

activities listed in Maryland's regulations. However, the commenter expresses concern that Maryland may employ COMAR 26.11.03.04(A)(14) to expand the approved list of 13 enumerated insignificant activities without the appropriate level of EPA review and approval.

Maryland revised the language of the COMAR 26.11.03.04(A)(14) in order to address a deficiency identified by EPA when the State's program was granted interim approval. Originally, Maryland's regulations exempted from permit applications emission units without applicable requirements of the Clean Air Act. The EPA was concerned that the exemption was too broad because permittees exercising the exemption did not have to identify the specific emission units or activities to the State, EPA and the public and that the exempted units may not be part of an EPA-approved insignificant activity list. In response to EPA's concerns, Maryland modified the language of COMAR 26.11.03.04(A)(14) to require the State to agree with any recommendation that an emission unit or activity be considered an insignificant activity. Therefore, Maryland may amend the list of 13 insignificant activities enumerated in its regulations by supplementing its regulatory insignificant activity list with a non-regulatory list of activities. The EPA expects that activities added to Maryland's list pursuant to COMAR 26.11.03.04(A)(14) will be consistent with the activities included in COMAR 26.11.03.04(A)(1)-(13) and with EPA's criteria for insignificant activities.

The title V implementing regulations at 40 CFR 70.5(c) do not require insignificant activity lists to be codified as part of a state's operating permit program regulations. However, the federal regulations do require insignificant activity lists to be approved by EPA as part of a state's program. Although Maryland's regulations do not explicitly require that EPA approve of any insignificant activities added by the State using the authority of COMAR 26.11.03.04(A)(14), EPA interprets Maryland's regulations as expressing the State's intent and obligation to submit such added activities to EPA for approval as part of the Maryland operating permit program. This interpretation is consistent with the State's ongoing obligation to keep EPA apprised of any changes to its program as required by 40 CFR 70.4(i). Thus, 40 CFR 70.5(c) requires any insignificant activity list employed by Maryland to be approved as part of its program by EPA and 40 CFR 70.4(i) requires the State to keep EPA informed

of any changes it intends to make to its approved program. If Maryland were to fail to seek EPA approval of amendments to its insignificant activity list, EPA could determine, pursuant to 40 CFR 70.10(b), that the State was failing to administer and enforce its approved program. Were EPA to make such a determination, Maryland would be obligated to submit the necessary program revisions and could face program withdrawal and sanctions as articulated by 40 CFR 70.10. It should be noted that the requirement of the State to implement its approved program applies generically and at all times and not only to the insignificant activity provisions.

The EPA confirmed Maryland's understanding of the State's ongoing obligation to inform EPA of all proposed program modifications and to seek EPA approval of such program changes. As documented in a December 12, 2002 memorandum from David Campbell, Air Protection Division, EPA Region III to the docket file for this action (hereafter, the December 12, 2002 memorandum), Maryland confirmed EPA's interpretation of COMAR 26.11.03.04 and related that it understands its duty to seek approval of revisions to its operating permit program, including any changes to the insignificant activity list.

Comment: The commenter believes Maryland's operating permit program regulations do not require general permits to be issued in accordance with the mandatory public participation procedures provided by 40 CFR 70.7(h). The commenter also expresses concern that Maryland's program does not clearly provide for adequate review by EPA and affected states and does not affirm citizens' authority to petition EPA to object to general permits.

Response: Maryland's regulations at COMAR 26.11.07(A)(3) require general permits to complete "all of the public, affected State, and EPA notification, comment, and review procedures required by this regulation." The EPA did not correctly interpret the full scope of the public participation procedures of COMAR 26.11.07 when it reviewed the regulation as part of Maryland's original program submittal in 1995. At that time, EPA incorrectly believed that the provisions of COMAR 26.11.07 applied only to permits or permit modifications for individual sources and not to general permits. As a result, EPA identified the lack of adequate public participation for general permits as a program deficiency when it granted Maryland interim approval. In its interim approval actions, EPA directed Maryland to revise its program to add requirements

to its general permit provisions to clarify that general permits must undergo appropriate EPA and affected state review and that the State shall maintain records of public comments raised during the public participation process for general permits.

It is important to note that the public participation procedures of COMAR 26.11.07 were approved by EPA as meeting the minimum requirements of 40 CFR 70.7(h). As discussed above, when EPA granted interim approval of Maryland's program in 1996 it interpreted the requirements of COMAR 26.11.07 as applying only to permits for individual sources. In that context, the Agency found the provisions acceptable and no comments were received pertaining to the public participation provisions at that time. The EPA now understands that the public participation provisions of COMAR 26.11.07 also apply to general permits and has confirmed its interpretation of these provisions with Maryland. (*See* December 12, 2002 memorandum.) The federal requirements for general permits at 40 CFR 70.6(d) requires that general permits must be subject to public participation procedures consistent with 40 CFR 70.7(h) and must comply with all requirements applicable to other part 70 permits. The provisions of COMAR 26.11.07 and COMAR 26.11.03.21 satisfy these requirements.

The provisions of COMAR 26.11.03.21 that apply specifically to general permits should be interpreted to be additional requirements on these type of permits above and beyond those that apply to permits for individual sources. This interpretation is supported by the language of COMAR 26.11.03.21(A) that states that "[a]ny general permit shall comply with all requirements applicable to other part 70 permits. * * *" It should be noted that COMAR 26.11.03.21(A) indicates that general permits must also satisfy the public participation requirements of Maryland's Administrative Procedure Act, State Government Article, section 10-101 *et seq.*

With regard to citizens' authority to petition EPA, COMAR 26.11.03.07(G) and COMAR 26.11.03.10 affirm the authority of citizens to petition EPA to object to a permit. The provisions of these regulations apply to both permits for individual sources and general permits. Likewise, the provisions of COMAR 26.11.03.08 and 26.11.03.09 regarding affected state and EPA review, respectively, apply to permits for individual sources and general permits. Each of these provisions have been previously determined to be consistent