

*Past Practices and Bankruptcy.* Issues relating to whether the parties had sufficient notice to be deemed to have acquiesced in matters now being challenged are beyond the question referred and are for the CRB's determination. The same is true with regard to the impact that bankruptcy proceedings may have on the outcome of its proceedings.

*Conclusion.* The Copyright Royalty Board referred a novel question of law to the Register which asked: "Is the universe of preexisting subscription services, [as defined by § 114(j)(11)], limited by law to only Muzak (provided over the DiSH Network), Music Choice, and DMX?" Before answering this question, the Office contemplated what Congress meant by the term "preexisting subscription service," because there was a controversy over whether the term applied to the use of the sound recording, or the business entity that operated under the § 114 statutory license. Ultimately, the Office discerned that the term is used in the statute in both manners. A preexisting subscription service is used in § 114 sometimes to refer to the aggregate of the subscription transmissions that were made by the entities identified in the legislative history, and sometimes to identify the business entities operating under the statutory license on or before July 31, 1998, and that have the authority to negotiate rates and terms for use of the license. Whether Congress intended this outcome is unclear, but the Office's interpretation offers a workable reading of the statute and the legislative intent.

Nevertheless, for purposes of the question posed by the Board, the determination that the term refers to the business entities in existence and making subscription transmissions on or before July 31, 1998, appears to be the more appropriate reading of the term "preexisting subscription service" for purposes of determining whether an entity can operate under the statutory license as a preexisting subscription service and participate in the rate setting process. Moreover, in light of Congress's decision to identify specific entities as being preexisting subscription services, it appears Congress meant to limit preexisting subscription service status to the three entities identified by the Board.

October 20, 2006.

**Marybeth Peters,**

*Register of Copyrights*

[FR Doc. E6-18590 Filed 11-2-06; 8:45 am]

BILLING CODE 1410-30-S

## POSTAL SERVICE

### 39 CFR Part 3

#### Amendment to Bylaws of the Board of Governors

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** On September 11, 2006, the Board of Governors of the United States Postal Service adopted a revision to its bylaws. The purpose of this revision was to enable Postal Service management to submit relatively minor Negotiated Service Agreements (NSAs) to the Postal Rate Commission for consideration without first submitting those minor NSAs to the Postal Service Board of Governors. Consequently, the Postal Service hereby publishes this final rule.

**DATES:** *Effective Date:* September 11, 2006.

**FOR FURTHER INFORMATION CONTACT:** Wendy A. Hocking, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260-1000, (202) 268-4800.

**SUPPLEMENTARY INFORMATION:** This document publishes a revision to 39 CFR 3.3 of the Bylaws of the Board of Governors of the United States Postal Service. The Board's bylaws in paragraphs (f) and (g) of § 3.3 had reserved to the full Board the authorization for filing any request to the Postal Rate Commission for a recommended decision on changes in rates or mail classification. The Board revised paragraphs (f) and (g) of § 3.3 to provide that the Postmaster General may authorize the filing of a request to the Postal Rate Commission for minor NSAs without first submitting the request to the Postal Service Board of Governors. The changes were adopted by the Board on September 11, 2006. The purpose of the changes was to enable Postal Service management to submit relatively minor NSAs to the Postal Rate Commission without first coming to the Board for approval. This exception would apply only for submissions under the Commission's rules for streamlined consideration of requests to renew an existing NSA or to add one that is "functionally equivalent" to an existing NSA. Proposals for new baseline NSAs would still require Board approval in advance. At the end of the process, when the Commission completes its proceedings and submits a recommended decision, final consideration by the Governors is required in all cases by statute.

### List of Subjects in 39 CFR Part 3

Administrative practice and procedure, Organization and functions (Government agencies), Postal Service.  
 ■ Accordingly, part 3 of title 39 CFR is amended as follows:

#### PART 3—BOARD OF GOVERNORS (ARTICLE 111)

■ 1. The authority citation for part three continues to read as follows:

**Authority:** 39 U.S.C. 202, 203, 205, 401(2), (10), 402, 414, 416, 1003, 2802-2804, 3013; 5 U.S.C. 552b (g), (j); Inspector General Act, 5 U.S.C. app.; Pub.L. 107-67, 115 Stat.514 (2001).

■ 2. Section 3.3 is amended by revising paragraphs (f) and (g) to read as follows:

#### § 3.3 Matters reserved for decision by the Board.

\* \* \* \* \*

(f) Authorization of the Postal Service to request the Postal Rate Commission to submit a recommended decision on changes in postal rates, except that the Postmaster General may authorize such requests with respect to Negotiated Service Agreements filed for consideration under 39 CFR 3001.196 or 3001.197.

(g) Authorization of the Postal Service to request the Postal Rate Commission to submit a recommended decision on changes in the mail classification schedule, except that the Postmaster General may authorize such requests with respect to Negotiated Service Agreements filed for consideration under 39 CFR 3001.196 or 3001.197.

\* \* \* \* \*

**Neva Watson,**

*Attorney, Legislative, Legal Policy and Ratemaking.*

[FR Doc. E6-18545 Filed 11-1-06; 8:45 am]

BILLING CODE 7710-12-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2006-0629; FRL-8238-9]

#### Approval and Promulgation of Air Quality Implementation Plans; Maryland; Nitrogen Oxides Allowance Allocations for 2008

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve a revision to the Maryland State Implementation Plan (SIP). The revision consists of the

Nitrogen Oxides (NO<sub>x</sub>) allowance allocations for the 2008 ozone season, in accordance with Maryland's approved NO<sub>x</sub> SIP Call trading program. EPA is approving this revision to Maryland's NO<sub>x</sub> Reduction and Trading Program in accordance with the requirements of the Clean Air Act.

**DATES:** This rule is effective on January 2, 2007 without further notice, unless EPA receives adverse written comment by December 4, 2006. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R03-OAR-2006-0629 by one of the following methods:

A. *www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. *E-mail: morris.makeba@epa.gov*

C. *Mail: EPA-R03-OAR-2006-0629, Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.*

D. *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 Docket ID No. EPA-R03-OAR-2006-0629. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov*, 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 *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is 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 *www.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 *www.regulations.gov index*. 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 *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, and 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*.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

On June 21, 2006, the State of Maryland submitted a formal revision to its State Implementation Plan (SIP). Maryland's NO<sub>x</sub> Reduction and Trading Program under COMAR 26.11.29 and 26.11.30 was approved by EPA as meeting the requirements of the NO<sub>x</sub> SIP Call on January 10, 2001 (66 FR 1866). The approved program contains NO<sub>x</sub> reduction requirements beginning on May 1, 2003 and establishes allowance allocations for affected trading sources for the 2003 through 2005 ozone seasons. Thereafter, Maryland's approved rule requires that allocations be updated, three years in advance, for each subsequent two year period. The allocations for 2006 and 2007 were approved into Maryland's SIP on March 22, 2004 (55 FR 13236). This SIP revision consists of Maryland's allocation update for 2008. Allocations for 2009 are not included in this SIP revision to ensure that Maryland's NO<sub>x</sub> Reduction and Trading program does not conflict with Clean Air Interstate Rule (70 FR 25162 of May 12, 2005) requirements that will apply to electric generating units (EGUs) greater than 25 MW starting in 2009.

##### **II. Summary of SIP Revision**

The revision consists of allocations for the ozone season in 2008 for each of the affected sources for which allocations were provided in the initial control period (2003 through 2005 ozone seasons). The allocations for EGUs were derived using each source's average actual heat input from the 2002 and 2003 ozone seasons multiplied by an emission rate of 0.15 pounds NO<sub>x</sub>/MMBTU. The allocations for non-electric generating units (non-EGUs) are unchanged from the initial control period. For most sources the 2008 allocations do not differ significantly from the initial 3-year allocations. The total number of 2008 allocations established for the sources in Maryland that are subject to its NO<sub>x</sub> Budget Trading Program are consistent with the State's budget under the NO<sub>x</sub> SIP Call.

##### **III. Final Action**

EPA is approving the SIP revision submitted by MDE on June 21, 2006 consisting of NO<sub>x</sub> allowance allocations for the 2008 ozone season.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on January 2, 2007 without further notice unless EPA receives adverse comment by December 4, 2006. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

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

###### *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. 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 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). This rule also does not have tribal implications because it will 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). This action also does not have Federalism implications because it does 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). This action merely approves 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 rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (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. 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 *January 2, 2007*. 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 to approve Maryland's NO<sub>x</sub> SIP Call allocations for 2008 may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Parts 52**

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone.

Dated: October 26, 2006.

**Donald S. Welsh,**  
*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 entry for COMAR 26.11.30.09 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
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
COMAR 26.11.30 .....	Policies and Procedures Relating to Maryland's NO <sub>x</sub> Reduction and Trading Program.			
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
COMAR 26.11.30.09 .....	Allocation of Allowances.	6/19/06 .....	November 3, 2006 [Insert page number where the document begins].	New column for 2008 allocations
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *