

#### IV. Administrative 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 32111, "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 (Public Law 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 CAA. 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 CAA. 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 CAA. 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.*).

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**. 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).

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 April 29, 2002. 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 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, Particulate matter, Reporting and recordkeeping requirements.

Dated: January 31, 2002.

**Wayne Nastri,**

*Regional Administrator, Region IX.*

Part 52, chapter I, title 40 of the Code of Federal Regulations 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 F—California

2. Section 52.220 is amended by adding paragraph (c)(288) to read as follows:

##### § 52.220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(288) New and amended regulations for the following APCDs were submitted on October 30, 2001, by the Governor's designee.

(i) Incorporation by reference.

(A) San Joaquin Valley Unified Air Pollution Control District.

(1) Rules 4103 and 4106, adopted on June 21, 2001.

\* \* \* \* \*

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[MD121-3082a; FRL-7144-5]

#### Approval and Promulgation of Air Quality Implementation Plans; Maryland Nitrogen Oxide Averaging Plan for Constellation Power Source Generation

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve a revision to the Maryland State Implementation Plan (SIP). This SIP revision consists of a Consent Order to Constellation Power Source Generation, Inc. for an inter-facility averaging plan for emissions of nitrogen oxides (NO<sub>x</sub>) at facilities located in Maryland and owned by Constellation Power. The SIP revision allows Constellation Power to use system-wide emissions averaging to comply with the applicable NO<sub>x</sub> reasonably available control technology (RACT) limits for 10 boiler units located at five electric generating facilities owned by Constellation Power. EPA is approving this revision in accordance with the requirements of the Clean Air Act.

**DATES:** This rule is effective on April 29, 2002 without further notice, unless EPA receives adverse written comment by March 29, 2002. 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 David L. Arnold, 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, 401 M Street, SW., Washington, DC 20460; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

**FOR FURTHER INFORMATION CONTACT:** David L. Arnold, (215) 814-2172 or by e-mail at [arnold.david@epa.gov](mailto:arnold.david@epa.gov). Please note that any formal comments must be submitted, in writing, as provided in the **ADDRESSES** section of this document.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Sections 182(b)(2) and 182(f) of the Clean Air Act require major sources in ozone nonattainment areas to implement RACT for the control of NO<sub>x</sub>. Maryland regulation, COMAR 26.11.09.08, establishes RACT level NO<sub>x</sub> emission limits for specific types of boilers and other fuel burning equipment. EPA approved Maryland's NO<sub>x</sub> RACT regulation as a SIP revision on February 8, 2001. Section (B)(3) of COMAR 26.11.09.08 allows sources to apply for an alternative emission standard from those specified in the regulation. Section (B)(4) of COMAR 26.11.09.08 allows sources that own and operate two or more affected units to achieve compliance through system-wide emissions averaging provided that total system-wide NO<sub>x</sub> emissions would be less than the total emissions achieved through compliance with the applicable unit specific emission standards. Section (B)(4) of COMAR 26.11.09.08 also requires that such an emissions averaging plan be submitted to and approved by EPA as a SIP revision. On April 25, 2001, the State of Maryland submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of a Consent Order issued by the Maryland Department of Environment (MDE) to Constellation Power Source Generation, Inc. for an inter-facility averaging plan for NO<sub>x</sub> emissions at five electric generating facilities. The SIP revision allows Constellation Power to use system-wide emissions averaging to comply with the applicable NO<sub>x</sub> reasonably available

control technology (RACT) limits for 10 boiler units located at the five facilities.

**II. Summary of SIP Revision**

The Consent Order issued by the MDE to Constellation Power Source Generation, Inc. establishes an averaging plan at five electric generating plants as a means of compliance with the NO<sub>x</sub> RACT requirements. The Consent Order was signed and dated April 16, 2001 and does not expire. The Consent Order applies to the following electric generating installations units owned by Constellation Power in Maryland: Brandon Shores units 1 and 2; Gould Street unit 3; H.A. Wagner units 1, 2, 3 and 4; C. P. Crane units 1 and 2; and Riverside unit 4. Other units located at these installations are not part of the averaging plan and remain subject to unit specific emission limits established in COMAR 26.11.09.08. Constellation Power is required to calculate mass emissions from the affected units on a daily basis, determine compliance with the averaging plan using continuous emissions monitors, and to submit quarterly reports of exceedances to both MDE and EPA. Constellation Power agrees that if it fails to comply with the averaging plan, all sources remain subject to the unit specific emission limits of COMAR 26.11.09.08. The aggregate mass emissions from all units, under the averaging plan, must be less than the mass emissions that would otherwise occur if each unit were subject to the applicable NO<sub>x</sub> RACT emissions limit. Constellation Power must certify annually that the NO<sub>x</sub> mass emissions for all ten units are at least five percent less than otherwise allowed by the applicable NO<sub>x</sub> RACT emission limits. Other provisions in the Consent Order require Constellation Power to notify the MDE and revise the averaging plan if Constellation Power acquires new or additional electric generating units. This provision does not exempt any new or modified units from applicable New Source Review requirements. The Consent Order also contains provisions for transfer of ownership, Title V permits and severability. This Consent Order for NO<sub>x</sub> RACT averaging does not relieve Constellation Power from the Consent Decree dated November 11, 1999 for compliance with Maryland's NO<sub>x</sub> Budget Rule (COMAR 26.11.27 and 26.11.28).

**III. EPA Evaluation of the SIP Revision**

Emissions averaging programs are a common form of Economic Incentive Program (EIP). Emissions averaging EIPs provide a source or group of sources flexibility in complying with a rate-

based regulatory limit by averaging the rate of pollution one source emits with another source. Averaging enables a source emitting above its allowable emission rate limit to comply with that rate limit by averaging its emissions with a another source(s) emitting below that second source's regulatory limit. Emissions averaging EIPs involve emission units at one or more facilities within the same state. EPA issued guidance to the states in developing EIPs in January 2001, "Improving Air Quality with Economic Incentive Programs", EPA-452/R-01-001. Maryland's SIP revision for Constellation Power Source Generation's NO<sub>x</sub> emission averaging plan meets all the applicable requirements and EPA guidance for RACT and EIPs. It also includes appropriate provisions for assuring compliance and enforceability. A more detailed description of EPA's evaluation of the Constellation Power emissions averaging EIP can be found in the technical support document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

**IV. Final Action**

EPA is approving Maryland's April 25, 2001 SIP revision which consists of the Consent Order dated April 16, 2001 between MDE and Constellation Power Source Generation, Inc. establishing a system-wide averaging plan to comply with NO<sub>x</sub> RACT requirements. 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 April 29, 2002 without further notice unless EPA receives adverse comment by March 29, 2002. 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.

## V. 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. 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 (Public Law 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. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today’s action under section 801 because this is a rule of particular applicability establishing source-specific requirements for five named facilities.

### C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action to approve the Consent Order for Constellation Power Source Generation, Inc. must be filed in the United States Court of Appeals for the appropriate circuit by April 29, 2002. 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 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: February 7, 2002.

**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)(168) to read as follows:

#### § 52.1070 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(168) SIP revision submitted on April 25, 2001 by the State of Maryland consisting of a Consent Order dated April 16, 2001 between the Maryland Department of the Environment and Constellation Power Source Generation Inc. The Consent Order establishes a system-wide inter-facility emissions averaging plan to comply with NO<sub>x</sub> RACT requirements at five facilities owned by Constellation Power Source Generation Inc. and located in the State of Maryland.

(i) Incorporation by reference.

(A) Letter of April 25, 2001 from the Maryland Department of the Environment (MDE) transmitting a Consent Order issued by MDE to Constellation Power Source Generation, Inc. establishing an averaging plan at five electric generating plants as a means of compliance with the NO<sub>x</sub> RACT requirements.

(B) Consent Order between the Maryland Department of the Environment and Constellation Power Source Generation, Inc. dated April 16, 2001.

(C) NO<sub>x</sub> RACT Averaging Plan Proposal submitted by Constellation Power Source Generation, Inc. dated November 6, 2000.

(ii) Additional Material.—Remainder of the state submittal pertaining to the revision listed in paragraph (c)(168) of this section.

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