

Dated: March 7, 2003.

**John B. Brown III,**

*Acting Administrator.*

[FR Doc. 03-10565 Filed 4-30-03; 8:45 am]

BILLING CODE 4410-09-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[MD139-3098a; FRL-7478-1]

#### **Approval and Promulgation of Air Quality Implementation Plans; Maryland; Revisions to Regulation for Control of Fuel-Burning Equipment, Stationary Internal Combustion Engines, and Certain Fuel-Burning Installations**

**AGENCY:** Environmental Protection  
Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the Maryland State Implementation Plan (SIP). The revisions amend provisions of Maryland's regulation for Control of Fuel-Burning Equipment, Stationary Internal Combustion Engines, and Certain Fuel-Burning Installations. EPA is approving these revisions in accordance with the requirements of the Clean Air Act.

**DATES:** This rule is effective on June 30, 2003 without further notice, unless EPA receives adverse written comment by June 2, 2003. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Written comments should be mailed to Makeba Morris, Acting Chief, Air Quality Planning and Information Services 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; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; and Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland, 21230.

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

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

On November 6, 2002, the Maryland Department of the Environment (MDE) submitted a formal revision to its State Implementation Plan (SIP). The SIP revision (#02-06) consists of administrative and clarifying amendments to regulation 26.11.09 for Control of Fuel-Burning Equipment, Stationary Internal Combustion Engines, and Certain Fuel-Burning Installations, and includes the establishment of an alternative NO<sub>x</sub> emission standard for a specific subcategory of sources subject to this regulation.

##### **II. Summary of SIP Revision**

Code of Maryland Administrative Regulation (COMAR) 26.11.09 establishes emission standards for fuel burning equipment, including standards for visible emissions, particulate matter emissions and NO<sub>x</sub> emissions. The amendments to COMAR 26.11.09 effect the following changes to the regulation:

1. Visible emissions requirements in Regulations .05 were revised to remove references to the Ringlemann Smoke Chart, and in lieu of the Ringlemann number, the percent opacity corresponding to that number is now required, resulting in no change to the standard.
2. Particulate matter standards in Regulation .06 and .09 were revised to remove emission limit applicability for fuel burning equipment which burn only gas or distillate fuel. The definitions in Regulation .01 were revised to clarify the definition for gas fuels. The particulate matter standards will now apply only to residual fuel-fired equipment as defined in Regulation .01. Since the uncontrolled emissions from gas or distillate fuel-fired equipment do not exceed the particulate matter emission standards in the regulation, this revision is approvable.

3. The requirement for observation of visible emissions by a Bacharach Smoke Test in Regulation .09 was removed. Visible emissions observations in accordance with EPA-approved methods are addressed by and required under a separate regulation under COMAR.

4. Regulation .08 was amended to revise the emission standard for coal-fired units having a capacity between 100 MMBtu and 250 MMBtu. Low NO<sub>x</sub> burners were installed on three coal-fired boilers to meet requirements for Reasonably Available Control

Technology for NO<sub>x</sub> (NO<sub>x</sub> RACT). NO<sub>x</sub> RACT was completed at considerable cost, however, the emission standard of 0.5 pounds NO<sub>x</sub> per MMBtu per hour could not be achieved under normal operating conditions. Continuous emissions monitoring (CEM) data showed that NO<sub>x</sub> RACT achieves the emission standard only when operating at maximum capacity, and that during normal operations NO<sub>x</sub> is reduced to 0.65 pounds per MMBTU. Installation of additional controls would result in NO<sub>x</sub> RACT which would be well above reasonable cost effectiveness. This revision will not negatively impact Maryland's Rate of Progress plan nor its attainment demonstration for the ozone national ambient air quality standards previously submitted by the state of Maryland, and is thus approvable.

##### **III. Final Action**

EPA is approving Maryland's SIP Revision to its regulation under COMAR 26.11.09 as submitted. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on June 30, 2003 without further notice unless EPA receives adverse comment by June 2, 2003. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

##### **IV. Statutory and Executive Order Reviews**

###### *A. General Requirements*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That

Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This 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 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 approves 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 (Pub. L. 104-4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does 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). This action 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 rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (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. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### *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 rule 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**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### *C. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 30, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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 to revise the provisions to COMAR 26.11.09 may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements.

Dated: March 31, 2003.

**Donald S. Welsh,**  
*Regional Administrator, Region III.*

■ 40 CFR part 52 is amended as follows:

#### **PART 52—[AMENDED]**

■ 1. The authority citation for part 52 continues to read as follows:

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

#### **Subpart V—Maryland**

■ 2. Section 52.1070 is amended by adding paragraphs (c)(183) to read as follows:

#### **§ 52.1070 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(183) Revisions to the Maryland Regulations pertaining to Control of Fuel Burning Equipment, Stationary Internal Combustion Engines, and Certain Fuel Burning Installations, submitted on November 6, 2002 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter dated November 6, 2002 from the Maryland Department of the Environment transmitting revisions to the Maryland State Implementation Plan pertaining to amendments to COMAR 26.11.09.

(B) Revisions to COMAR 26.11.09, Control of Fuel-Burning Equipment, Stationary Internal Combustion Engines, and Certain Fuel-Burning Installations, effective November 11, 2002.

(1) Addition of COMAR 26.11.09.01B(3-1)—definition of "gas". Existing paragraph .01B(3-1) is renumbered as .01B(3-2).

(2) Revisions to COMAR 26.11.09.05A(3), .05B(2), and .05B(3).

(3) Revisions to COMAR 26.11.09.06A(1), .06A(2), and .06B(4); addition of .06A(3)(c).

(4) Revision to COMAR 26.11.09.08D (introductory paragraph) and .08D(1)(a).

(5) Revision to COMAR 26.11.09.09 by removing existing Table 1 and adding both a new Table 1 and footnotes (a), (b), and (c).

(ii) Additional Material.—Remainder of the State submittal pertaining to the revisions listed in paragraph (c)(183)(i) of this section.

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#### **ENVIRONMENTAL PROTECTION AGENCY**

#### **40 CFR Part 52**

[FL-93-200318 (a); FRL-7491-5]

#### **Approval and Promulgation of Implementation Plans, Florida: Martin Gas Sales, Inc., Variance**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The EPA is approving a revision to the Florida State Implementation Plan (SIP) submitted on