



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2011-0866; FRL-9649-3]

**Approval and Promulgation of Air Quality Implementation Plans;
Maryland; Preconstruction Requirements-Prevention of Significant Deterioration and
Nonattainment New Source Review**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve several revisions to the Maryland State Implementation Plan (SIP) submitted by the Maryland Department of the Environment (MDE). These revisions pertain to preconstruction requirements under the Prevention of Significant Deterioration (PSD) and non-attainment New Source Review (NSR) programs. The proposed SIP revisions will satisfy the following required SIP elements: NSR Reform, NO_x as a precursor to ozone, PM_{2.5}, and Greenhouse Gases (GHGs). Additionally, EPA is proposing, as a separate action, to approve Maryland's submittals for purposes of meeting the infrastructure requirements of the Clean Air Act (CAA) which relate to Maryland's PSD permitting program and are necessary to implement, maintain, and enforce the 1997 8-hour ozone and PM_{2.5} National Ambient Air Quality Standards (NAAQS) and the 2006 PM_{2.5} NAAQS. This action is being taken under the CAA.

DATES: Written comments must be received on or before [insert date 30 days from date of publication].

ADDRESSES: Submit your comments, identified by Docket ID Number **EPA-R03-OAR-**

2011-0866 by one of the following methods:

A. www.regulations.gov. Follow the on-line instructions for submitting comments.

B. E-mail: cox.kathleen@epa.gov

C. Mail: **EPA-R03-OAR-2011-0866**, Kathleen Cox, Associate Director, Office of Permits and Air Toxics, Mailcode 3AP10, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. **EPA-R03-OAR-2011-0866**. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification,

EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index.

Although listed in the index, some information is not publicly available, i.e., 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 in www.regulations.gov or in hard copy 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: David Talley, (215) 814-2117, or by e-mail at talley.david@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, whenever “we,” “us,” or “our” is used, we mean EPA. On the dates described in detail below, MDE submitted revisions to its SIP for the PSD and nonattainment NSR programs.

I. Background

Today’s action proposes the simultaneous approval of three separate SIP revision requests submitted by MDE, as described below. Approval of these actions will have several significant impacts. It will incorporate for the first time, EPA’s 2002 “NSR Reform” provisions into

Maryland's non-attainment NSR and PSD programs. It will correct deficiencies identified by EPA in the March 27, 2008 Federal Register notice entitled, "Completeness Findings for Section 110(a) State Implementation Plans for the 8 hour Ozone National Ambient Air Quality Standards (1997 Ozone NAAQS)", (73 FR 16205), by regulating NOx as a precursor to ozone. It will ensure that GHGs in Maryland are regulated in a manner consistent with federal regulations. Additionally, these proposed SIP Revisions, along with previously approved SIP revisions relating to Maryland's federally enforceable PSD program, support a finding that Maryland has met its statutory obligations pursuant to CAA section 110(a)(2) which relate to CAA Title I, Part C requirements, including, but not limited to, relevant portions of sections 110(a)(2)(C), (D)(i)(II) and (J).

A. SIP Revision #07-13

On October 24, 2007 MDE submitted a SIP revision request to EPA which included amendments to Regulations .01-.03, repeal of existing Regulations .04 and .05, and the adoption of new Regulations .04 - .09 under COMAR 26.11.17, Nonattainment Provisions for Major New Sources and Major Modifications. This SIP submittal revises the previously-approved versions of these rules as approved into the Maryland SIP on February 12, 2001 for COMAR 26.11.17 Regulations .02, .04, and .05 (66 FR 9766) and September 20, 2004 for COMAR 26.11.17 Regulations .01 and .03 (69 FR 56170). These amendments were adopted by Maryland on September 18, 2007 and became effective on October 22, 2007. The State adopted these regulations in order to meet the relevant plan requirements of Title 40 of the Code of Federal Regulations (CFR) Part 51.165 and the CAA. The MDE is now seeking approval of these amendments.

B. SIP Revision #09-03

On July 31, 2009, MDE submitted a SIP revision request to EPA that consisted of the incorporation by reference of the Federal PSD requirements at 40 CFR 52.21 as codified in the July 1, 2008 edition of the CFR. The SIP revision request included amendments to the MDE Regulation .01 under COMAR 26.11.01 (General Administrative Provisions) and Regulation .14 under COMAR 26.11.06 (General Emission Standards, Prohibitions, and Restrictions). On June 23, 2011, MDE submitted a letter, retracting the part of submission #09-03 which updated the incorporation by reference date. Since originally submitting #09-03, Maryland has adopted the federal regulations as they appear in the July 1, 2009 version of the CFR (See State Submission #11-02, below). Today's action proposes approval of only that part of the submission which clarifies the definitions of "Administrator" and "reviewing authority".

This SIP submittal revises the previously-approved versions of these rules as approved into the Maryland SIP on May 28, 2002 (67 FR 36810). These amendments were adopted by Maryland on June 11, 2009 and became effective on July 16, 2009. The State adopted these regulations in order to meet the relevant plan requirements of 40 CFR 51.166 and the CAA. The MDE is now seeking approval of these amendments.

C. SIP Revision #11-02

On June 23, 2011, MDE submitted a SIP revision request to EPA that consisted of the incorporation by reference of the federal PSD requirements at 40 CFR 52.21 as codified in the July 1, 2009 edition of the CFR, as well as the incorporation of the revisions to 40 CFR 52.21 promulgated on May 13, 2010 in the Greenhouse Gas Tailoring Rule (75 FR 31514). The SIP

revision request included amendments to the MDE Regulation .01 under COMAR 26.11.01 (General Administrative Provisions), Regulations .01 and .12 under COMMAR 26.11.02 (Permits, Approvals, and Registration), and Regulation .14 under COMAR 26.11.06 (General Emission Standards, Prohibitions, and Restrictions).

This SIP submittal revises the previously-approved versions of these rules, approved as follows: COMAR 26.11.01.01 and COMAR 26.11.06.14 were adopted into the Maryland SIP on May 28, 2002 (67 FR 36810). COMAR 26.11.02.01 and .12 were adopted into the Maryland SIP on February 27, 2003 (68 FR 9012). These amendments were adopted by Maryland on April 14, 2011 and became effective on May 16, 2009. The State adopted these regulations in order to meet the relevant plan requirements of 40 CFR 51.166 and the CAA. The MDE is now seeking approval of these amendments.

II. Analysis

A. NSR REFORM

1. History

On December 31, 2002 (67 FR 80186), EPA published final rule changes to 40 CFR parts 51 and 52, regarding the CAA's PSD and Nonattainment NSR programs. On November 7, 2003 (68 FR 63021), EPA published a notice of final action on the reconsideration of the December 31, 2002, final rule changes. The December 31, 2002, and the November 7, 2003, final actions are collectively referred to as "NSR Reform." The purpose of this action is to propose to approve the SIP submittals from the State of Maryland that include State rule changes made as a result of EPA's 2002 NSR Reform Rules.

The 2002 NSR Reform Rules are part of EPA's implementation of parts C and D of title I of the CAA. Part C of title I of the CAA is the PSD program, which applies in areas that meet the NAAQS (“attainment” areas), as well as in areas for which there is insufficient information to determine whether the area meets the NAAQS (“unclassifiable” areas). Part D of title I of the CAA is the nonattainment NSR program, which applies in areas that are not in attainment of the NAAQS (“nonattainment” areas). Collectively, the PSD and nonattainment NSR programs are referred to as the “New Source Review” or NSR programs. EPA regulations implementing these programs are contained in 40 CFR 51.165, 51.166, 52.21, 52.24, and part 51, appendix S.

The CAA’s NSR programs are preconstruction review and permitting programs applicable to new and modified stationary sources of air pollutants regulated under the CAA. The NSR programs of the CAA include a combination of air quality planning and air pollution control technology program requirements. Briefly, section 109 of the CAA requires EPA to promulgate primary NAAQS to protect public health and secondary NAAQS to protect public welfare. Once EPA sets those standards, states must develop, adopt, and submit to EPA for approval a SIP that contains emissions limitations and other control measures to attain and maintain the NAAQS. Each SIP is required to contain a preconstruction review program for the construction and modification of any stationary source of air pollution to assure that the NAAQS are achieved and maintained; to protect areas of clean air; to protect air quality related values (such as visibility) in national parks and other areas; to assure that appropriate emissions controls are applied; to maximize opportunities for economic development consistent with the preservation of clean air

resources; and to ensure that any decision to increase air pollution is made only after full public consideration of the consequences of the decision.

The 2002 NSR Reform Rules made changes to five areas of the NSR programs. In summary, the 2002 Rules: (1) provided a new method for determining baseline actual emissions; (2) adopted an actual-to-projected-actual methodology for determining whether a major modification has occurred; (3) allowed major stationary sources to comply with a Plantwide Applicability Limit (PAL) to avoid having a significant emissions increase that triggers the requirements of the major NSR program; (4) provided a new applicability provision for emissions units that are designated clean units; and (5) excluded pollution control projects (PCPs) from the definition of “physical change or change in the method of operation.” On November 7, 2003 (68 FR 63021), EPA published a notice of final action on its reconsideration of the 2002 NSR Reform Rules, which added a definition for “replacement unit” and clarified an issue regarding PALs. For additional information on the 2002 NSR Reform Rules, see 67 FR 80186 (December 31, 2002), and <http://www.epa.gov/nsr>.

After the 2002 NSR Reform Rules were finalized and effective (March 3, 2003), industry, state, and environmental petitioners challenged numerous aspects of the 2002 NSR Reform Rules, along with portions of EPA’s 1980 NSR Rules (45 FR 52676, August 7, 1980). On June 24, 2005, the United States Court of Appeals for the District of Columbia (D.C. Circuit Court) issued a decision on the challenges to the 2002 NSR Reform Rules. *New York v. United States*, 413 F.3d 3 (*New York I*). In summary, the D.C. Circuit Court vacated portions of the rules pertaining to clean units and PCPs, remanded a portion of the rules regarding recordkeeping and

the term “reasonable possibility” found in 40 CFR 52.21(r)(6) and 40 CFR 51.166(r)(6), and either upheld or did not comment on the other provisions included as part of the 2002 NSR Reform Rules. On June 13, 2007 (72 FR 32526), EPA took final action to revise the 2002 NSR Reform Rules to remove from federal law all provisions pertaining to clean units and the PCP exemption that were vacated by the D.C. Circuit Court.

With regard to the remanded portions of the 2002 NSR Reform Rules related to recordkeeping, on December 21, 2007, EPA took final action to establish that a “reasonable possibility” applies where source emissions equal or exceed 50 percent of the CAA NSR significance levels for any pollutant (72 FR 72607). The “reasonable possibility” provision identifies for sources and reviewing authorities the circumstances under which a major stationary source undergoing a modification that does not trigger major NSR must keep records.

Finally, on January 19, 2010, EPA denied a petition from the Natural Resources Defense Council (NRDC) and Sierra Club requesting EPA to reconsider and stay the Wisconsin Department of Natural Resources SIP revision that incorporated EPA’s New Source Review Reforms of 2002. Petitioners submitted comments arguing that these NSR Reform provisions were “backsliding”, and thus prohibited under CAA sections 110(l) and 193. EPA approved the Wisconsin SIP revisions and addressed Petitioners’ arguments about backsliding by (1) noting that the provisions had been upheld by the *New York I* court, (2) that the general analysis that EPA had done to support the 2002 rule supported NSR Reform in Wisconsin, and (3) Petitioners had not provided any information or arguments demonstrating that the general analysis did not apply in Wisconsin, and that information in the record countered Petitioners’ specific arguments that the

revisions would be backsliding. Additionally, in response to comments, EPA performed an analysis specific to Wisconsin to examine the impacts of applying reform in that State. Our findings were consistent with those of the supplementary environmental analysis (SEA) for the 2002 Reform Rule (neutral).

NRDC v. Jackson: On June 16, 2011, the U.S. Court of Appeals for the Seventh Circuit (Seventh Circuit) denied the petitions for review filed by NRDC and Sierra Club challenging EPA's approval of the 2002 NSR Reform provisions into the Wisconsin SIP. The primary issue addressed in the opinion was whether EPA's approval of Wisconsin's NSR SIP was backsliding prohibited by CAA sections 110(l) and 193. The Court held that EPA's decision was not contrary to these provisions. First, the Court found that Petitioners' arguments were a repeat of the arguments that they had made and lost in *New York I*. Second, the Court held that the general analysis that supported the NSR Reform provisions when they were challenged after promulgation "supply substantial evidence for the EPA's decision [with respect to the Wisconsin SIP] and show that it is neither arbitrary nor capricious." But, the Court did note that some states have implemented the NSR Reform provisions and that the experience in those states might support or refute EPA's conclusions and that "[a]t some point, preferring predictions over facts is no longer rational."

2. Analysis

The 2002 NSR Reform Rules required that state agencies adopt and submit revisions to their SIP permitting programs implementing the minimum program elements of the 2002 NSR Reform

Rules no later than January 2, 2006 (consistent with changes to 40 CFR 51.166(a)(6)(i), state agencies are now required to adopt and submit SIP revisions within three years after new amendments are published in the Federal Register). State agencies may meet the requirements of 40 CFR Part 51 and the 2002 NSR Reform Rules with different but equivalent regulations. For the purposes of PSD, Maryland has incorporated by reference 40 CFR 52.21. For non-attainment NSR, the State has adopted regulations that in most respects track the federal rules. The proposed SIP revisions include only those provisions which were upheld by the D.C. Circuit in 2005, and reaffirmed in the Seventh Circuit's denial of the petition to reconsider EPA's approval of NSR Reform into Wisconsin's SIP (*NRDC v. Jackson*).

With respect to Maryland's nonattainment NSR rules, a line-by-line comparison indicates that they vary from the federal 2002 NSR Reform rules in insignificant ways. For instance, the State's definition of "baseline actual emissions" for sources other than electric steam generating facilities has a five-year presumptive "look-back" period, but allows a facility to request up to a 10 year look-back period if it is more representative of actual source operations. In addition, PALs are limited to a five year effective date, rather than ten years as allowed in the federal rules. As noted above, states may have different but equivalent rules and in this regard, it is clear that Maryland's nonattainment NSR rules contain the basic elements for implementing NSR reform.

Section 110(l) of the CAA prohibits the approval of a SIP revision which would interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the CAA. EPA has determined that approval of the proposed revisions

to COMAR 26.11.17 and the incorporation of 40 CFR 52.21 will not violate section 110(l). The inherent checks and balances afforded by the CAA have been maintained, including the independent obligation for attainment of the NAAQS. Nevertheless, the Seventh Circuit, in upholding EPA's approval of the Wisconsin NSR SIP rules, cautioned that predictions made when these rules were promulgated should no longer be relied upon to demonstrate that NSR Reform is not a relaxation of the SIP. In fact, the proposed regulations have been in effect in Maryland since 2007, and several states, including Georgia, New York, and North Carolina have had the NSR Reform regulations approved into their SIPs with no known link between reform and a decrease in air quality or an interference with reasonable further progress. This is not unexpected given the limited universe of affected sources. NSR Reform only affects permitting of modifications to existing sources, and more specifically, modifications to existing emissions units. Any growth occurring from new, greenfield sites would be controlled and permitted the same both pre- and post-reform. Therefore, any concerns about NSR Reform would be related to unregulated growth from existing major sources. In the specific case of Maryland, the State maintains a robust minor NSR program that specifically regulates minor changes to major stationary sources. So while a facility may escape the requirements of major NSR, they do not escape the requirement to obtain a pre-construction permit that includes the requirement to monitor emissions after a change and may also include an air quality impact analysis. Finally, Maryland's demonstration of reasonable further progress for nonattainment areas does not rely on this NSR rule, but on other control requirements such as Reasonably Available Control Technology (RACT).

As noted above, EPA took final action in December of 2007 to promulgate the "reasonable

possibility” provisions which had been remanded by the D.C. Circuit in 2005 in *New York I*. These are recordkeeping and reporting requirements for major stationary sources undergoing minor modifications. These requirements are included in the PSD regulations that Maryland has incorporated by reference. However, because Maryland’s proposed non-attainment regulations were effective and submitted to EPA in October of 2007, the submittal does not include the “reasonable possibility” requirements promulgated on December 21, 2007 (72 FR 72607). While these provisions are a required minimum program element, we note that in the preamble to the final rule, we acknowledge that “State and local authorities may adopt or maintain NSR program elements that have the effect of making their regulations more stringent than these rules.” (72 FR 72614). Maryland maintains a robust minor NSR program, with recording keeping and reporting requirements that are more stringent than the “reasonable possibility” requirements. As further discussed in the preamble, “Minor NSR programs by definition apply to emissions increases less than the major NSR significant level, and only activities that a State qualifies as ‘insignificant activities’ under the SIP-approved program may be excluded from review. Thus, reviewing authorities have an opportunity to review virtually all projects causing an emissions increase before construction begins. Moreover, our regulations (40 CFR 51.161) provide for public review of information submitted by owners/operators for purposes of minor NSR review. Thus, information provided for purposes of minor NSR programs is also of value in determining applicability of major NSR” (See 72 FR 72613). On December 6, 2001, MDE submitted a letter acknowledging that the SIP approved regulations under COMAR 26.11.02 fulfill the requirements of 40 CFR 51.165 (a)(6) and (a)(6)(vi). This letter is included in the docket for the proposed rulemaking.

B. NO_x as a Precursor to Ozone

This SIP submission corrects a deficiency identified by EPA in the March 27, 2008 Federal Register action entitled, “Completeness Findings for Section 110(a) State Implementation Plans for the 8-hour Ozone National Ambient Air Quality Standards (1997 Ozone NAAQS)” (73 FR 16205). EPA’s proposed approval of this SIP submission addresses Maryland’s compliance with the portion of CAA section 110(a)(2)(C) & (J) relating to the CAA’s parts C and D permit programs for the 1997 Ozone NAAQS, because this proposed approval would approve regulating NO_x as a precursor to ozone in Maryland’s SIP in accordance with the Federal Register action dated November 29, 2005 (70 FR 71612) that finalized NO_x as a precursor for ozone regulations set forth at 40 CFR 51.165 and in 40 CFR 52.21.

C. PM_{2.5}

On May 16, 2008, EPA promulgated the final “Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5})” (73 FR 28321). That action established NSR applicability for PM_{2.5} precursor pollutants, established major source thresholds and significant emissions rates for PM_{2.5} and its precursors, and laid out a road map for states to use in transitioning to addressing condensable particulate matter. By incorporating by reference the federal regulations of 40 CFR 52.21 as codified in the July 1, 2009 edition of the Code of Federal Regulations and submitting that change to EPA to be approved as a SIP revision, Maryland has met its statutory obligations for PSD under the May 16, 2008 PM_{2.5} rule.

D. Infrastructure

Section 110(a) of the CAA requires states to submit SIPs that provide for the implementation,

maintenance, and enforcement of new or revised NAAQS within three years following the promulgation of such NAAQS. EPA is proposing to make a determination that the above described submittals meet the portions of the CAA section 110(a)(2)(C), (D)(i)(II) and (J) for the 1997 8-hour ozone and PM_{2.5} NAAQS and the 2006 PM_{2.5} NAAQS which relate to Maryland's PSD permit program. A summary of EPA's review of, and rationale for, approving Maryland's submittals for purposes of meeting these statutory requirements may be found in the Technical Support Document (TSD) for this action. These proposed SIP Revisions, along with previously approved SIP Revisions relating to Maryland's federally enforceable PSD program, support a finding that Maryland has met its statutory obligations pursuant to CAA section 110(a)(2) which relate to CAA title I, part C requirements, including, but not limited to, relevant portions of sections 110(a)(2)(C), (D)(i)(II) and (J).

E. Greenhouse Gases

A detailed explanation of GHGs, climate change and the impact on health, society, and the environment is included in EPA's technical support documents (TSDs) for EPA's GHG endangerment finding final rule (Document ID No. EPA-HQ-OAR-2009-0472-11292 at www.regulations.gov), as well as the TSD for this current action.

With regard to GHGs, the proposed action on the Maryland SIP generally relates to four federal rulemaking actions. The first rulemaking is EPA's Tailoring Rule. The second rulemaking is EPA's "Action to Ensure Authority to Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call," (GHG SIP Call) proposed on September 2, 2010 (75 FR 53892). The

third rulemaking is EPA's "Action to Ensure Authority to Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan," (GHG FIP) also proposed on September 2, 2010 (75 FR 53883), which serves as a companion rulemaking to EPA's proposed GHG SIP Call. The fourth rulemaking is the "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans" 75 FR 82536 (Narrowing Rule) (December 30, 2010). A summary of each of these rulemakings is described below.

In the first rulemaking, the Tailoring Rule, EPA established appropriate GHG emission thresholds for determining the applicability of PSD requirements to GHG-emitting sources. In the second rulemaking, the GHG SIP Call, EPA proposed to find that the EPA-approved PSD programs in 13 States (not including Maryland) are substantially inadequate to meet CAA requirements because they do not appear to apply PSD requirements to GHG-emitting sources. For each of these States, EPA proposed to require the State (through a "SIP Call") to revise its SIP as necessary to correct such inadequacies. In the third rulemaking, the GHG FIP, EPA proposed a FIP to apply in any state that is unable to submit, by its deadline, a SIP revision to ensure that the state has authority to issue PSD permits for GHG-emitting sources. Because Maryland already has authority to regulate GHGs, Maryland is only seeking to revise its SIP to put in place the GHG emission thresholds for PSD applicability set forth in EPA's Tailoring Rule, thereby ensuring that smaller GHG sources emitting less than these thresholds are not subject to permitting requirements.

In the Narrowing Rule, EPA limited its approval of those states' programs which had the authority to regulate GHG's, but lacked a vehicle to limit applicability to the higher thresholds established by the Tailoring Rule. Maryland was one of the states impacted by the Narrowing Rule. With the regulations submitted in the proposed SIP revision, Maryland has adopted EPA's tailoring approach. These changes to Maryland's regulations are also consistent with section 110 of the CAA because they are incorporating GHGs for regulation in the Maryland SIP.

A complete overview of GHGs and GHG-emitting sources, the CAA PSD program, minimum SIP elements for a PSD program, EPA's recent actions regarding GHG permitting, as well as the relationship between the proposed Maryland SIP revision and EPA's other national rulemakings, and EPA's analysis of Maryland's SIP revision can be found in the Technical Support Document (TSD) in the docket for this proposed rule making action.

III. Proposed Action

Pursuant to Section 110 of the Clean Air Act, EPA is proposing to approve the Maryland SIP revisions as described above. EPA has made the preliminary determination that these revisions are approvable because they conform to the CAA and EPA regulations. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA 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 CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed 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 (Public Law 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 CAA; 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 proposed rule regarding preconstruction requirements under Maryland's PSD and non-attainment NSR programs 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Greenhouse Gases, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 et seq.

Dated: March 07, 2012

W. C. Early, Acting
Regional Administrator,
Region III.

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