

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R03-OAR-2007-1120; FRL- ]**

**Approval and Promulgation of Air Quality Implementation Plans; Maryland; Reasonably Available Control Technology Requirements for Marine Vessel and Barge Loading**

**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 establishes and requires reasonably available control technology (RACT) for the control of volatile organic compound (VOC) emissions from marine vessel and barge loading. EPA is approving this SIP revision in accordance with the Clean Air Act (CAA).

**EFFECTIVE DATE:** This final rule is effective on [insert date 30 days from date of publication].

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number **EPA-R03-OAR-2007-1120**. All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) website. Although listed in the electronic docket, 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 through [www.regulations.gov](http://www.regulations.gov) or in hard copy 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. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland, 21230.

**FOR FURTHER INFORMATION CONTACT:** Gobeil McKinley, (215) 814-2033, or by e-mail at [mckinley.gobeil@epa.gov](mailto:mckinley.gobeil@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On April 15, 2008 (73 FR 20234), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. The NPR proposed approval of the control of VOC emissions from marine vessel and barge loading by establishing RACT requirements. The formal SIP revision was submitted by the Maryland Department of the Environment (MDE) on October 24, 2007.

**II. Summary of SIP Revision**

The Maryland Department of the Environment submitted this revision to the SIP to establish reasonably available control technology requirements for marine vessel and barging loading. The SIP revision includes amendments to Regulation .01 and adoption of new Regulation .08 under COMAR 26.11.13 Control of Gasoline and Volatile Organic Compound Storage and Handling. The amendment to COMAR 26.11.13.01 consists of a new definition that defines a

marine vessel as any tank ship or barge that transports VOCs in bulk as cargo. The new regulation COMAR 26.11.13.08 requires owners or operators of barge loading facilities in Baltimore City, Anne Arundel, Baltimore, Calvert, Carroll, Cecil, Charles, Frederick, Harford, Howard, Montgomery, and Prince George's Counties to reduce capture of VOC vapors by 90 percent if emissions from the barge loading equal or exceed 25 tons per year (TPY). In the rest of the state (Allegheny, Caroline, Dorchester, Garrett, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Washington, Wicomico, and Worcester Counties), controls are required if emissions are equal to or exceed 50 TPY.

The rationale for EPA's proposed action are explained in the NPR and will not be restated here. On April 15, 2008, EPA received a comment on the April 15, 2008 NPR. A summary of the comment submitted and EPA's response is provided in Section III of this document.

### **III. Summary of Public Comments and EPA Response**

**Comment:** A single commenter questions why the state is establishing a RACT standard for marine vessel and barge loading instead of a Best Available Control Technology (BACT) or Maximum Achievable Control Technology (MACT) standard. The commenter also claims that established BACT and MACT standards would achieve greater control than the proposed RACT standard, though at cost ranging from somewhat less than estimated by the state.

**Response:** These amendments, submitted by the State of Maryland establishing RACT requirements for VOC emissions from marine vessel and barge loading, are being approved by

EPA because EPA has determined that they properly represent RACT for this source category. Since the 1970's, EPA has consistently interpreted RACT to mean the lowest emission limit that a particular source is capable of meeting by the application of the control technology that is reasonably available considering technological and economic feasibility. See, e.g., 72 FR 20586 at 20610 (April 25, 2007). Maryland submitted this SIP revision request pursuant to the RACT requirements of sections 182 and 184 of the CAA. Other provisions of the CAA may require BACT or MACT level controls for sources. However, these are generally considered to be more stringent than RACT, and thus, the controls necessary to meet BACT or MACT requirements may not be the same as controls that would meet the RACT requirement.

Maryland is located in the Ozone Transport Region (OTR) that was created by section 184 of the CAA. Section 184(b)(1)(B) of the CAA requires that Maryland implement RACT regulations on all VOC sources that have the potential to emit 50 TPY or more. In addition, section 182(b)(2) requires that Maryland implement RACT regulations on all major sources of VOC in moderate or above ozone nonattainment areas within the State. Major VOC sources are those with the potential to emit at least 100 TPY in moderate areas, 50 TPY in serious areas, and 25 TPY in severe areas.

BACT, on the other hand, is a case-by-case emissions limitation based on the maximum degree of reduction of a regulated pollutant emitted from a major new source or a major modification of an existing source, as determined by application of EPA's Prevention of Significant Deterioration regulations, 40 C.F.R. 52.21, which are authorized by Sections 160 – 169 of the

CAA. BACT, therefore, is determined by a different standard than RACT and does not apply to unmodified existing sources that would be covered by the RACT rule.

Similarly, MACT is also a distinct legal requirement and is determined through a different standard than RACT. MACT standards are designed to reduce hazardous air pollutants emissions to a maximum achievable degree, taking into account factors such as cost and energy requirements, as set forth at 40 CFR 63.41, and as authorized by section 112 of the CAA. Although EPA has promulgated a standard for barge loading (40 CFR Part 63 Subpart Y), as with BACT, not every source required to be covered by the Maryland RACT rule would be required to have a MACT limit, and the definition of MACT takes into account factors that are not required for RACT.

In sum, RACT, MACT, and BACT are potentially overlapping emissions limitation requirements, authorized by different provisions of the CAA, directed to remedy distinct problems (RACT, in this case, to help attain the federal ozone standard by controlling emissions of VOC, an ozone precursor; BACT to prevent significant deterioration in areas attaining a federal standard through permitting of new and modified sources; and MACT to control emissions of listed hazardous air pollutants), covering different (but potentially overlapping) subsets of sources, and based on different control standards.

The commenter's failure to document and support either cost data provided in the comment, or the methodology the commenter used to determine BACT/MACT, prevents EPA from

ascertaining whether or not the commenter has properly determined BACT/MACT for these operations, the relative costs compared to the RACT adopted by the State, where the cost data supplied in the comment comes from, or if it is valid. Mere assertions, without analysis, that EPA's proposal is wrong are an insufficient basis for EPA to disapprove this SIP. See *International Fabricare Inst. v. EPA*, 972 F.2d 384 (D.C.Cir. 1992).

EPA has evaluated Maryland's SIP submittal and determined that the Maryland regulation meets the requirements for RACT. Because this SIP revision meets the criteria for RACT, as well as the other approvability criteria, EPA must approve this SIP revision. See section 110(k)(3) of the CAA, 42 U.S.C. 7410(k)(3); see also, *Union Elec. Co. v. EPA*, 427 U.S. 246, 265, 96 S.Ct. 2518, 49 L.Ed.2d 474 (1976).

### **III. Final Action**

EPA is approving the control of volatile organic compound emissions by establishing reasonably available control technology requirements for marine vessel and barge loading as a revision to the Maryland SIP which was submitted on October 24, 2007. This regulation will result in the reduction of VOC emissions from the affected sources.

### **IV. Statutory and Executive Order Reviews**

#### **A. General Requirements**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act 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 Clean Air Act. 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 (Public Law 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 Clean Air Act; and

- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### **B. Submission to Congress and the Comptroller General**

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

#### **C. Petitions for Judicial Review**

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be



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 entry for COMAR

26.11.13.01 and adding the entry for COMAR 26.11.13.08 to read as follows:

§ 52.1070                      Identification of plan.

\*                      \*                      \*                      \*                      \*

(c) \* \* \*

EPA-APPROVED REGULATIONS IN THE MARYLAND SIP

<b>Code of Maryland administrative regulations (COMAR) citation</b>	<b>Title/subject</b>	<b>State effective date</b>	<b>EPA approval date</b>	<b>Additional explanation/ citation at 40 CFR 52.1100</b>
*                      *	*                      *	*                      *	*                      *	*                      *
<b>COMAR 26.11.13</b>	<b>Control of Gasoline and Volatile Organic Compound Storage and Handling</b>			
*                      *	*                      *	*                      *	*                      *	*                      *
26.11.13.01	Definitions	10/8/07	[Insert <u>Federal Register</u> publication date] [Insert page number where the document	

Code of Maryland administrative regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100
			begins]	
26.11.13.08	Control of VOC Emissions from Marine Vessel Loading	10/8/07	[Insert <u>Federal Register</u> publication date] [Insert page number where the document begins]	New regulation
*	*	*	*	*

\* \* \* \* \*