(5), Alternative 2, 61 FR 38314. Under this alternative, states could allow emissions reductions from source shutdowns or curtailments to be used as offsets in all nonattainment areas and for all pollutants provided such reductions occurred after the base year of the emissions inventory used by the state to meet the applicable provisions of part D of the CAA. As explained above, Maryland's NSR rule allows sources to take credit for emissions reductions from shutdowns or curtailments of production or operating hours which occurred after January 1, 1991. This is consistent with Alternative 2 of EPA's NSR Reform

Rulemaking, which credits only those emissions reductions from source shutdowns and curtailments occurring after 1990, i.e., the base year of the emissions inventory used to meet the applicable provisions of part D of the CAA. Thus, EPA believes that Maryland's NSR regulation is generally consistent with "Shutdown Alternative 2" as described in EPA's proposed NSR Reform Rulemaking, because both Maryland's rule and Alternative 2 allow sources to take credit only from emission reductions or curtailments occurring after January 1, 1991. Because Maryland's NSR regulation is generally consistent with Alternative 2 of EPA's proposed NSR Reform Rulemaking (as discussed above), and because approval of the revised version of Maryland's NSR regulation submitted on June 8, 1993 and as amended on September 25, 2000 would strengthen the SIP to be consistent with the CAA's provisions for NSR, EPA believes that Maryland's revised NSR regulation warrants limited approval. If EPA promulgates Alternative 2, this limited approval would convert to a full approval.

The alternative shutdown related provision set forth in EPA's NSR Reform Rulemaking proposal is entitled "Shutdown Alternative 1." This alternative proposes, for ozone nonattainment areas, to lift the current offset restriction applicable to emissions reductions from source shutdowns and curtailments in such areas without EPA-approved attainment demonstrations, provided the emissions reductions occur after November 15, 1990 and the area has kept current with the CAA's scheduled part D ozone nonattainment planning requirements. See proposed section 51.165(a)(3)(ii)(C)(5) and (6), Alternative 1.

EPA acknowledges that either Alternative 1 or 2 may be eventually incorporated into the final NSR Reform Rulemaking upon its final promulgation. It is also noted that while EPA is, with this rulemaking, proposing to grant limited approval of Maryland's NSR regulation based on the rule's consistency with Shutdown Alternative 2 in EPA's NSR Reform rulemaking, the state may need to amend its NSR regulation if Shutdown Alternative 1 rather than Shutdown Alternative 2 is promulgated. If Alternative 1 is promulgated, EPA would determine the status of Maryland's conformance with part D ozone planning requirements for any nonattainment area. If Maryland's SIP were not current with the part D ozone planning requirements for any nonattainment area, EPA would make a SIP call for Maryland to amend its NSR rule to conform with Alternative 1 as

provided in EPA's final NSR Reform Rulemaking.

Maryland's regulation does not state that any emission reductions must also have occurred after the base year of the emissions inventory most recently used (or to be used) to meet the applicable provisions of part D of the CAA. If an area in Maryland is designated as a new nonattainment area in the future, the baseline year of the inventory used in the attainment demonstration for that area would likely be after the January 1, 1991 baseline year used for areas designated as nonattainment at the time of the 1990 CAA amendments. Because Maryland does not state in its NSR regulation that any emission reductions must also have occurred after the base year of the emissions inventory most recently used (or to be used) to meet the applicable provisions of part D of the CAA, Maryland would have to modify its NSR rule if, in the future, Maryland is required to do a new attainment demonstration because a new area in Maryland is designated as nonattainment or the attainment demonstration for any current nonattainment area is revised to use a base year emission inventory other than 1990.

III. Proposed Action

Maryland's only amendments to its NSR regulations, as submitted on September 25, 2000, were those necessary to address the deficiencies cited by EPA in its May 25, 1994 proposal. Rather than proceed to grant final limited approval, however, given the length of time that has transpired since that proposed action, EPA believes it is prudent to withdraw the May 25, 2000 proposed limited approval/disapproval (FR 59 26994) and to re-propose limited approval of Maryland's NSR regulations.

EPA is hereby withdrawing the limited approval/disapproval action of Maryland's NSR SIP revision that was published in the **Federal Register** on May 25, 1994 (FR 59 26994). EPA is re-proposing limited approval. Such approval would strengthen the SIP for meeting the NSR requirements of the CAA. Because Maryland's NSR regulations are generally consistent with Alternative 2 of EPA's proposed NSR Reform Rulemaking (as discussed above), and because approval of the revised version of Maryland's NSR regulations submitted on June 8, 1993 and September 25, 2000 would strengthen the SIP to be consistent with the CAA's provisions for NSR, EPA believes that Maryland's revised NSR regulations warrants limited approval. If EPA promulgates Alternative 2, this

limited approval would convert to a full approval.

Written comments must be received on or before November 9, 2000. EPA calls your attention to the November 9, 2000 deadline date for submittal of comments on this proposed action to grant limited approval of this SIP revision submitted by the State of Maryland. The EPA is providing a shortened time period for comment for two reasons. As an initial matter, this revision is non-controversial and EPA does not expect comment as we proposed approval of it previously and got comments only from the State of Maryland. Maryland's recent revisions were done simply to correct the deficiencies noted in our previous proposed action. Moreover, this SIP revision is necessary for full approval of the attainment demonstration SIP for the Metropolitan Washington, D.C. ozone nonattainment area. The EPA is currently under an obligation to complete rulemaking by November 15, 2000 fully approving the attainment demonstration for the Metropolitan Washington, D.C. ozone nonattainment area or, in the alternative, proposing a Federal implementation plan.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This proposed action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). For the same reason, this proposed rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as

specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This proposed rule to grant limited approval of Maryland's NSR regulations does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Ozone, Reporting and recordkeeping requirements.

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

Dated: October 13, 2000.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 00-26903 Filed 10-18-00; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD 096-3053; FRL-6887-9]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Nitrogen Oxides Budget Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Maryland. The revision consists of amendments to Maryland's Nitrogen Oxides (NO_x) Budget Program. The revisions implement the Ozone Transport Commission's (OTC) September 27, 1994 Memorandum of Understanding (MOU) in Maryland. In accordance with the MOU, the revisions implement the Maryland portion of a regional NO_x cap and trade program that significantly reduces NO_x emissions generated within the Ozone Transport Region (OTR). EPA is approving these revisions in accordance with the requirements of the Clean Air Act.

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

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

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

SUPPLEMENTARY INFORMATION:

Background

On August 28, 1998, the Maryland Department of the Environment (MDE) submitted a revision to its SIP. The revision to the SIP includes the adoption of new sections .01-.14 under a new chapter, COMAR 26.11.27—Post RACT Requirements for NO_x Sources (Nitrogen Oxides (NO_x) Budget Program) and new sections .01-.13 under a new chapter, COMAR 26.11.28—Policies and Procedures Relating to Maryland's NO_x Budget Program. On November 16, 1999 and