

Inc. located in Wicomico County, Maryland submitted on May 31, 2005. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

#### IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve 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 (Pub. L. 104-4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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 proposes to approve 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 proposed 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 proposed 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 proposed rule pertaining to a Consent Order establishing VOC RACT for Perdue Farms, Inc. located in Wicomico County, Maryland, does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: July 22, 2005.

**Donald S. Welsh,**

*Regional Administrator, Region III.*

[FR Doc. 05-15052 Filed 7-28-05; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[R03-OAR-2005-MD-0005; FRL-7946-4]

### Approval and Promulgation of Air Quality Implementation Plans; Maryland; Repeal of NO<sub>x</sub> Budget Program COMAR 26.11.27 and 26.11.28

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a revision to the Maryland State

Implementation Plan (SIP). The revision repeals Maryland's Nitrogen Oxides (NO<sub>x</sub>) Budget Program under COMAR 26.11.27 and 26.11.28. This program implemented Maryland's portion of the Ozone Transport Commission (OTC) regional cap and trade program to significantly reduce transport of ozone in 12 northeastern states and the District of Columbia (DC), an area known as the Ozone Transport Region (OTR). Maryland's OTC NO<sub>x</sub> Budget Program has been superseded by its more stringent, federally-approved NO<sub>x</sub> Reduction and Trading Program which satisfies the NO<sub>x</sub> SIP Call. This action is in accordance with the Clean Air Act.

**DATES:** Written comments must be received on or before August 29, 2005.

**ADDRESSES:** Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03-OAR-2005-MD-0005 by one of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

Agency Web site: <http://www.docket.epa.gov/rmepub/> RME, RPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

E-mail: [campbell.dave@epa.gov](mailto:campbell.dave@epa.gov)  
Mail: R03-OAR-2005-MD-0005, David Campbell, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to RME ID No. R03-OAR-2005-MD-0005. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at <http://www.docket.epa.gov/rmepub/>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, [regulations.gov](http://www.regulations.gov) or e-mail. The EPA RME and the Federal [regulations.gov](http://www.regulations.gov) Web sites are an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the

body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the electronic docket are listed in the RME index at <http://www.docket.epa.gov/rmepub/>. Although listed in the index, some information is not publicly available, *i.e.*, 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 RME or in hard copy 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:** Marilyn Powers, (215) 814-2308, or by e-mail at [powers.marilyn@epa.gov](mailto:powers.marilyn@epa.gov).

**SUPPLEMENTARY INFORMATION:**

### I. Background

Maryland's OTC NO<sub>x</sub> Budget Program (OTC Program) implemented the State's portion of a regional cap and trade program to reduce NO<sub>x</sub> emissions generated within the OTR. The regional program consisted of an agreement by member states, called a Memorandum of Understanding (MOU), which recognized that further reductions of NO<sub>x</sub> beyond reasonably available control technology (RACT, termed Phase I) would be required for power plants and other large sources in order for the states in the OTR to meet the national ambient air quality standards (NAAQS). The OTC Program (termed Phase II) was implemented by Maryland and approved as part of the State's SIP on December 15, 2000 (65 FR 78416).

While the OTC Program was being implemented by certain states in the OTC, including Maryland, EPA finalized its rulemaking under the so-called "NO<sub>x</sub> SIP Call." A discussion of the relationship between OTC Program and the NO<sub>x</sub> SIP Call may be found in EPA's Notice of Proposed Rulemaking (NPR) for the NO<sub>x</sub> SIP Call (62 FR 60345, November 7, 1997). As discussed in the NPR, EPA recognized that the OTC Program was necessary for OTC states to make progress towards attainment of the one-hour ozone standard, and that coordination between the programs could eventually be accomplished because the timing and amount of emission reductions required by the OTC's Phase III were very close to those of NO<sub>x</sub> SIP Call, although the reductions in the NO<sub>x</sub> SIP Call were expected to be more stringent. EPA published its final rulemaking for the NO<sub>x</sub> SIP Call on October 27, 1998 (63 FR 57356), which required 22 eastern states, including Maryland, as well as the District of Columbia, to submit SIP revisions to prohibit specified amounts of NO<sub>x</sub>. As in the OTC program, the NO<sub>x</sub> SIP Call established statewide NO<sub>x</sub> budgets for each state to meet during the ozone season (May 1 through September 30). The SIP call rule also made express certain provisions for states currently operating the OTC trading programs to transition elements of their OTC programs to the NO<sub>x</sub> SIP Call trading program. See 63 FR at 57356. Maryland adopted the model NO<sub>x</sub> budget trading rule of the NO<sub>x</sub> published with the NO<sub>x</sub> SIP as COMAR 26.11.29—NO<sub>x</sub> Reduction and Trading Program and COMAR 26.11.30—Policies and Procedures Relating to Maryland's NO<sub>x</sub> Reduction and Trading Program. On January 10, 2001 (66 FR 1866), these regulations were approved as part of the Maryland SIP as fully meeting the NO<sub>x</sub> SIP Call. Trading under Maryland's OTC Program ended in 2002. Pursuant to the NO<sub>x</sub> SIP Call, in May 2003, Maryland began implementing the federally-approved NO<sub>x</sub> SIP Call trading program, which contains more stringent, *i.e.*, lower, caps on NO<sub>x</sub> emissions than the OTC program it replaced.

### II. Summary of SIP Revision

On December 1, 2003, the State of Maryland submitted a formal revision to its SIP. The SIP revision repeals Maryland's OTC NO<sub>x</sub> Budget Program under COMAR 26.11.27 (Post-RACT Requirements for NO<sub>x</sub> Sources) and COMAR 26.11.28 (Policies and Procedures Relating to Maryland's NO<sub>x</sub> Budget Program).

In Maryland, the NO<sub>x</sub> SIP Call applies to electric generating units larger than

25 megawatts, as compared to an applicability of 15 megawatts under the OTC Program. There are, therefore, some small units between 15 and 25 megawatts that were subject to the OTC program, but not the NO<sub>x</sub> SIP Call trading program. All of these units are peaking units which typically operate only a few days per year and are subject to RACT-based emissions limits. The OTC program state budget was 22,881 tons of NO<sub>x</sub>, which was established using an EGU NO<sub>x</sub> emission rate of 0.20 pounds NO<sub>x</sub> per million Btu (lbs/mmBtu). In comparison, the NO<sub>x</sub> SIP Call state budget is 15,603 tons of NO<sub>x</sub>, based on a NO<sub>x</sub> emission rate of 0.15 lbs/mmBtu for EGUs and 0.17 lbs/mmBtu for large non-EGUS. Maryland's requirements under the NO<sub>x</sub> SIP Call are more stringent than the OTC program, and as noted above, supplants the requirement for Phase III under the OTC MOU<sup>1</sup>. Further, in accordance with CAA 110(1), repeal of the OTC program, which has been, as EPA intended, replaced with the more stringently capped NO<sub>x</sub> SIP Call trading program, will not interfere with any applicable requirement concerning attainment or reasonable further progress or any other applicable requirement. The Metropolitan Washington, DC area attainment plan, the Philadelphia-Wilmington-Trenton area attainment plan, and the Baltimore attainment plan for one-hour ozone relied on the OTC NO<sub>x</sub> Budget program to help meet reductions required in 2002, and relies on the NO<sub>x</sub> SIP Call Program to help meet reductions required in 2005 and beyond.

### III. Proposed Action

Maryland's OTC Program has been superseded by its NO<sub>x</sub> Reduction and Trading Program, approved to satisfy the NO<sub>x</sub> SIP Call. Its budget under the NO<sub>x</sub> Reduction and Trading Program is lower than its budget under the OTC program, and repeal of the OTC program does not impact any attainment plan. EPA is proposing to approve Maryland's SIP revision to repeal its OTC NO<sub>x</sub> Budget Program under COMAR 26.11.27 and 26.11.28. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

<sup>1</sup> As should be expected, the more stringent cap under the NO<sub>x</sub> SIP Call trading programs results, for the most part, in fewer allowances being allocated to each individual trading source under the NO<sub>x</sub> SIP Call trading program than under the OTC program. Compare COMAR 26.11.28.11 (allowance allocation under the OTC program) to COMAR 26.11.30.09 (allowances allocated under the NO<sub>x</sub> SIP Call trading program).

#### IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve 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 (Pub. L. 104-4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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 proposes to approve a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

This proposed 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 proposed 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 proposed rule to repeal Maryland's NO<sub>x</sub> Budget Trading Program under COMAR 29.11.27 and 29.11.28 does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: July 22, 2005.

**Donald S. Welsh,**

*Regional Administrator, Region III.*

[FR Doc. 05-15051 Filed 7-28-05; 8:45 am]

**BILLING CODE 6560-50-M**

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Parts 52 and 81

[R05-OAR-2005-IN-0004; FRL-7946-3]

#### Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Indiana; Lake County Sulfur Dioxide Regulations, Redesignation and Maintenance Plan

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a State Implementation Plan (SIP) revision for the control of sulfur dioxide (SO<sub>2</sub>) emissions in Lake County,

Indiana. The SIP revision submitted by the Indiana Department of Environmental Management (IDEM) on April 8, 2005, and supplemented on July 6, 2005, amends 326 Indiana Administrative Code (IAC) Article 7. Indiana's revised SO<sub>2</sub> rule consists of changes to 326 IAC 7-4 which sets forth facility-specific SO<sub>2</sub> emission limitations and recordkeeping requirements for Lake County. The rule revision also reflects updates to company names, updates to emission limits currently in permits, deletion of facilities that are already covered by natural gas limits, or other corrections or updates. Due to changes in section numbers, references to citations in other parts of the rule have also been updated. EPA is also proposing to approve a request to redesignate the Lake County nonattainment area to attainment of the SO<sub>2</sub> National Ambient Air Quality Standards (NAAQS), which was submitted for parallel processing by IDEM on June 21, 2005. In conjunction with these actions, EPA is also proposing to approve the maintenance plan for the Lake County nonattainment area to ensure that attainment of the NAAQS will be maintained. The SIP revision, redesignation request and maintenance plan are approvable because they satisfy the requirements of the Clean Air Act (Act). The rationale for the approval and other information are provided in this notice.

**DATES:** Comments must be received on or before August 29, 2005.

**ADDRESSES:** Submit comments, identified by Regional Material in EDocket (RME) ID No. R05-OAR-2005-IN-0004, by one of the following methods:

*Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

*Agency Web site:* <http://docket.epa.gov/rmepub/>. Regional RME, EPA's electronic public docket and comments system, is EPA's preferred method for receiving comments. Once in the system, select "quick search," then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

*E-mail:* [mooney.john@epa.gov](mailto:mooney.john@epa.gov).

*Fax:* (312) 886-5824.

*Mail:* You may send written comments to: John M. Mooney, Chief, Criteria Pollutant Section, (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

*Hand delivery:* Deliver your comments to: John M. Mooney, Chief, Criteria Pollutant Section, (AR-18J),