



This document is scheduled to be published in the Federal Register on 07/06/2015 and available online at <http://federalregister.gov/a/2015-16386>, and on FDsys.gov

6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2015-0225; FRL-9930-08-Region 3]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a January 24, 2013 State Implementation Plan (SIP) revision submitted for the State of Maryland by the Maryland Department of the Environment (MDE). This revision pertains to preconstruction permitting requirements under Maryland's minor New Source Review (NSR) program. This action is being taken under the Clean Air Act (CAA).

DATES: This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2015-0225. All documents in the docket are listed in the www.regulations.gov website. 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: David Talley, (215) 814-2117, or by e-mail at talley.david@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On April 29, 2015 (80 FR 23756), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. In the NPR, EPA proposed approval of revisions to MDE's minor NSR program. The formal SIP revision (#12-10) was submitted by MDE on behalf of the State of Maryland on January 24, 2013.

The revision consists of amendments to Regulation .09 under section 26.11.02 of the Code of Maryland Regulations (COMAR). An amendment to COMAR 26.11.01.01 inadvertently widened the universe of sources that are required to obtain a permit to construct under COMAR 26.11.02.09. The previously approved version of COMAR 26.11.02.09A(4) requires that any "National Emission Standards for Hazardous Air Pollutants Source (NESHAP Source) as defined in section 26.11.01.01..." obtain a permit to construct. The definition of NESHAP Source at COMAR 26.11.01.01B(21) was amended and simplified (specifically,

26.11.01.01B(21)(b)), effective March 5, 2012.¹ The revised definition had the unintended consequence of requiring that all sources subject to the NESHAP obtain a permit to construct, even the small emission sources which had previously been exempt under section 26.11.02.10. The proposed revision to section 26.11.02.09A(4) allows MDE to retain the exemptions for smaller sources as originally intended and already approved in the Maryland SIP. Additionally, Regulations .09A(3) and .09A(4) under section 26.11.02 were revised to clarify that electric generating stations that meet the definitions of New Source Performance Standard (NSPS) sources and NESHAP sources are exempt from MDE permitting requirements only if they receive a Certificate of Public Convenience and Necessity (CPCN) from the Maryland Public Service Commission (PSC).

II. Summary of SIP Revision

COMAR 26.11.02.09A(4) has been revised to specify that NESHAP sources "...as defined by COMAR 26.11.01.01B(21)(a)," are required to obtain a permit to construct. This corrects the unintended consequence of applying MDE permitting requirements to emission sources that would otherwise be exempt. COMAR 26.11.02.09A(6) will continue to require that all sources not explicitly exempt are required to obtain a permit to construct. Additionally, as previously discussed, Regulations .09A(3) and .09A(4) under section 26.11.02 have been revised to clarify that electric generating stations that meet the definitions of NSPS sources and NESHAP sources are exempt from permitting requirements only if they receive a CPCN from the Maryland PSC. The revisions were effective in Maryland on July 8, 2013.

¹ It should be noted that COMAR 26.11.01.01B(21) is not part of the Maryland SIP.

As was noted in the NPR, limited approval was previously granted to a Maryland SIP revision that included amendments to COMAR 26.11.02.09. *See* 77 FR 6963 (February 10, 2012). The reasons for that limited approval are unrelated to this action, and do not prevent EPA from granting full approval to amendments to section 26.11.02.09 contained in the January 24, 2013 submittal. That limited approval remains in effect.

Other specific requirements of MDE's January 24, 2013 submittal and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

III. Final Action

EPA is approving MDE's January 24, 2013 submittal as a revision to the Maryland SIP. This action is being taken in accordance with CAA section 110.

IV. Incorporation by Reference

In this rulemaking action, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the MDE rules regarding definitions and permitting requirements discussed in section II of this preamble. The EPA has made, and will continue to make, these documents generally available electronically through www.regulations.gov and/or in hard copy at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

V. Statutory and Executive Order Reviews

A. General Requirements

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 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 (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 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the Federal Register]**. 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 pertaining to Maryland's minor NSR program 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 22, 2015.

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

40 CFR part 52 is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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 entry for COMAR

26.11.02.09. The revised text reads as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS, TECHNICAL MEMORANDA, AND STATUTES 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
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
26.11.02	Permits, Approvals, and Registration			
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
26.11.02.09	Sources Subject to Permits to Construct	7/8/13	[Insert date of Federal Register publication] [Insert Federal Register citation]	.09A(3) and .09A(4) are amended. Limited approval remains in effect.
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *

* * * * *

