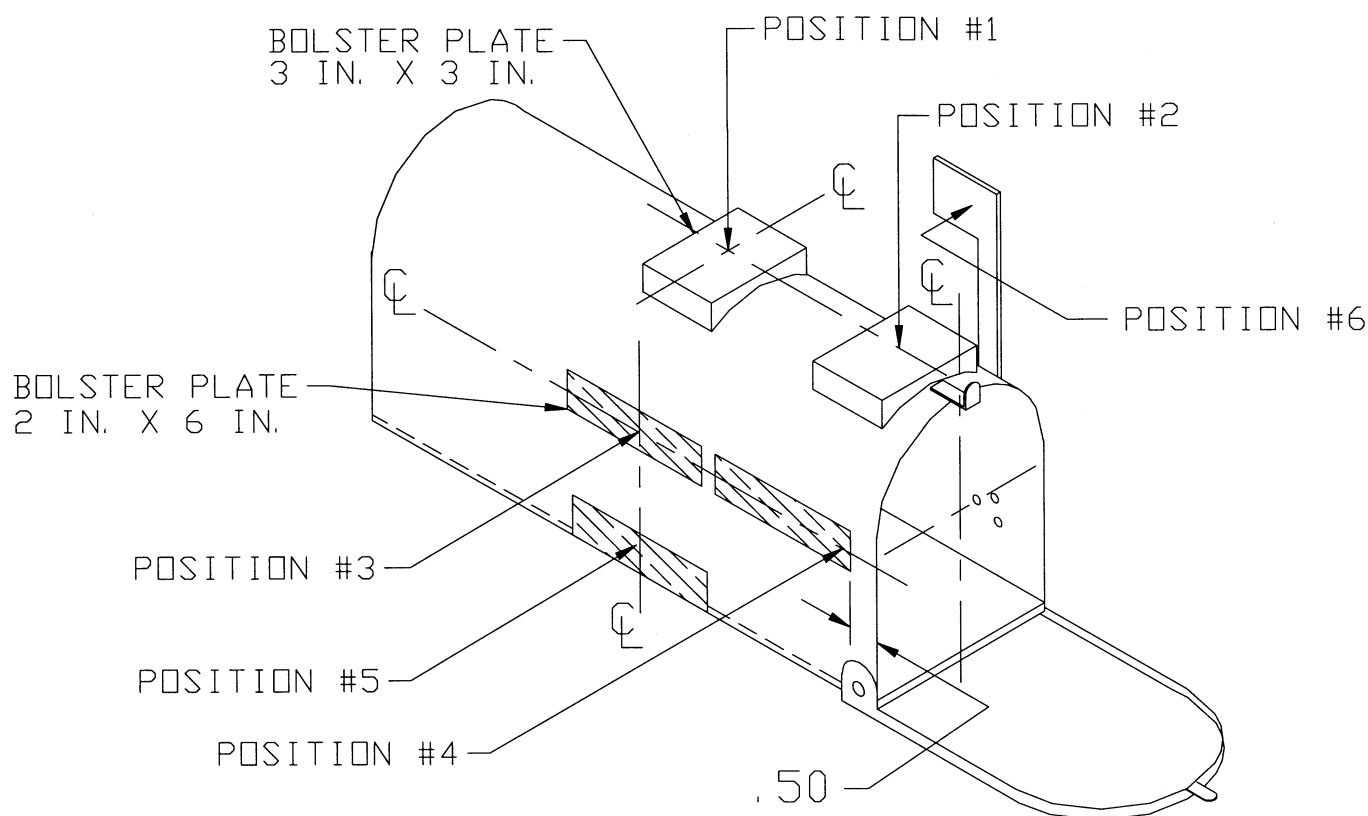




## DIRECTION OF LOADS FIGURE 6

### Appendix A—USPS Approved Independent Test Laboratories

(1) ACTS Test Labs, Contact: Dennis Maclaughlin, Phone: 716-505-3547 Fax: 716-505-3301, 100 Northpointe Parkway, Buffalo, NY 14228-1884.

(2) The Coatings Lab, Contact: Tom Schwerdt, Phone: 713-981-9368 Fax: 713-776-9634, 10175 Harwin Drive, Suite 110, Houston, TX 77036.

(3) Ithaca Materials Research & Testing, Inc. (IMR), Contact: Jeff Zerilli, Vice President, Phone: 607-533-7000, Lansing Business and Technology Park, 31 Woodsedge Drive, Lansing, NY 14882.

(4) Independent Test Laboratories, Inc., Contact: Robet Bouvier, Phone: 800-962-Test Fax: 714-641-3836, 1127B Baker Street, Costa Mesa, CA 92626.

(5) Environ Labs L.L.C., Contact: Chuck Mapes, Phone: 1-800-826-3710, Fax: 612-888-6345, 9725 Girard Ave S., Minneapolis, MN 55431.

(6) Midwest Testing Laboratories, Inc., Contact: Cherie Ulatowski, Phone: 248-689-

9262, Fax: 248-689-7637, 1072 Wheaton, Troy, MI 48083.

**Note:** Additional test laboratories may be added provided they satisfy USPS certification criteria. Interested laboratories should contact: USPS, Engineering, Test Evaluation & Quality, 8403 Lee Highway, Merrifield, VA 22082-8101.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 01-2232 Filed 2-7-01; 8:45 am]

**BILLING CODE 7710-12-P**

### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[MD106-3063; FRL-6922-7]

### Approval and Promulgation of Air Quality Implementation Plans; Maryland; Reasonably Available Control Technology for Oxides of Nitrogen

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maryland. This revision requires major sources of nitrogen oxides (NO<sub>x</sub>) in the State of Maryland to implement reasonably available control technology (RACT).

This action is being taken in accordance with the Clean Air Act.

**EFFECTIVE DATE:** This final rule is effective on March 12, 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:** Kelly L. Bunker, (215) 814-2177 or by e-mail at [bunker.kelly@epamail.epa.gov](mailto:bunker.kelly@epamail.epa.gov).

**SUPPLEMENTARY INFORMATION:**

### I. Background

Pursuant to sections 182(b)(2) and 182(f) of the Clean Air Act (CAA), Maryland is required to implement RACT for all major NO<sub>x</sub> sources by no later than May 31, 1995. The definition of a major source is determined by its size, location, the classification of that area and whether it is located in the ozone transport region (OTR), which is established by the CAA. The entire State of Maryland is included in the OTR. The Baltimore nonattainment area and Cecil County are classified as severe nonattainment areas. Calvert, Charles, Frederick, Montgomery and Prince George's Counties are classified as serious ozone nonattainment areas. The remaining counties in Maryland are classified as marginal or in attainment. However, under section 184 of the CAA, at a minimum, moderate area requirements for stationary sources, including RACT as specified in sections 182(b)(2) and 182(f), apply throughout the OTR. Therefore, RACT is applicable statewide in Maryland. Section 182 of the Act defines a major NO<sub>x</sub> source as one that emits or has the potential to emit 25 or more tons of NO<sub>x</sub> per year (TPY) in any ozone nonattainment area classified as severe, or 50 or more TPY located in any ozone nonattainment area classified as serious. For any area in the OTR classified as attainment or marginal nonattainment, sections 182 and 184 of the Act define a major stationary source of NO<sub>x</sub> as one that emits or has the potential to emit 100 or more TPY.

On July 11, 1995, the Maryland Department of the Environment (MDE) submitted a revision to its State Implementation Plan (SIP) for the control of NO<sub>x</sub> emissions from major

sources. This submittal included revisions to regulation COMAR 26.11.09.01 and 26.11.09.08 which pertained to definitions and a "generic" NO<sub>x</sub> RACT rule. This generic rule required affected sources to either meet a presumptive NO<sub>x</sub> emissions standard or to submit a "case-by-case" RACT proposal for approval by MDE. In all cases, under this regulation, RACT requirements were to have been met by no later than May 31, 1995. On June 22, 1999 (64 FR 33197), EPA granted conditional limited approval of this SIP revision. Under EPA's conditional limited approval, each case-by-case RACT determination was to have been submitted to EPA as a SIP revision. Many sources in Maryland invoked the provisions of the generic rule, submitted case-by-case RACT determinations and complied with them by May 31, 1995. However, the State of Maryland found that to meet EPA's condition by processing these numerous case-by-case RACT determinations as SIP revisions to be unduly burdensome. Therefore, on September 8, 2000, Maryland submitted a SIP revision. It consisted of a revised version of COMAR 26.11.09.08 which removed the "generic" RACT provisions and replaced them with source category specific RACT emission limitations. The submittal of the September 8, 2000, SIP revision satisfies the conditions of EPA's June 22, 1999 conditional limited approval. Maryland first revised COMAR 26.11.09.08 on September 22, 1999 and further revised it on August 30, 2000. These revisions to COMAR 26.11.09.08 became effective in the State of Maryland on October 18, 1999, and September 18, 2000, respectively. Its provisions are to be complied with at all times and it provides no extension of the CAA mandated RACT compliance date of May 31, 1995.

The September 8, 2000, SIP revision is the subject of this action. The September 8, 2000, submittal included the new version of regulation, COMAR 26.11.09.08, which requires major sources of NO<sub>x</sub> throughout the entire State of Maryland to comply with RACT requirements, and which adds the definition for the term "high heat release unit" to COMAR 26.11.09.01.

On October 19, 2000 (65 FR 62668), EPA published a notice of proposed rulemaking (NPR) for the Maryland NO<sub>x</sub> RACT regulations proposing to approve the September 8, 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. Other specific requirements of Maryland's NO<sub>x</sub> RACT

regulation and the rationale for EPA's action are explained in the NPR and will not be restated here.

### II. Public Comments and Response

Pursuant to its October 19, 2000 NPR, EPA received one letter of comment from the EarthJustice Legal Defense Fund. A summary of EarthJustice's comments and EPA's responses are provided below.

*Comment:* The commenter asserts that the State's and EPA's technical support documents (TSDs) fail to justify the RACT determinations made for each source category because the TSDs lack an analysis which examines available NO<sub>x</sub> controls used in Maryland and elsewhere and selects one or more technologies that provide the lowest emission limitation reasonably available considering technological and economic feasibility.

*Response:* EPA disagrees with the commenter. The State of Maryland's submittal includes two TSDs, one dated June 30, 1999 and a revised TSD dated August 3, 2000. These TSDs explain the background of the former case-by-case generic rule and the rationale for its evolution to a regulation that imposes source category specific RACT requirements for major sources of NO<sub>x</sub>. They also contain an explanation for the RACT requirements selected for each source category. Moreover, the preamble of Notice of Proposed Action published in the Maryland Register (Vol. 26, Issue 15, Friday, July 16, 1999) states that the source category specific RACT standards are, in many cases, based upon the information developed by the subject sources as part of the earlier case-by-case process. Many of these source-specific RACT determinations submitted to the Maryland Department of the Environment contain detailed analyses for their RACT determinations. Those submittals were reviewed and commented upon by both the Maryland Department of the Environment (MDE) and EPA. They are referenced in Maryland's rulemaking notices amending COMAR 26.11.09.08, which were made available for public inspection during the State's public comment periods on the revisions to COMAR 26.11.09.08 at MDE's offices in Baltimore, Maryland. With regard to the comments made about EPA's TSD in support of its rulemaking, EPA believes it has fulfilled its obligations. EPA did not attempt to complete a new and independent RACT analysis for the sources to which this rulemaking pertains. However, EPA did review the RACT provisions of Maryland's revised regulation to determine if the RACT requirements appeared to be reasonable

and consistent with RACT requirements for similar sources and source-categories.

*Comment:* The commenter asserts that the State's RACT emission limits for electric generating units is much higher than the OTC Phase II emission limits, which is the less stringent of 0.2 lb/MMBtu or a 65% reduction. EPA estimates that the Phase II reductions will be achieved at a cost of \$1,600 per ton—well below the \$2,500 benchmark used by the State. The commenter contends that EPA cannot approve the State's emission limits as RACT when lower limits are achievable at costs consistent with RACT.

*Response:* EPA disagrees with the commenter that Maryland must, in effect, declare that the Phase II emission limits of the OTC's Memorandum of Agreement (MOU) are needed to comply with RACT requirements for controlling NO<sub>x</sub> from electric generating units in Maryland. The compliance date for RACT is and remains May 31, 1995. The model rule developed by the OTC to implement Phase II of its MOU calls for compliance by May 1, 1999. Simply because Maryland has revised its previously SIP-approved NO<sub>x</sub> RACT rule to include category specific RACT limits to avoid the need to process case-by-case RACT determinations as SIP revisions in no way provides for the State to grant a compliance date extension or requires that it redefine RACT as it may otherwise be determined were the compliance date May 1, 1999 instead of May 31, 1995.

Moreover, on October 19, 2000, the very same day as EPA proposed approval of Maryland's September 8, 2000 SIP revision to amend its NO<sub>x</sub> RACT rule, EPA also proposed approval of Maryland's regulation to implement Phase II of the OTC's MOU (65 FR 62671). On August 28, 1998, Maryland submitted a revision to its SIP to implement Phase II of the OTC's NO<sub>x</sub> MOU. The revision consists of amendments to COMAR 26.11.27, Post RACT Requirements for NO<sub>x</sub> Sources (NO<sub>x</sub> Budget Program) and COMAR 26.11.28, Policies and Procedures Relating to Maryland's NO<sub>x</sub> Budget Program. Post RACT Requirements for NO<sub>x</sub> Sources, COMAR 26.11.27, is divided in fourteen sections: (.01) Definitions; (.02) Incorporation by Reference; (.03) Applicability; (.04) General Requirements; (.05) Allowance Allocations; (.06) Identification of Authorized Account Representatives; (.07) Allowance Banking; (.08) Emission Monitoring; (.09) Reporting; (.10) Record Keeping; (.11) End-of-Season Reconciliation; (.12) Compliance Certification; (.13) Penalties; (.14) Audit.

Policies and Procedures Relating to Maryland's NO<sub>x</sub> Budget Program, COMAR 26.11.28, is divided in thirteen sections: (.01) Scope; (.02) Definitions; (.03) Procedures Relating to Compliance Accounts; (.04) Procedures Relating to General Accounts; (.05) Allowance Banking; (.06) Allowance Transfer; (.07) Emissions Monitoring; (.08) Early Reduction Allowances; (.09) Opt-in Procedures; (.10) Audit Provisions; (.11) Allocations to Units in Operation in 1990; (.12) Allocations to Budget Sources Beginning Operation or for Which a Permit Was Issued After 1990 and Before January 1, 1998; (.13) Percent Contribution of Budget by Company. On November 16, 1999, MDE submitted amendments to its August 28, 1998 SIP revision request. The purpose of these amendments is to change the compliance date of the Maryland NO<sub>x</sub> Budget Program from May 1, 1999 to May 1, 2000. The revisions to the August 28, 1998 submittal include amendments to Regulations (.04) General Requirements, (.07) Allowance Banking, and (.11) End-of-Season Reconciliation under COMAR 26.11.27 and the repeal of Regulation (.08) Early Reduction Allowances under COMAR 26.11.28. On March 20, 2000, MDE submitted amendments to its August 28, 1998 SIP revision request consisting of two enforceable consent agreements between MDE and the Baltimore Gas and Electric Company and the Potomac Electric Power Company. These consent agreements impose special conditions and time lines for both companies regarding the implementation of Maryland's NO<sub>x</sub> Budget Trading Program requirements.

A more detailed description of Maryland's NO<sub>x</sub> Budget Trading Program requirements, the two consent agreements and EPA's rationale for approving them as a SIP revision are provided in the October 19, 2000 NPR (65 FR 62671) and its accompanying Technical Support Document (TSD) prepared for that rule. EPA received no comments on its October 19, 2000 NPR to approve Maryland's SIP revision to implement Phase II of the OTC NO<sub>x</sub> MOU. The final rule approving that SIP revision was signed on December 1, 2000 and was published in the **Federal Register** on December 15, 2000. Therefore, as of this time, and in substance, the commenter's contention that electric generating units in Maryland be required to meet the Phase II emission limits of the OTC's NO<sub>x</sub> MOU has been satisfied.

*Comment:* The commenter asserts that for the source categories found in the revised version of COMAR 26.11.09.08 at E, F, G, I (1) and (2) and J, RACT was

determined to be good management and operating practices, combustion analyses and operator training. The commenter contends that to the extent that the State is imposing these work practice requirements in lieu of numeric emission limits, the regulation represents a weakening of the current rule which sets presumptive numeric emission limits for all of these categories. The commenter cautions that this may violate the Act's antibacksliding provision, 42 U.S.C. 7515. The commenter goes on to say that other states have set numeric NO<sub>x</sub> RACT emission limits for the same or similar source categories. The commenter contends that the State and EPA must show that they will assure the same or better degree of emission control as the State's current presumptive limits and numeric RACT limits in other States, or demonstrate why such limits do not represent RACT for any sources in Maryland. Finally, the commenter argues that the State and EPA have failed to explain why the use of emission control devices such as selective catalytic reduction (SCR) or selective non-catalytic reduction (SNCR) are not RACT for these sources. According to data compiled by the Institute of Clean Air Companies (ICAC), SCR is used by sources elsewhere to reduce NO<sub>x</sub> emissions from industrial furnaces and small boilers (See ICAC White Paper: SCR Control of NO<sub>x</sub> Emissions (11/97)) and SNCR is used at three glass furnaces in California and one in Germany (See ICAC White Paper: SNCR for Controlling NO<sub>x</sub> Emissions (10/97)).

*Response:* EPA disagrees with the assertions of the commenter. While the current SIP-approved version of COMAR 26.11.09.08 does contain presumptive numerical limits, it concurrently also contains generic provisions for sources to submit and be approved for case-by-case RACT determinations. As Maryland's SIP-approved NO<sub>x</sub> RACT regulation has always provided for sources to seek and be approved for case-by-case RACT determinations versus meeting the regulation's otherwise presumptive emission limitation, Maryland's revising the regulation to simply include source category specific RACT requirements based upon case-by-case RACT determinations it has made does not weaken that current SIP-approved regulation and certainly does not violate the CAA's antibacksliding provision. Again, Maryland's September 8, 2000 SIP revision explains that the source-category RACT requirements are derived, in part, from case-by-case

RACT proposals submitted by sources, including those subject under COMAR 26.11.09.08 E, F, G, I (1) and (2) and J. The sources in Maryland covered under COMAR 26.11.09.08 E, F, G, I (1) and (2) and J all provided information to the Maryland MDE justifying why the presumptive limit of COMAR 26.11.09.08 did not constitute RACT in accordance with the provisions for doing so found in that same SIP-approved regulation. Maryland analyzed that information submitted pursuant to the case-by-case provisions and determined RACT for these sources. Therefore, when it amended COMAR 26.11.09.08 to include source category RACT requirements to avoid the need to process the case-by-case RACT determinations as SIP revisions, Maryland simply included its RACT determinations for these sources by their source categories in the revised regulation at COMAR 26.11.09.08 E, F, G, I (1) and (2) and J. EPA has approved RACT SIP regulations for other States in which NO<sub>x</sub> RACT for small combustion units is defined as work practice standards such proper operation and maintenance or an annual evaluation and adjustment of the combustion process. For example, EPA has approved provisions in Pennsylvania's RACT SIP regulations which define RACT for combustion units with a rated heat input equal to or greater than 20 MMBTU/hour and less than 50 MMBTU/hour as an annual adjustment or tune-up on the combustion process, and which define RACT for combustion units with a rated heat input of less than 20 MMBTU/hour as proper operation and maintenance. EPA approved these provisions in Pennsylvania's RACT SIP regulations because Pennsylvania had "provided information stating that there are no technically or economically feasible controls." With regard to the comment that Maryland and EPA must justify in their rulemakings amending previously SIP-approved COMAR 26.11.09.08 as to why SCR and NSCR are not RACT for these types of sources, EPA disagrees. As explained previously, on July 11, 1995, the Maryland Department of the Environment (MDE) submitted a revision to its State Implementation Plan (SIP) for the control of NO<sub>x</sub> emissions from major sources. This submittal included revisions to regulation COMAR 26.11.09.01 and 26.11.09.08 which pertained to definitions and a "generic" NO<sub>x</sub> RACT rule. This generic rule required affected sources to either meet a presumptive NO<sub>x</sub> emissions standard or to submit a "case-by-case" RACT determination for approval by MDE. In

all cases, under this regulation, RACT requirements were to have been met by no later than May 31, 1995. On June 22, 1999 (64 FR 33197), EPA granted conditional limited approval of this SIP revision. Under EPA's conditional limited approval, each case-by-case RACT determination was to have been submitted to EPA as a SIP revision. Many sources in Maryland invoked the provisions of the generic rule, submitted case-by-case RACT determinations by the date the rule required they do so, and complied with them by May 31, 1995. However, the State of Maryland found that processing these numerous case-by-case RACT determinations as SIP revisions to satisfy EPA's condition was unduly burdensome. Therefore, on September 8, 2000, Maryland submitted a SIP revision. It consisted of a revised version of COMAR 26.11.09.08 which removed the generic RACT provisions and replaced them with source category specific RACT emission limitations. Its provisions are to be complied with at all times and it provides no extension of the CAA mandated RACT compliance date of May 31, 1995. The revisions to COMAR 26.11.09.08 submitted on September 8, 2000, were made to satisfy EPA's June 22, 1999 (64 FR 33197) conditional limited approval of COMAR 26.11.09.08 and to remove the burden of processing RACT determinations as case-by-case SIP revisions. EPA does not believe that by making these amendments to COMAR 26.11.09.08 to satisfy the June 22, 1999 (64 FR 33197) final conditional limited approval, Maryland is required to re-evaluate and redefine RACT. Moreover, the SCR and SNCR related documents cited by the commenter are dated 1997, well beyond both the CAA's mandated date for determining RACT and its mandated May 31, 1995 date for complying with RACT.

As a point of information, EPA further notes that the 1990 total NO<sub>x</sub> emission inventory for the entire State of Maryland is 1056.4 tons per day. The 1990 statewide point source NO<sub>x</sub> total is 559.2 tons/day. The total emissions of NO<sub>x</sub> from Maryland sources covered under 26.11.09.08 E, F, G, I (1) and (2) and J equal 2% of the point source NO<sub>x</sub> inventory and 1% of the total NO<sub>x</sub> inventory.

*Comment:* The commenter contends that the State's rationale for the cement kiln RACT limits found in COMAR 26.11.09.08 H is very sparse. The commenter argues that the State must conduct a thorough review of available control technologies, including SNCR, to determine whether the controls constitute RACT and if further emission reductions are feasible at these sources.

Lastly the commenter expresses concern over the State TSD's indication that the limits are "interim" and that the state is deferring emission reductions until the start of the Phase III NO<sub>x</sub> program in 2003. The commenter asserts that if the State is deferring RACT controls, such an approach is contrary to the Act's mandate for adoption of RACT in Maryland's nonattainment areas.

*Response:* EPA disagrees with the commenter's assertions regarding the adequacy of the State's determination of RACT for cement kilns. It is based upon an analysis of CEM data after combustion optimization. The State's TSD explains that as of the date of RACT compliance, the only combustion control device (SNCR) installed on a cement kiln operated for only a few months due to excessive operating costs. The fact that Maryland's TSD includes the statement that the RACT limits are interim until the affected sources comply with new NO<sub>x</sub> requirements in 2003 clearly alludes to post-RACT requirements of Phase III of the OTC's MOU or those of the NO<sub>x</sub> SIP call. In fact, Maryland's regulation responding to the NO<sub>x</sub> SIP call was proposed for approval by EPA on October 19, 2000 (65 FR 62617), again the very same day as EPA proposed approval of the revisions to COMAR 26.11.09.08 for NO<sub>x</sub> RACT. The final rule approving that SIP revision has been signed and has been or shortly will be published in the rules portion of the **Federal Register**.

*Comment:* The commenter contends that the State offers no analysis to justify why the proposed limits for municipal waste combustors found in COMAR 26.11.09.08 H constitute RACT. Among other things, the State must consider whether required use of SNCR would justify lower emission limits than those proposed.

*Response:* EPA disagrees with the commenter. On page 5 of its June 30, 1999 TSD and on page 4 of its August 3, 2000 revised TSD, Maryland explains that its municipal waste combustors (MWCs) are subject to prevention of significant deterioration (PSD) requirements as established under the approved SIP and the provisions of its approved section 111d/129 plan. EPA agrees that simply being in compliance with an applicable BACT determination and/or section 11d/126 plan requirement would not, in and of itself, necessarily satisfy RACT requirements to be met by May 31, 1995, particularly if the BACT or 111d/126 emission limitations had been imposed prior to the time RACT was to be determined and its compliance date met. However, under MDE's BACT determination, the

new MWC in Montgomery County has installed SNCR. The existing MWC in Maryland that is subject to RACT requirements to control NO<sub>x</sub> is now also subject to Maryland's 111d/126 plan for the control of emissions from MWC's which was approved by EPA on April 23, 1999 (64 FR 19919). In fact, the MWC in Baltimore City has installed SNCR to meet those standards. Therefore, as of this time, and in substance, the commenter's concern related to SNCR have been satisfied.

*Comment:* The commenter asserts that the State offers no analysis to justify why the proposed limits for internal combustion engines found in COMAR 26.11.09.08 I constitute RACT, and must, among other things, consider whether SCR constitutes RACT for these sources.

*Response:* EPA disagrees with the commenter. On page 5 of its revised TSD dated August 3, 2000, Maryland provides its RACT limits for internal combustion engines and an explanation that those limits were derived from stack tests for the larger units and by applying an emission factor for the smaller units. The TSD then refers the reader to section VI. of the TSD for source-specific information. At subsection K entitled Internal Combustion Engines of section VI. of the TSD, on pages 28–30, Maryland provides specific information regarding the rationale and justification for its RACT determinations for companies which operate internal combustion engines. EPA has reviewed the State's rationale and believes it meets the requirements of the CAA.

*Comment:* The State submittal does not provide commitments of adequate funding and personnel to implement and enforce the NO<sub>x</sub> RACT rules and does not detail a program for enforcement of the rules.

*Response:* EPA disagrees with the commenter's assertion that states must provide such information with each SIP revision. Although 42 U.S.C. 7410(a)(2)(E) and 7410(a)(2)(C) do contain these provisions cited by the commenter, section 7410(a)(2)(H) is the statutory provision which governs requirements for individual plan revisions which States may be required to submit from time to time. There are no cross-references in section 7410(a)(2)(H) to either 7410(a)(2)(E) or 7410(a)(2)(C). Therefore, EPA concludes that Congress did not intend to require States to submit an analysis of adequate funding and enforcement with each subsequent and individual SIP revision submitted under the authority of section 7410(a)(2)(H). Similarly, 40 CFR part 51, Appendix V contains the list of

information which States must submit each plan revision in order for EPA to conduct a review of completeness under section 7410(k)(1). The list in part 51, Appendix V contains no cross-reference to or cite of the provisions 40 CFR 51.280 as a criterion for determining completeness. Thus, in following Congress' intent, EPA has further determined that the requirements of 40 CFR 51.280 do not apply to each individually-submitted State plan revision. Nevertheless, EPA notes that Maryland had previously submitted such commitments as part of the 1982 SIP for its ozone nonattainment areas. In a final rulemaking action published on March 8, 1984 (49 FR 8610), EPA approved Maryland's financial and manpower resource commitments, after having proposed approval of these commitments on February 3, 1983 (48 FR 5124 at 5052). EPA is satisfied that Maryland continues to have adequate funding and personnel to implement and enforce the current RACT rules. However, EPA does have the authority under the Act to make findings regarding implementation failures or other SIP deficiencies and take appropriate action in such situations. Should EPA find that Maryland lacks adequate resources to pursue any violation of the ozone SIP, or if Maryland's enforcement response is inadequate, EPA will take appropriate action under its Clean Air Act authority.

*Comment:* The commenter asserts that the Act required compliance by all sources with RACT by no later than May 31, 1995, that the RACT rules were not even submitted to EPA until the year 2000, that EPA has not specified actual compliance deadlines for the subject sources and should not approve these RACT rules without specific compliance deadlines.

*Response:* EPA disagrees with the commenter that there are no compliance dates established for the RACT requirements. As explained previously, on July 11, 1995, the MDE submitted a revision to its SIP for the control of NO<sub>x</sub> emissions from major sources. This submittal included revisions to regulation COMAR 26.11.09.01 and 26.11.09.08 which pertained to definitions and a generic NO<sub>x</sub> RACT rule which required affected sources to either meet a presumptive NO<sub>x</sub> emissions standard or to submit a case-by-case RACT proposal for approval by MDE. In all cases, under this regulation, RACT requirements were to have been met by no later than May 31, 1995. On June 22, 1999 (64 FR 33197), EPA granted conditional limited approval of this SIP revision. The condition imposed required that all case-by-case

RACT determination be submitted as SIP revisions. On September 8, 2000, Maryland submitted a SIP revision. It consisted of a revised version of COMAR 26.11.09.08 which removed the generic RACT provisions and replaced them with source category specific RACT emission limitations. Maryland chose to do this to avoid the undue burden of submitting all the case-by-case RACT determinations as source-specific SIP revisions. The submittal of the September 8, 2000, SIP revision satisfies the conditions of EPA's June 22, 1999 conditional limited approval. Maryland first revised COMAR 26.11.09.08 on September 22, 1999 and further revised it on August 30, 2000. These revisions to COMAR 26.11.09.08 became effective in the State of Maryland on October 18, 1999, and September 18, 2000, respectively. Its provisions are to be complied with at all times and it provides no extension of the CAA mandated RACT compliance date of May 31, 1995.

While not directly responsive to a specific comment, it should be noted that the 1990 total NO<sub>x</sub> emission inventory for the entire State of Maryland is 1056.4 tons per day. The 1990 statewide point source NO<sub>x</sub> total is 559.2 tons/day. From the 1990 baseline, Maryland's SIP-approved NO<sub>x</sub> OTC budget rule eliminates 413.6 tons/day or reduces total NO<sub>x</sub> by 39% and point source NO<sub>x</sub> by 74%. From the 1990 baseline, Maryland's SIP-approved NO<sub>x</sub> SIP call rule eliminates an additional 49.3 tons/day for a total reduction of 462.9 tons/day reducing total NO<sub>x</sub> by a total of 44% and point source NO<sub>x</sub> by a total of 83%.

### III. Final Action

EPA is fully approving Maryland's revised NO<sub>x</sub> RACT regulations found at COMAR 26.11.09.01 and 26.11.09.08 which were submitted as a SIP revision by the MDE on September 8, 2000. The submittal of the September 8, 2000, SIP revision satisfies the conditions of EPA's June 22, 1999 conditional limited approval. Maryland first revised COMAR 26.11.09.08 on September 22, 1999 and further revised it on August 30, 2000. These revisions to COMAR 26.11.09.08 became effective in the State of Maryland on October 18, 1999, and September 18, 2000, respectively.

### IV. 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 (Public Law 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 April 9, 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 approving the Maryland NO<sub>x</sub> RACT regulations 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, Intergovernmental relations, Nitrogen dioxide, Reporting and recordkeeping requirements.

Dated: December 15, 2000.

**Thomas C. Voltaggio,**  
*Acting 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 paragraph (c)(155) to read as follows:

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

\* \* \* \* \*

(c) \* \* \*

(155) Revisions to the Maryland Regulations for NO<sub>x</sub> RACT regulations submitted on September 8, 2000 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of September 8, 2000 from the Maryland Department of the Environment transmitting the Maryland NO<sub>x</sub> RACT regulations.

(B) The Maryland NO<sub>x</sub> RACT regulations found at COMAR 26.11.09.08, effective October 18, 1999, as revised effective September 18, 2000. This rule replaces COMAR 26.11.09.08, effective May 10, 1993, as revised effective June 20, 1994 and May 8, 1995.

(C) Addition of COMAR 26.11.09.01B(3-1) (definition of the term "high heat release unit"), effective September 18, 2000.

(ii) Additional Material.—Remainder of September 8, 2000 submittal.

##### **§ 52.1072 [Amended]**

3. Section 52.1072(e) is removed and reserved.

[FR Doc. 01-3161 Filed 2-7-01; 8:45 am]

BILLING CODE 6560-50-P

## **DEPARTMENT OF THE INTERIOR**

### **Bureau of Land Management**

#### **43 CFR Parts 3100, 3106, 3108, 3130, and 3160**

[WO-310-1310-01-24 1A-PB]

RIN 1004-AC54

#### **Oil and Gas Leasing: Onshore Oil and Gas Operations: Delay of Effective Date**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Final rule; delay of effective date.

**SUMMARY:** In accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled "Regulatory Review Plan," 66 FR 7701 (January 24, 2001), this document temporarily delays for 60 days the effective date of the rule entitled "Oil and Gas Leasing: Onshore Oil and Gas Operations," published in the **Federal Register** on January 10,