

circuit by April 25, 2011. 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule

and address the comment in the proposed rulemaking. This action which pertains to Maryland's amendment to the definition of "fuel-burning equipment" 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, Particulate matter, Sulfur oxides.

Dated: February 1, 2011.

W.C. Early,

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. In § 52.1070, the table in paragraph (c) is amended by revising the entries for COMAR 26.11.01.01 and COMAR 26.11.09.01 to read as follows:

#### § 52.1070 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

#### EPA-APPROVED REGULATIONS 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>26.11.01 General Administrative Provisions</b>				
26.11.01.01 .....	Definitions .....	9/20/10	2/22/11, [Insert page number where the document begins].	Revision to paragraph .01B(17).
*	*	*	*	*
<b>26.11.09 Control of Fuel Burning Equipment and Stationary Internal Combustion Engines, and Certain Fuel-Burning Installations</b>				
26.11.09.01 .....	Definitions .....	9/20/10	2/22/11, [Insert page number where the document begins].	Revision removes definition of "fuel-burning equipment".
*	*	*	*	*

\* \* \* \* \*

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[DC103-2051; FRL-9267-6]

#### Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Update to Materials Incorporated by Reference

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

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

**SUMMARY:** EPA is updating the materials submitted by the District of Columbia that are incorporated by reference (IBR) into the State implementation plan (SIP). The regulations affected by this update have been previously submitted by the State agency and approved by

EPA. This update affects the SIP materials that are available for public inspection at the National Archives and Records Administration (NARA), the Air and Radiation Docket and Information Center located at EPA Headquarters in Washington, DC and the EPA Regional Office.

**DATES:** *Effective Date:* This action is effective February 22, 2011.

**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; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue NW., Room Number 3334, EPA West Building, Washington, DC 20460; or the National Archives and Records Administration (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.*

**FOR FURTHER INFORMATION CONTACT:** Harold A. Frankford, (215) 814-2108 or by e-mail at [frankford.harold@epa.gov](mailto:frankford.harold@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The SIP is a living document which the 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 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 December 7, 1998, (63 FR 67407) EPA

published a document in the **Federal Register** beginning the new IBR procedure for the District of Columbia. On August 6, 2004 (69 FR 47773), September 6, 2005 (70 FR 52919) and March 19, 2009 (74 FR 11647), EPA published updates to the IBR material for the District of Columbia.

Since the publication of the last IBR update, EPA has approved the following regulatory changes to the IBR materials in paragraph 40 CFR 52.470(c):

1. The addition of 20 DCMR Chapter 15.
2. A revision to the Title of 20 DCMR Chapter 4.
3. The removal of Section 403 of 20 DCMR, Chapter 4.

## II. EPA Action

In this action, EPA is doing the following:

1. Announcing the update to the IBR material as of December 1, 2010.
2. Correcting the title entry for 20 DCMR Chapter 4 in paragraph 52.470(c).
3. Making corrections to several table entries in paragraph 52.470(e) so that the date format in the “state submittal date” and “EPA approval date” columns are consistent with that of the table.

EPA has determined that today’s rule falls under the “good cause” exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding “good cause,” authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today’s rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs. Under section 553 of the APA, an agency may find good cause where procedures are “impractical, unnecessary, or contrary to the public interest.” Public comment is “unnecessary” and “contrary to the public interest” since the codification only reflects existing law. Immediate notice in the CFR benefits the public by removing outdated citations and incorrect table entries.

## III. Statutory and Executive Order Reviews

### A. General Requirements

Under the Clean Air Act (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 Order 12866 (58 FR 51735, October 4, 1993);
  - 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 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

EPA has also determined that the provisions of section 307(b)(1) of the CAA pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the District of Columbia SIP compilations had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review for this “Identification of plan” update action for the District of Columbia.

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and record keeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 1, 2011.

**W.C. Early,**

*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 J—District of Columbia

- 2. Section 52.470 is amended by:
  - a. Revising paragraph (b).
  - b. In paragraph (c), revising the title heading for Chapter 4.
  - c. Revising the following entries in paragraph (e): 15% Rate of Progress Plan, 1996–1999 Rate-of-Progress plan SIP, 1990 Base Year Inventory Revisions, 1999–2005 Rate-of-Progress Plan SIP Revision and the Transportation Control Measures (TCMs) in Appendix J, VMT Offset SIP Revision, Contingency Measure Plan, and 1-hour Ozone Modeled Demonstration of Attainment and Attainment Plan.

The amendments read as follows:

**§ 52.470 Identification of plan.**

\* \* \* \* \*

(b) Incorporation by reference.

(1) Material listed as incorporated by reference in paragraphs (c) and (d) was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The material incorporated is as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates on or after

December 1, 2010 will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region III certifies that the rules/regulations provided by EPA at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State implementation plan as of December 1, 2010.

(3) Copies of the materials incorporated by reference may be inspected at the EPA Region III Office at 1650 Arch Street, Philadelphia, PA

19103. For further information, call (215) 814-2108; the EPA, Air and Radiation Docket and Information Center, Room Number 3334, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC 20460. For further information, call (202) 566-1742; or at the National Archives and Records Administration (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).

(c) *EPA-approved regulations.*

**EPA-APPROVED DISTRICT OF COLUMBIA REGULATIONS**

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
<b>District of Columbia Municipal Regulations (DCMR), Title 20—Environment</b>				
* * * * *				
<b>Chapter 4 Ambient Monitoring, Emergency Procedures, and Chemical Accident Prevention</b>				
* * * * *				
(e) <i>EPA-approved non-regulatory and quasi-regulatory material.</i>				
Name of non-regulatory SIP revision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Additional explanation
* * * * *				
15% Rate of Progress Plan.	Metropolitan Washington Ozone Nonattainment Area.	4/16/98 .....	08/05/99, 64 FR 42600	52.476(a).
* * * * *				
1996–1999 Rate-of-Progress plan SIP.	Washington 1-hour ozone nonattainment area.	11/3/97, 5/25/99 .....	5/13/05, 70 FR 25688 ...	1999 motor vehicle emissions budgets of 128.5 tons per day (tpy) of VOC and 196.4 tpy of NOx, effective 6/13/05.
1990 Base Year inventory Revisions.	Washington 1-hour ozone nonattainment area.	9/5/03, 2/25/04 .....	5/13/05, 70 FR 25688 ...	Effective date: 6/13/05.
1999-2005 Rate-of-Progress Plan SIP Revision and the Transportation Control Measures (TCMs) in Appendix J.	Washington 1-hour ozone nonattainment area.	9/5/03, 2/25/04 .....	5/13/05, 70 FR 25688 ...	Only the TCMs in Appendix J of the 2/25/2004 revision, 2002 motor vehicle emissions budgets (MVEBs) of 125.2 tons per day (tpy) for VOC and 290.3 tpy of NOx, and, 2005 MVEBs of 97.4 tpy for VOC and 234.7 tpy of NOx, effective 6/13/05.
VTM Offset SIP Revision.	Washington 1-hour ozone nonattainment area.	9/5/03, 2/25/04 .....	5/13/05, 70 FR 25688 ...	Effective date: 6/13/05.
Contingency Measure Plan.	Washington 1-hour ozone nonattainment area.	9/5/03, 2/25/04 .....	5/13/05, 70 FR 25688 ...	Effective date: 6/13/05.
1-hour Ozone Modeled Demonstration of Attainment and Attainment Plan.	Washington 1-hour ozone nonattainment area.	9/5/03, 2/25/04 .....	5/13/05, 70 FR 25688 ...	2005 motor vehicle emissions budgets of 97.4 tons per day (tpy) for VOC and 234.7 tpy of NOx, effective 6/13/05.
* * * * *				

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R05-OAR-2010-0671; FRL-9267-8]

### Approval and Promulgation of Air Quality Implementation Plans; Illinois

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a July 29, 2010, request from the State of Illinois to exempt sources of Oxides of Nitrogen (NO<sub>x</sub>) in the Illinois portions of the Chicago-Gary-Lake County, Illinois-Indiana and St. Louis, Missouri-Illinois 8-hour ozone nonattainment areas from Clean Air Act (CAA) requirements for NO<sub>x</sub> Reasonably Available Control Technology (RACT) for purposes of attaining the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS or standard). This NO<sub>x</sub> RACT waiver is based on the most recent three years of complete, quality assured ozone monitoring data, which show attainment of the 1997 8-hour ozone standard in the subject nonattainment areas and demonstrate that additional reduction of NO<sub>x</sub> emissions in these areas would not contribute to attainment of the 1997 8-hour ozone NAAQS.

**DATES:** This final rule is effective March 24, 2011.

**ADDRESSES:** EPA has established a docket for this action: Docket ID No. EPA-R05-OAR-2010-0671. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, i.e., 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 either electronically in <http://www.regulations.gov> or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Edward Doty, Environmental Scientist, at (312) 886-6057 before visiting the Region 5 office.

#### FOR FURTHER INFORMATION CONTACT:

Edward Doty, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6057, [doty.edward@epa.gov](mailto:doty.edward@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA. This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

- I. What is the background for this rule?
- II. What comments did we receive on the proposed rule?
- III. What action is EPA taking?
- IV. Statutory and Executive Order Reviews

#### I. What is the background for this rule?

On July 18, 1997 (62 FR 38856), EPA promulgated an 8-hour ozone standard of 0.08 parts per million parts of air (ppm). EPA published a final rule designating and classifying areas under the 1997 8-hour ozone standard on April 30, 2004 (69 FR 23857). In that rulemaking, the Chicago-Gary-Lake County, Illinois-Indiana (IL-IN) and St. Louis, Missouri-Illinois (MO-IL) areas were designated as nonattainment for the 1997 8-hour ozone standard. The designations became effective on June 15, 2004.

Since the Illinois ozone nonattainment areas were classified as moderate nonattainment for ozone under subpart 2 of the CAA in the April 30, 2004, designation rulemaking, they became subject to the Oxides of Nitrogen (NO<sub>x</sub>) emission control requirements of section 182(f) of the CAA. Section 182(f) requires States with areas classified as moderate nonattainment and above to adopt and implement the same level of NO<sub>x</sub> emission controls for major stationary sources as are required for major stationary sources of Volatile Organic Compounds (VOC). Major stationary VOC sources are subject to RACT requirements. Therefore, major NO<sub>x</sub> sources are also subject to RACT requirements. Section 182(f) also provides that these NO<sub>x</sub> emission control requirements do not apply to an area (outside of a designated ozone transport region) if EPA determines that additional reductions of NO<sub>x</sub> emissions would not contribute to attainment of the ozone standard. In areas where the ozone standard is attained, as demonstrated by complete, quality-assured air quality data, without the implementation of the additional section 182(f) NO<sub>x</sub> emission controls, it is clear that additional NO<sub>x</sub> emission controls required by section 182(f) would not contribute to attainment of

the ozone standard since the standard has already been attained.

On July 29, 2010, the Illinois Environmental Protection Agency (Illinois EPA) submitted a request for a waiver of the NO<sub>x</sub> RACT requirements that would apply under section 182(f) of the CAA to the Illinois portions of the Chicago-Gary-Lake County, IL-IN and St. Louis, MO-IL ozone nonattainment areas.<sup>1</sup> Although Illinois has adopted NO<sub>x</sub> RACT rules for the ozone nonattainment areas, the 1997 8-hour ozone standard has been attained in the two ozone nonattainment area prior to the implementation of Illinois' NO<sub>x</sub> RACT rules.

On December 8, 2010 (75 FR 76332), EPA published a proposed rule reviewing Illinois' NO<sub>x</sub> control waiver request and proposing to grant this waiver under section 182(f) of the CAA. This proposed rule provides a detailed discussion of Illinois' requested NO<sub>x</sub> RACT waiver and the ozone air quality data supporting the granting of this waiver.

#### II. What comments did we receive on the proposed rule?

EPA received no comments on the December 8, 2010, proposed rule.

#### III. What action is EPA taking?

The 2007–2009 ozone data for the Chicago-Gary-Lake County, IL-IN and St. Louis, MO-IL 8-hour ozone nonattainment areas show attainment of the 1997 8-hour ozone standard. Based on this conclusion, we are approving Illinois' request for a waiver from the NO<sub>x</sub> RACT requirements of the CAA in the Illinois portions of the Chicago-Gary-Lake County, IL-IN and St. Louis, MO-IL 8-hour ozone nonattainment areas.

#### IV. Statutory and Executive Order Reviews

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

<sup>1</sup> The Illinois portion of the Chicago-Gary-Lake County, IL-IN 8-hour ozone nonattainment area includes Cook, DuPage, Kane, Lake, McHenry, and Will Counties, and portions of Grundy (Aux Sable and Goose Lake Townships) and Kendall (Oswego Township) Counties. The Illinois portion of the St. Louis, MO-IL 8-hour ozone nonattainment area includes Jersey, Madison, Monroe, and St. Clair Counties. These nonattainment areas are not part of a designated ozone transport region. See section 184(a) of the CAA.