

(2) Documents incorporated by reference in regulation 9VAC5–20–21.

Revised paragraph in regulation 5–20–21	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
9VAC5–60–100 (adopts 40 CFR 63.460 through 63.469 by reference).	Statewide	10/9/98	11/3/99, 64 FR 59648	52.2423(q).
9VAC5–20–21, paragraphs E.1 through E.5 and E.7.	Statewide	4/12/89	8/23/95, 60 FR 43714	52.2423(m); Originally Appendix M, Sections II.A. through II.E. and II.G.
9VAC5–20–21, paragraphs E.1 and E.2.	Statewide	2/12/93	8/23/95, 60 FR 43714	52.2423(n); Originally Appendix M, Sections II.A. and II.B.
9VAC5–20–21, Section E	Statewide	6/22/99	1/7/03, 68 FR 663	52.2423(r).
9VAC5–20–21, paragraph E.12	Statewide	2/23/04	6/8/04, 69 FR 31893	52.2423(s).
9VAC5–20–21, Section E	Northern Virginia VOC Emissions Control Area designated in 9VAC5–20–206.	3/24/04	5/12/05, 70 FR 24970	9VAC5–20–21, Sections E.1.a.(7), E.4.a.(12) through a.(17), E.10., E.11., E.13.a.(1), and E.13.a.(2).
9VAC5–20–21, Sections D and E.	Statewide	8/25/05	3/3/06, 71 FR 10838	Sections D., E. (introductory sentence), E.2 (all paragraphs), E.3.b., E.4.a.(1) and (2), E.4.b., E.5. (all paragraphs), and E.7. (all paragraphs) State effective date is 2/1/00.
9VAC5–20–21, Section B	Statewide	10/25/05	3/3/06, 71 FR 10838	State effective date is 3/9/05; approval is for those provisions of the CFR which implement control programs for air pollutants related to the national ambient air quality standards (NAAQS) and regional haze.
9VAC5–20–21, Section E	Northern Virginia VOC Emissions Control Area designated in 9VAC5–20–206.	10/25/05	1/30/07, 72FR 4207	9VAC5–20–21, Sections .1.a.(16), E.4.a.(18) through a.(20), E.6.a., E.11.a.(3), E.12.a.(5) through a.(8), E.14.a. and E.14.b.
9VAC5–20–21, Paragraphs E.4.a. (21) and (22).	Fredericksburg VOC Emissions Control Area Designated in 9VAC5–20–206.	5/14/07	12/5/07, 72 FR 68511	State effective date is 3/9/05. State effective date is 10/4/06.
9VAC5–20–21, Sections B. and E.1.	Statewide	6/24/09	1/18/11, 76 FR 2829	Revised sections.
9VAC5–20–21, Sections E.1.a.(1)(q) and E.1.a.(1)(r).	Statewide	9/27/10	4/25/11, 76 FR 22814	Revised sections.
9VAC5–20–21, Section E.1.a.(1)(s).	Statewide	8/18/10	6/22/11, 76 FR 36326	Added Section.
9VAC5–20–21, Sections E.1.a.(2), (16)–(19), E.2.a.(3), E.2.b., E.4.a.(23)–(27), E.11.a.(4)–(6), E.12.a.(3), (5) and (9)–(11).	Northern Virginia and Fredericksburg VOC Emissions Control Areas.	3/17/10	1/26/12, 77 FR 3928	Added section.
9VAC5–20–21 Section E.1.a(1) Documents Incorporated by Reference.	Statewide	5/25/11	2/3/12, 77 FR 5400	Addition of paragraph (1)(a) and (1) (u). The citations of all other paragraphs are revised.
Documents incorporated by reference.	Northern Virginia VOC emissions control area.	02/01/16	10/21/16, 81 FR 72711	Section 15 added.

[FR Doc. 2017–10909 Filed 5–26–17; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA–R03–OAR–2016–0238; FRL–9962–73–Region 3]

**Approval and Promulgation of Air Quality Implementation Plans; Maryland; Control of Nitrogen Oxide Emissions From Coal-Fired Electric Generating Units**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the State of Maryland. The revision consists of a Maryland regulation that regulates nitrogen oxides (NO<sub>x</sub>) emissions from coal-fired electric generating units (EGUs) in the State. EPA is approving this revision in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This final rule is effective on June 29, 2017.

**ADDRESSES:** EPA has established a docket for this action under Docket ID

Number EPA-R03-OAR-2016-0238. All documents in the docket are listed on the <https://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., 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 through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

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

**SUPPLEMENTARY INFORMATION:**

### I. Background

On January 11, 2017 (82 FR 3233), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. In the NPR, EPA proposed approval of a Maryland regulation to control emissions of NO<sub>x</sub> from coal fired EGUs. The formal SIP revision (#15-06) was submitted by the Maryland Department of the Environment (MDE) on November 20, 2015. On September 8, 2016, MDE provided a letter to EPA to clarify that the November 20, 2015 submission was submitted as a SIP strengthening measure and not as a submission to address reasonably available control technology (RACT) requirements for coal-fired EGUs.

As noted in the NPR, this action pertains only to the changes to COMAR 26.11.38 that were submitted by MDE on November 20, 2015 with a State effective date of August 31, 2015, namely COMAR 26.11.38.01-.05. Subsequent revisions and amendments to this regulation have been made by MDE, but have not yet been submitted to EPA for incorporation into the Maryland SIP.

### II. Summary of SIP Revision

The revision consists of Maryland regulation COMAR 26.11.38—Control of NO<sub>x</sub> Emissions from Coal-Fired Electric Generating Units (effective August 31, 2015). The regulation establishes NO<sub>x</sub> emissions standards for 14 EGUs at 7 coal-fired power plants, and requires an affected EGU to minimize NO<sub>x</sub> emissions by operating and optimizing the use of all installed pollution controls and combustion controls during all times that the unit is in operation while burning coal.

Additional monitoring and recordkeeping are required to demonstrate compliance with these requirements, and the owner or operator is required to submit a plan to MDE and to EPA for approval, which summarizes the data to be collected and make a showing that each affected EGU is operating its installed controls. Other specific requirements of COMAR 26.11.38 and the rationale supporting EPA's proposed rulemaking action are explained in the NPR and Technical Support Document (TSD) supporting EPA's analysis for approval of Maryland's regulation into the SIP and will not be restated here. The NPR and TSD are available in the docket for this rulemaking at <https://www.regulations.gov>, Docket ID Number EPA-R03-OAR-2016-0238.

### III. Public Comments and EPA's Responses

EPA received two anonymous comments on the January 11, 2017 proposed approval of COMAR 26.11.38 for the Maryland SIP.

*Comment 1:* One commenter expressed support for strengthening the NO<sub>x</sub> emissions limits in Maryland.

*Response 1:* EPA thanks the commenter for the submitted statement.

*Comment 2:* Another commenter expressed support for the proposed rulemaking as a SIP strengthening measure needed to reduce pollution and to meet the requirements of the national ambient air quality standards (NAAQS) "to keep the air clean." However, the commenter also stated, "This regulation was submitted as a SIP strengthening measure which seems to be necessary because of how it does not include nitrogen oxides (NO<sub>x</sub>) emissions from seven coal-fired electric generating units which is a great amount." The commenter also stated it is an important measure to regulate clean air in "already polluted skies" and acknowledged this regulation was SIP strengthening and was not submitted to meet RACT requirements.

*Response 2:* EPA thanks the commenter for supporting our approval of the Maryland regulation into the State's SIP. EPA notes that the commenter is incorrect in stating that COMAR 26.11.38, entitled "Control of Nitrogen Oxides Emissions from Coal Fired Electric Generating Units," does not apply to NO<sub>x</sub> emissions from seven coal-fired EGUs. The language of COMAR 26.11.38 specifically contains NO<sub>x</sub> limitations for these EGUs as well as other control measures related to NO<sub>x</sub> emissions as discussed in the NPR and TSD. As EPA discussed in the NPR, because NO<sub>x</sub> is a precursor to ozone

formation, the NO<sub>x</sub> limitations and measures for these EGUs identified in COMAR 26.11.38 will reduce NO<sub>x</sub> emissions and ozone formation in Maryland which should assist Maryland with attaining and maintaining the ozone NAAQS. Finally, the commenter correctly acknowledged that Maryland had not submitted COMAR 26.11.38 for SIP inclusion to address any RACT requirements which Maryland confirmed with its September 8, 2016 letter to EPA. The September 8, 2016 letter is available in the docket for this rulemaking. EPA expects subsequent rulemaking action on Maryland's obligations for RACT under the 2008 ozone NAAQS.

### III. Final Action

EPA is approving Maryland regulation COMAR 26.11.38, submitted in the November 20, 2015 SIP submission, which has a state effective date of August 31, 2015, as a revision to the Maryland SIP as a SIP strengthening measure in accordance with section 110 of the CAA. COMAR 26.11.38.01-.05 imposes NO<sub>x</sub> emissions limits on coal fired EGUs subject to the regulation, and EPA expects the regulation will lower NO<sub>x</sub> emissions within the State which should reduce ozone formation. The NO<sub>x</sub> emissions limits plus the operation and optimization of the existing NO<sub>x</sub> controls whenever the units are in operation strengthens the Maryland SIP and will help the State's attainment and maintenance of the ozone NAAQS.

### IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of Maryland regulation COMAR 26.11.38.01-.05 described in the amendments to 40 CFR part 52 set forth below. Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.<sup>1</sup> EPA has made, and will continue to make, these materials generally available through <http://www.regulations.gov> and/or at the EPA Region III Office (please contact the person identified in the "For Further

<sup>1</sup> 62 FR 27968 (May 22, 1997).

Information Contact” 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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 (Pub. L. 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 July 31, 2017. 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 approving Maryland regulation COMAR 26.11.38 into the Maryland SIP 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 requirement.

Dated: May 5, 2017.

**Cecil Rodrigues,**

*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 adding the heading “26.11.38 Control of Nitrogen Oxide Emissions from Coal-Fired Electric Generating Units” and the entries “26.11.38.01 through 26.11.38.05” in numerical order to read 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
*	*	*	*	*
<b>26.11.38 Control of Nitrogen Oxide Emissions From Coal-Fired Electric Generating Units</b>				
26.11.38.01	Definitions	8/31/2015	5/30/2017 [Insert <b>Federal Register</b> citation].	
26.11.38.02	Applicability	8/31/2015	5/30/2017 [Insert <b>Federal Register</b> citation].	
26.11.38.03	2015 NO <sub>x</sub> Emission Control Requirements ..	8/31/2015	5/30/2017 [Insert <b>Federal Register</b> citation].	

EPA-APPROVED REGULATIONS, TECHNICAL MEMORANDA, AND STATUTES IN THE MARYLAND SIP—Continued

Code of Maryland Administrative Regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100
26.11.38.04 .....	Compliance Demonstration Requirements ...	8/31/2015	5/30/2017 [Insert <b>Federal Register</b> citation].	
26.11.38.05 .....	Reporting Requirements .....	8/31/2015	5/30/2017 [Insert <b>Federal Register</b> citation].	
*	*	*	*	*

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 [FR Doc. 2017-10912 Filed 5-26-17; 8:45 am]  
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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[MD 204-3120; FRL-9959-24-Region 3]

**Air Plan Approval; Maryland; Update to Materials Incorporated by Reference**

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

**ACTION:** Final rule; administrative change.

**SUMMARY:** The Environmental Protection Agency (EPA) is updating the materials that are incorporated by reference (IBR) into the Maryland state implementation plan (SIP). The regulations affected by this update have been previously submitted by the Maryland Department of the Environment (MDE) and approved by EPA. This update affects the SIP materials that are available for public inspection at the National Archives and Records Administration (NARA) and the EPA Regional Office. **DATES:** This action is effective May 30, 2017.

**ADDRESSES:** SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; or NARA. For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

**FOR FURTHER INFORMATION CONTACT:** Sharon McCauley, (215) 814-3376, or by email at [mccauley.sharon@epa.gov](mailto:mccauley.sharon@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The SIP is a living document which a state revises as necessary to address its

unique air pollution problems. Therefore, EPA, from time to time, must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference federally-approved SIPs, as a result of consultations between EPA and the Office of the Federal Register (OFR). The description of the revised SIP document, IBR procedures and “Identification of plan” format are discussed in further detail in the May 22, 1997 **Federal Register** document. On November 29, 2004 (69 FR 69304), EPA published a document in the **Federal Register** beginning the new IBR procedure for Maryland. On February 2, 2006 (71 FR 5607), May 18, 2007 (72 FR 27957), March 11, 2008 (73 FR 12895), March 19, 2009 (74 FR 11647), and August 22, 2011 (76 FR 52278), EPA published updates to the IBR material for Maryland.

Since the publication of the last IBR update, EPA has approved the following regulatory changes to the following regulations, statutes, and source-specific actions for Maryland:

*A. Added*

1. COMAR 26.11.09.10 (Requirements to Burn Used Oil and Waste Combustible Fluid as Fuel).
2. COMAR 26.11.09.12 (Standards for Biomass Fuel-Burning Equipment Equal to or Greater Than 350,000 Btu/hr).
3. COMAR 26.11.17.06 through .09 (Requirements for New Sources and Modifications).
4. COMAR 26.11.19.07-2 (Plastic Parts and Business Machines Coating).
5. COMAR 26.11.19.27-1 (Control of Volatile Organic Compounds from Pleasure Craft Coating Operations).
6. COMAR 26.11.26.01, 26.11.26.04 through .09 (Conformity).
7. COMAR 26.11.34.01 through .14 (Low Emissions Vehicle Program).
8. COMAR 26.11.35.01 through .07 (Volatile Organic Compounds from Adhesives and Sealants).
9. COMAR 20.79.01.01 (part), .02 (part), and .06 (Applications Concerning

the Construction or Modification of Generating Stations and Overhead Transmission Lines—General).

10. COMAR 20.79.02.01 through 20.79.02.03 (Applications Concerning the Construction or Modification of Generating Stations and Overhead Transmission Lines—Administrative Provisions).

11. COMAR 20.79.03.01 and 20.79.03.02 (part) (Applications Concerning the Construction or Modification of Generating Stations and Overhead Transmission Lines—Details of Filing Requirements—Generating Stations).

12. Public Utility Companies Article of the Annotated Code of Maryland, sections 7-205, 7-207 (part), 7-207.1 (part), and 7-208.

13. Annotated Code of Maryland, title 15 (Public Ethics) which was also removed and replaced (see section C of this rulemaking).

14. Annotated Code of Maryland, section 5-101 (a),(e),(f), (g)(1) and (2), (h), (i), (j), (m), (n), (p), (s), (t), (bb), (ff), (gg), (ll) (Definitions), section 5-103(a) through (c) (Designation of Individuals as Public Officials, section 5-208(a) (Determination of Public Official in Executive agency), section 5-501(a) and (c) (Restrictions on Participation), section 5-601(a) (Individuals Required to File Statement), section 5-602(a) (Financial Disclosure Statement—Filing Requirements), section 5-606(a) (Public Records), section 5-607(a) through (j) (Content of statements), and section 5-608(a) through (c) (Interests Attributable to Individual Filing Statement).

15. In 40 CFR 52.1070(d), a source specific requirement was added for the GenOn Chalk Point Generating Station—2011 Consent Decree for Chalk Point.

*B. Revised*

1. COMAR 26.11.01.01 (Definitions).
2. COMAR 26.11.01.04 (Testing and Monitoring).
3. COMAR 26.11.02.01 (Definitions), .09 (Sources Subject to Permits to Construct), .10 (Sources Exempt from Permits to Construct and Approvals),