

procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 9, 1995, memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") (signed into law on March 22, 1995) requires that the USEPA prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year. Section 203 requires the USEPA to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the USEPA must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The USEPA must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the USEPA explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this final rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than \$100 million in any one year, the USEPA has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the USEPA is not required to develop a plan with regard to small governments. This rule only approves the incorporation of existing state rules into the SIP. It imposes no additional requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis

assessing the impact of any proposed or final rule on small entities. (5 U.S.C. 603 and 604.) Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Clean Air Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. USEPA.*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

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 1, 1996. 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.

Dated: October 31, 1995.
Valdas V. Adamkus,
Regional Administrator.

For the reasons stated in the preamble, 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. 7401-7671q.

Subpart P—Indiana

2. Section 52.770 is amended by adding paragraph (c)(100) to read as follows:

§ 52.770 Identification of Plan.

* * * * *

(c) * * *

(100) On August 25, 1995, Indiana submitted a regulation which bans residential open burning in Clark, Floyd, Lake, and Porter Counties in Indiana. The regulation allows residential open burning, with certain restrictions, in other parts of the State, and describes other types of open burning which are allowed in Indiana.

(i) Incorporation by reference.

(A) Indiana Administrative Code Title 326: Air Pollution Control Board, Article 4: Burning Regulations, Rule 1: Open Burning, Section 3: Exemptions. Added at 18 In. Reg. 2408 Effective June 23, 1995.

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40 CFR Part 52

[MD043-3005; FRL-5339-2]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Prevention of Significant Deterioration: PM-10 Increments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maryland which amends Code of Maryland Administrative Regulations (COMAR) 26.11.01.01, 26.11.02.10 (C)(9), and 26.11.06.14. The intended effect of this action is to approve an amendment to Maryland's Prevention of Significant Deterioration (PSD) program. This revision makes these regulations consistent with the currently effective version of 40 CFR part 52.21, including establishing the maximum increases in ambient particles with an aerodynamic diameter of less than or equal to a nominal 10 micrometers (PM-10) concentration allowed in an area above the baseline concentrations. This action is being taken in accordance with section 110 of the Clean Air Act (CAA), and in satisfaction of the June 3, 1993 promulgation of the PM-10 increment regulations requiring that existing state PSD programs be modified to replace the total suspended particulate (TSP) increments with the new PM-10 increment provisions.

DATES: This action is effective April 1, 1996 unless notice is received on or before March 4, 1996 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Comments may be mailed to Marcia L. Spink, Associate Director, Air Programs, Mailcode 3AT00, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and Maryland Department of the Environment, 2500 Broening Highway, Baltimore Maryland 21224.

FOR FURTHER INFORMATION CONTACT: Lisa M. Donahue, (215) 597-2923.

SUPPLEMENTARY INFORMATION: From 1991 to 1993, EPA promulgated amendments to the regulations for the prevention of significant deterioration of air quality from emissions of sulfur dioxide, nitrogen oxides, and particulate matter. These regulations establish the maximum increases, or increments, in ambient concentrations of these criteria pollutants. In 1991, EPA amended the definition of significant at § 52.21(b)(23)(i) (56 FR 5506). In 1992, EPA promulgated two revisions to 40 CFR Part 52.21. On February 3, 1992 EPA amended the definition of VOC at § 52.21(b)(30) (57 FR 3946), and on July 21, 1992 EPA adopted a New Source Review (NSR) exclusion for utility pollution control projects and amended § 52.21(b)(2), (21), and (31)-(38) (57 FR 32314-32339).

On June 3, 1993, EPA promulgated regulations under Section 166 of the Clean Air Act to prevent significant deterioration of air quality due to emissions of particles with an aerodynamic diameter of less than or equal to a nominal 10 micrometers (PM-10), establishing increments for PM-10. EPA added the PM-10 increments to the PSD program elements in 40 CFR 51.166 and 52.21, which replaced the original increments that were based on total suspended particulate (TSP) (58 FR 31637). On July 20, 1993, EPA revised § 52.21(l)(1) and (2), which adds Supplement B to the "Guideline on Air Quality Models (Revised)" (57 FR 38816).

Summary of SIP Revision

On July 17, 1995, the State of Maryland submitted a formal revision to its State Implementation Plan (SIP). The SIP revisions consist of changes to Maryland's Prevention of Significant Deterioration (PSD) Program at the Code of Maryland Administrative Regulations (COMAR) 26.11.01.01, 26.11.02.10 (C)(9), and 26.11.06.14, which update references to 40 CFR Part 52.21 to the 1993 edition. The SIP would be revised to remove references to the 1990 edition of the CFR and replace those references with 1993.

EPA Evaluation

EPA evaluated Maryland's SIP revision and concluded the following: (1) Updating the regulations provides updated definitions and model guidelines, establishes a New Source Review (NSR) exclusion for utility pollution control projects, and provides protection of the PSD increment for PM-10; and (2) all of the applicable requirements of 40 CFR Part 51 and 52 are met. A more detailed evaluation is provided in a Technical Support Document available upon request from the Regional EPA office listed in the **ADDRESSES** section of this notice.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective April 1, 1996 unless, by March 1, 1996, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on April 1, 1996.

Final Action

EPA is approving as revisions to the Maryland SIP changes to the Code of Maryland Administrative Regulations (COMAR) which were submitted on July 17, 1995. The submitted revision updates the reference to 40 CFR 52.21. This actions make Maryland's SIP

regulations, COMAR 26.11.01.01, 26.11.02.10 (C)(9) and 26.11.06.14, consistent with the currently effective version of 40 CFR 52.21.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed/promulgated does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action to approve revisions to the Maryland SIP which make Maryland's SIP regulations, COMAR 26.11.01.01, 26.11.02.10 (C)(9) and 26.11.06.14, consistent with the currently effective version of 40 CFR 52.21 must be filed in the United States Court of Appeals for the appropriate circuit by April 1, 1996. 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, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur Oxides.

Dated: November 3, 1995.

Stanley L. Laskowski,
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. 7401-7671q.

Subpart V—Maryland

2. Section 52.1070 is amended by adding paragraphs (c)(119) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(119) Revisions to the Code of Maryland Administrative Regulations for prevention of significant deterioration submitted on July 17, 1995 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of July 17, 1995 from the Maryland Department of the Environment transmitting revisions to the Maryland State Implementation Plan.

(B) Amendments to regulations 26.11.01.01, 26.11.02.10 (C)(9) and 26.11.06.14 under the Code of Maryland Administrative Regulations (COMAR) revising Maryland's prevention of significant deterioration program to incorporate changes to 40 CFR 52.21 made between 1992 and 1993. The amendments were effective on May 8, 1995 in the State of Maryland.

(ii) Additional material.

(A) Remainder of July 17, 1995 State of Maryland submittal.

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40 CFR Part 52

[NC-070-1-6962a; FRL-5295-9]

Approval and Promulgation of Implementation Plans; North Carolina: Approval of Revisions to the North Carolina State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On August 15, 1994, the State of North Carolina, through the North Carolina Department of Environment, Health and Natural Resources, (NCDEHNR) submitted revisions to the North Carolina State Implementation Plan (SIP). These revisions are the adoption of new air quality rules, amendments to existing air quality rules and repeals of existing air quality rules that were the subject of public hearings held on March 21 and 30, 1994. These major rule changes include the addition of new sections 15A NCAC 2Q .0100 through .0111 General Provisions, 15A NCAC 2Q .0300 through .0311 (except 302) Construction and Operation Permits, and 15A NCAC 2Q .0600 through .0606 Transportation Facility

Procedures. Other major revisions to the SIP include the repealing of sections 15A NCAC 2H .0601 through .0607, Purpose and Scope, and .0609 Permit Fees. Additional rule changes include modification to existing rules to correct cross references.

EFFECTIVE DATE: This action is effective April 1, 1996 unless notice is received by March 4, 1996 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be addressed to: Randy Terry, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365.

Copies of the material submitted by the NCDEHNR may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365

North Carolina Department of Environment, Health and Natural Resources, 512 North Salisbury Street, Raleigh, North Carolina 27604.

FOR FURTHER INFORMATION CONTACT: Randy Terry, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347-3555 extension 4212.

SUPPLEMENTARY INFORMATION: On August 15, 1994, the State of North Carolina, through the NCDEHNR submitted revisions to the North Carolina SIP covering the adoption of new air quality rules, amendments to existing air quality rules and repeals of existing air quality rules that were the subject of public hearings held on March 21 and 30, 1994. These rules address permitting and transportation.

EPA is approving the following new rules and revisions of existing rules in the North Carolina SIP. These new rules and revisions are consistent with the requirements of the Clean Air Act and EPA guidance.