

1. The option to proceed under the 1982 regulations or under the provisions of this subpart specifically includes the option to select either the administrative appeal and review procedures of 36 CFR part 217 in effect prior to November 9, 2000, or the objection procedures of 36 CFR 219.32.

2. The Department interprets the term "initiated," as used in paragraph (b) of this section, to indicate that the agency has issued a Notice of Intent or other public notification announcing the commencement of a plan revision or amendment as provided for in the Council on Environmental Quality regulations at 40 CFR 1501.7 or in Forest Service Handbook 1909.15, Environmental Policy and Procedures Handbook, section 11.

\* \* \* \* \*

Dated: January 4, 2001.

**Dan Glickman,**  
Secretary.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[MD104-3060; FRL-6920-9]

#### Approval and Promulgation of Air Quality Implementation Plans; Maryland; Nitrogen Oxides Reduction and Trading Program

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maryland on April 27, 2000. This revision was submitted to satisfy EPA's regulation entitled, "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone," otherwise known as the "NO<sub>x</sub> SIP Call." This revision establishes and requires a nitrogen oxides (NO<sub>x</sub>) allowance trading program for large electric generating and industrial units, and reductions for cement kilns and stationary industrial combustion engines, beginning in 2003. The intended effect of this action has two purposes. EPA is approving the Maryland's NO<sub>x</sub> Reduction and Trading Program because it meets the requirements of the NO<sub>x</sub> SIP Call that will significantly reduce ozone transport in the eastern United States. In addition, EPA is approving Maryland's NO<sub>x</sub> Reduction and Trading Program because it supports the one-hour attainment demonstration plans for the Baltimore, Metropolitan Washington, D.C. and

Philadelphia-Wilmington-Trenton ozone nonattainment areas.

**EFFECTIVE DATE:** This final rule is effective on February 9, 2001.

**ADDRESSES:** 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, 401 M Street, SW, Washington, DC 20460; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

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

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On April 27, 2000, the Maryland Department of the Environment (MDE) submitted a revision to its SIP to meet the requirements of the NO<sub>x</sub> SIP Call. The revision consists of the adoption of two new chapters COMAR 26.11.29—NO<sub>x</sub> Reduction and Trading Program and COMAR 26.11.30—Policies and Procedure Relating to Maryland's NO<sub>x</sub> Reduction and Trading Program.

On October 19, 2000 (65 FR 62671), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland proposing to approve the April 27, 2000 SIP revision. That NPR provided for a public comment period ending on November 9, 2000. On November 9, 2000 (65 FR 67319), EPA published a notice extending the comment period to November 20, 2000. A detailed description of this SIP revision and EPA's rationale for approving it was provided in the October 19, 2000 NPR and will not be restated here. One letter of comment was submitted on EPA's proposal. A summary of the comments expressed in that letter and EPA's response is provided in section II, below.

##### II. Public Comments and EPA Response

*Comment:* A letter of comment was submitted expressing concerns over the impact an expansion of the Baltimore/Washington International (BWI) Airport expansion would have on Maryland's ability to limit both emissions of NO<sub>x</sub> and volatile organic compounds (VOCs) sufficiently to meet the National Ambient Air Quality Standard for ozone. The commenter states his overarching concern that planned "growth" in the Baltimore and Washington, DC areas from such

projects as the expansion of BWI airport and the Ann Arundel Mills Mall is occurring at a rate such that compliance with the Maryland's program to satisfy the NO<sub>x</sub> SIP call could be jeopardized. The commenter expresses concerns that although Maryland is "required" to abide by a regional cap and trade program that is intended to significantly reduce NO<sub>x</sub> emissions generated within the Ozone Transport Region, that effort will fail unless the impact of the BWI airport is properly documented to include the cumulative impact of the airport's NO<sub>x</sub> emissions, due to cars, buses, transport vehicles, maintenance facilities, rental cars, and aircraft.

*Response:* The commenter is correct that VOC and NO<sub>x</sub> emissions resulting from growth in the Baltimore and Washington DC areas from projects such as BWI airport and the Ann Arundel Mills Mall must be considered by the State of Maryland in meeting its requirements under the Clean Air Act for attainment and maintenance of the NAAQS for ozone. Increases in both NO<sub>x</sub> and VOC emissions from such projects must be demonstrated to conform to plans and provisions of the Maryland SIP established to accommodate such "growth." Approval of Maryland's regulations and requirements to satisfy the NO<sub>x</sub> SIP call in no way relieves the State from the applicable requirements and obligations under the Clean Air Act's transportation and general conformity provisions. In determining the appropriate control levels, the NO<sub>x</sub> SIP Call rulemaking assumed certain amounts of growth from all source categories. The comment seems to imply that EPA was not cognizant of growth, any such implication is incorrect. Moreover, the requirements of the NO<sub>x</sub> SIP Call and Maryland's SIP will be satisfied if the sources subject to controls implement those controls, and if the emissions cap applicable to electric generating units (EGUs) is adhered to. Under the federal NO<sub>x</sub> SIP Call, states were allowed the flexibility to decide what sources of emissions to control to achieve the required reductions in NO<sub>x</sub>. EPA did provide information that those reductions could be achieved in the most cost effective manner by controlling large stationary sources. EPA finds that Maryland's NO<sub>x</sub> Reduction and Trading Program meets the requirements of the NO<sub>x</sub> SIP Call. However, neither the federal NO<sub>x</sub> SIP Call rule nor Maryland's Program to satisfy that rule alters either of the mandated conformity programs' requirements. Moreover, while the NO<sub>x</sub> SIP Call rule specifically establishes

requirements to reduce NO<sub>x</sub> emissions, the transportation and general conformity provisions of the Clean Air Act require that both NO<sub>x</sub> and VOC emissions increases be accounted for and conform with a state's plan(s) to attain and maintain the NAAQS for ozone. For these reasons, EPA believes that approval of Maryland's regulations and requirements to satisfy the NO<sub>x</sub> SIP call strengthens the SIP and does not alter or make less stringent the State's obligation to meet the conformity requirements of the Clean Air Act and its SIP.

## II. Final Action

EPA is approving the Maryland's SIP revision consisting of its NO<sub>x</sub> Reduction and Trading Program, which was submitted on April 27, 2000. EPA finds that Maryland's submittal is fully approvable because it meets the requirements of the NO<sub>x</sub> SIP Call. In addition, EPA is approving Maryland's NO<sub>x</sub> Reduction and Trading Program because it supports the one-hour attainment demonstration plans for the Baltimore, Metropolitan Washington, DC and Philadelphia-Wilmington-Trenton ozone nonattainment areas.

## III. Administrative Requirements

### 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. 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 (Publ. L. 104-4). For the same reason, this 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 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 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 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 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 March 12, 2001. 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 approve Maryland's NO<sub>x</sub> Reduction and Trading 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, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: December 14, 2000.

**Bradley M. Campbell,**

*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)(154) to read as follows:

#### § 52.1070 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(154) Revisions to the Maryland Regulations pertaining to the Nitrogen Oxides (NO<sub>x</sub>) Reduction and Trading Program submitted on April 27, 2000 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of April 27, 2000 from the Maryland Department of the Environment transmitting additions to the Maryland State Implementation Plan pertaining to the NO<sub>x</sub> Reduction and Trading Program.

(B) Revisions to COMAR 26.11.29, NO<sub>x</sub> Reduction and Trading Program and COMAR 26.11.30, Policies and Procedures Relating to Maryland's NO<sub>x</sub> Reduction and Trading Program, effective May 1, 2000.

(1) Addition of COMAR 26.11.29.01 through COMAR 26.11.29.15.

(2) Addition of COMAR 26.11.30.01 through COMAR 26.11.30.09.

(ii) *Additional material.* Remainder of April 27, 2000 submittal pertaining to the NO<sub>x</sub> Reduction and Trading Program.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[NH036-7136A; A-1-FRL-6928-7]

#### Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; Vehicle Inspection and Maintenance Program; Restructuring OTR Requirements

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a Clean Air Act State Implementation Plan (SIP) revision submitted by the State of New Hampshire. On December 17, 1998 (63 FR 69589), EPA proposed to approve a revision to the New Hampshire SIP for vehicle inspection and maintenance (I/M). This SIP revision request was submitted on September 4, 1998. The State supplemented it by a letter dated November 20, 1998 which provided additional information about the New Hampshire I/M program, and requested further flexibility from requirements applicable to areas in the Ozone Transport Region (OTR) in light of the air quality status of New Hampshire's ozone nonattainment areas. EPA proposed approval of New Hampshire's I/M program under the concept of OTR "restructuring" on December 17, 1998 and received no comments. This action is being taken under section 110 of the Clean Air Act.

**DATES:** This rule will become effective on February 9, 2001.

**ADDRESSES:** Copies of documents relevant to this action are available for public inspection during normal business hours, by appointment, at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room M-1500, 401 M Street, (Mail Code 6102), S.W., Washington, D.C.; and the Air Resources Division, Department of Environmental Services, 6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095.

**FOR FURTHER INFORMATION CONTACT:** Robert C. Judge, (617) 918-1045.

#### SUPPLEMENTARY INFORMATION:

This Supplementary Information section is organized as follows:

- I. What SIP revision was submitted by the State of New Hampshire?
- II. What are the relevant Clean Air Act requirements?
- III. What action did EPA propose for the New Hampshire I/M SIP?
- IV. What action did EPA take to defer the offset sanction in New Hampshire?
- V. What is EPA's basis for restructuring the Ozone Transport Region requirements?
- VI. Have any circumstances changed since the original proposal?
- VII. What action is EPA taking on New Hampshire's I/M program?
- VIII. EPA Action
- IX. Administrative Requirements

#### I. What SIP revision was submitted by the State of New Hampshire?

The New Hampshire Department of Environmental Services (DES) submitted a revision to the New Hampshire SIP on September 4, 1998 and November 20, 1998 for a vehicle I/M program. The submittal requested further flexibility from requirements applicable to areas in the OTR in light of the air quality status of the ozone nonattainment areas in New Hampshire. The SIP revision includes New Hampshire Code of Administrative Rules, Part Saf-C 3220 "Official Motor Vehicle Inspection Requirements" and Part Saf-C 5800 "Roadside Diesel Opacity Inspection" and additional supporting material including authorizing legislation, administrative items, and a description of the program being implemented.

#### II. What are the relevant Clean Air Act requirements?

Section 184(b)(1)(A) of the Act requires areas with a population of at least 100,000 in a metropolitan statistical area in the OTR to adopt and implement an inspection and maintenance program meeting EPA's enhanced I/M performance standard. EPA's I/M rule was established on November 5, 1992 (57 FR 52950). EPA made significant revisions to the I/M rule on September 18, 1995 (60 FR 48035) and on July 25, 1996 (61 FR 39036). Under EPA's I/M rule, enhanced I/M programs would be required in the Portsmouth-Dover-Rochester, New Hampshire area, and the New Hampshire portion of the Boston-Worcester-Lawrence area<sup>1</sup>. This

<sup>1</sup> These areas are MSAs with populations greater than 100,000, and are subject to enhanced I/M under the OTR provisions of the Act. Further, because the one-hour standard was recently reinstated as of July 20, 2000, certain areas in New Hampshire if they had sufficient "urbanized area" populations, would be subject to the enhanced I/M requirements applicable in serious ozone

program was initially submitted to fulfill the State's obligations to implement I/M pursuant to these requirements. The I/M regulation was codified at 40 CFR part 51, subpart S, and requires States subject to the I/M requirement to submit an I/M SIP revision that includes all necessary legal authority and the items specified in 40 CFR 51.350 through 51.373.

#### III. What action did EPA propose for the New Hampshire I/M SIP?

EPA proposed approval of New Hampshire's I/M program under the concept of OTR "restructuring" on December 17, 1998 (63 FR 69589). EPA stated that the New Hampshire areas and all nearby areas had met the one-hour national ambient air quality standard (NAAQS) for ozone. Because of this, and because of the technical demonstration made by the State, EPA made a determination that emission reductions from I/M under section 184 would not significantly contribute to the attainment of the one-hour standard anywhere in the OTR, and the I/M requirement could be "restructured." EPA then proposed approval of the I/M SIP as a SIP strengthening measure under section 110 of the Clean Air Act. EPA received no comments on its proposal.

#### IV. What action did EPA take to defer the offset sanction in New Hampshire?

Due to the disapproval of an earlier I/M SIP submitted by the State of New Hampshire, the Clean Air Act's offset sanction was applicable in New Hampshire beginning December 6, 1998. Based on the December 17, 1998 proposed approval (63 FR 69589) on that same day, EPA published an interim final rule in the **Federal Register** which stayed that sanction and deferred the imposition of the highway funding sanction in New Hampshire (63 FR 69557). In that action EPA said that the stay and deferral would remain in effect until EPA took final action on the New Hampshire I/M SIP proposed on that same day or retracted its proposed approval.

Today EPA is issuing a final, full approval of New Hampshire's submitted I/M program SIP revision, and a final determination that the CAA requirement for an enhanced I/M program for areas in the OTR does not apply for New Hampshire. Accordingly, all sanctions and FIP clocks started based on EPA's earlier disapproval of New Hampshire's

nonattainment areas. The urbanized area populations of these areas, however, do not trigger the I/M requirements of section 182 as codified in EPA's I/M rule.