

develop a general permit, the EPA expects that Maryland would use its authority under COMAR 26.11.03.13(A)(1)(a) and 26.11.03.21(F), (G) and (I) to provide procedures in the general permit that expressly require an applicant to obtain an affirmative determination from the State that it qualifies for the general permit prior to being considered covered by the general permit.

*Comment:* The commenter believes that Maryland's operating permit program regulations are inconsistent with 40 CFR part 70 with respect to the administrative amendment procedures. Specifically, the commenter is concerned that Maryland and EPA, on an ad hoc basis, may approve permit changes as qualifying for processing as administrative amendments even though they do not meet the regulatory criteria for processing as administrative amendments. The commenter asserts that because the public receives no notice of administrative amendments, the public must receive an opportunity to evaluate whether particular types of administrative amendments are appropriate.

*Response:* Maryland's regulations at COMAR 26.11.03.15 define six types or categories of permit changes that may be processed as administrative amendments in a manner consistent with 40 CFR part 70.7(d). In large part, the language of Maryland's regulations is identical to the federal regulations governing administrative amendments. The last category in both regulations indicate that other unspecified permit changes may be considered administrative amendments provided the changes are similar to those explicitly defined in the regulation and that EPA approves the types of changes as being similar to the other approved changes. Specifically, the federal provisions at 40 CFR 70.7(d)(1)(vi) state that only changes that EPA "has determined as part of the approved program to be similar to those in paragraphs (d)(1)(i) through (iv) of this section," may be considered administrative amendments. Maryland's regulation at COMAR 26.11.03.15(B)(6) states that any change "as approved by the EPA, which is similar to those in Section B(1)—(4) of this regulation" may be considered an administrative amendment.

The EPA does not share the commenter's concern that EPA or Maryland will use the slightly different phrasing of COMAR 26.11.03.15(B)(6) to informally change the approved list of changes that may be processed as administrative amendments under 40 CFR 70.6(d)(1). The EPA would

consider any proposed change to the approved list of administrative amendment categories as a revision to Maryland's approved program as defined by 40 CFR 70.4(i). As such, the revision would have to be approved by EPA consistent with 40 CFR 70.4(i)(2). Should Maryland attempt to modify its approved list of changes qualifying for processing as administrative amendments and implement the modified list without first seeking EPA approval, the Agency would find pursuant to 40 CFR 70.10(b) that the State was failing to implement and enforce its approved program. Such a finding would require the State to submit the necessary program revisions or face program withdrawal and other sanctions provided by the Clean Air Act and part 70.

The intended effect of 40 CFR 70.7(d)(1)(vi) is to provide EPA with the authority to approve as part of a state's program additional types of permit changes that qualify for processing as administrative amendments. The expectation is that the state would specifically list the types of changes that the state proposes to be eligible for processing as administrative amendments as part of the state's operating permit regulations and submit those regulations to EPA for approval as revisions to the state's program. Maryland's regulation is simply reiterating the authority of the State to propose additional types of changes and the requirement that EPA must approve such changes. Maryland's regulations can in no way amend or alter the means by which EPA can approve changes to the State's approved program as provided by the Clean Air Act and 40 CFR part 70.

*Comment:* The commenter believes Maryland's operating permit program regulations impermissibly allow changes at a source to occur without a permit revision even when such change constitutes a modification under title I of the Clean Air Act.

*Response:* EPA stated its interpretation of what constitutes a "title I modification" under the current 40 CFR part 70 in the preamble to proposed revisions to 40 CFR parts 70 and 71 that were published in the **Federal Register** on August 31, 1995 (60 FR 45530). In particular, EPA stated that the term "title I modifications" under the current regulations should be read to exclude changes subject to the minor new source review program in section 110(a)(2)(C) of the Clean Air Act. The rationale for this interpretation is set forth at 60 FR at 45545–45546.

Prior to the lapse of interim approval, Maryland was implementing its

program consistent with EPA's current interpretation of what represents a title I modification. EPA fully expects that Maryland will implement its fully-approved operating permit program consistent with its past practices and EPA's current interpretation of what represents a title I modification.

#### **How Does This Action Affect the Part 71 Program in Maryland?**

The EPA is fully approving Maryland's title V operating permit program. Upon the effective date of this action, the part 71 program will no longer be effective in Maryland. Likewise, the delegation of the authority to implement and enforcement the part 71 program to Maryland will be terminated. However, a part 71 program could become effective at a future date if EPA makes a finding that Maryland's title V program fails to meet the requirements of part 70. If such a finding is made, the Agency will use its authority and follow the procedures under section 502(i) of the Clean Air Act and 40 CFR 70.10.

#### **Statutory and Executive Order Reviews**

Under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), this final approval is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Administrator certifies that this final approval will not have a significant economic impact on a substantial number of small entities because it merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) because it approves pre-existing requirements under state law and does not impose any additional enforceable duties beyond that required by state law. 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, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). This rule also does not have Federalism implications because it will not have