



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2016-0127; FRL-9945-44-Region 3]

**Approval and Promulgation of Air Quality Implementation Plans;
Maryland; State Board Requirements**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the Maryland State Implementation Plan (SIP). The SIP revision removes the current SIP approved state board requirements and replaces them with an updated version of the requirements. The new provisions continue to address state board requirements for all the National Ambient Air Quality Standards (NAAQS). The revision is being done because the Maryland legislature revised Maryland's statutory requirements related to state boards and the State wants the most recent version in its SIP. EPA is approving these revisions to state board requirements in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on **[insert date 60 days after date of publication in the Federal Register]** without further notice, unless EPA receives adverse written comment by **[insert date 30 days after date of publication in the Federal Register]**. 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 No. EPA-R03-OAR-2016-0127 at <http://www.regulations.gov>, or via email to fernandez.cristina@epa.gov. For comments

submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Ruth Knapp, (215) 814-2191, or by e-mail at knapp.ruth@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 128 of the CAA requires SIPs to comply with requirements for state boards. Section 128(a) requires SIPs to contain provisions that: (1) any board or body which approves permits or enforcement orders under the CAA shall have at least a majority of its members represent the public interest and not derive any significant portion of their income from persons subject to permits or enforcement orders under the CAA; and (2) any potential conflict of interest by

members of such board or body or the head of an executive agency with similar powers be adequately disclosed. The requirements of section 128(a)(1) are not applicable to Maryland because it does not have any board or body which approves air quality permits or enforcement orders. The requirements of section 128(a)(2), however, are applicable because the heads of the Maryland Department of the Environment (MDE) and the Maryland Public Service Commission (PSC) or their designees approve permits or enforcement orders.

II. Summary of SIP Revision

On February 17, 2016, the State of Maryland submitted a formal revision (#16-03) to its SIP. The SIP revision submittal requests EPA to remove the currently approved state board statutory provisions and replace them in the Maryland SIP with the updated statutory provisions so that the SIP includes the most recent state statutes that are applicable to the section 128 CAA requirements pertaining to state boards.

On December 6, 2013 (78 FR 73442), EPA approved a Maryland SIP revision which addressed the requirements of section 128 of the CAA. The 2013 revision incorporated portions of the Annotated Code of Maryland Title 15 (Public Ethics) into the Maryland SIP. Subsequently, Maryland made revisions to its Annotated Code which included relocating the ethics provisions from Title 15 to Title 5, as well as minor wording changes. Maryland is requesting that EPA remove the previously approved portions of Title 15 from its SIP and replace those provisions with the most recent portions of the Annotated Code of Maryland Title 5 (Maryland Public Ethics Laws) which address CAA section 128 requirements. The Secretary of MDE and the state employees subordinate to that position, as well as state employees at the PSC are subject to the

requirements of Title 5.

EPA is removing the previously approved portions of Title 15, including these portions of: Subtitle 1, sections 15-102 and 15-103; and subtitle 6, sections 15-601, 15-602, 15-607, and 15-608. In order to continue to meet the requirements of CAA section 128, EPA is incorporating as requested by Maryland the relevant ethics provisions of Title 5 (Maryland Public Ethics Laws) including portions of: Subtitle 1, sections 5-101, 5-103; Subtitle 2, section 5-208; Subtitle 5, section 5-501; and Subtitle 6, sections 5-601, 5-602, 5-606, 5-607, and 5-608. The State effective date for all these provisions in Title 5 of the Maryland Annotated Code subsections is October 1, 2014.

III. EPA's Analysis of Maryland's SIP Revision

Section 128(a)(2) requires that each state SIP demonstrate that the head of all boards, bodies or heads of executive agencies which approve CAA permits or enforcement orders disclose any potential conflicts of interest. The Secretary of MDE or his/her designee approves all CAA permits or enforcement orders in Maryland with the exception of pre-construction permits for electric generating stations that receive a Certificate of Public Convenience and Necessity (CPCN) from the PSC. MDE is an executive agency that acts through its Secretary or a delegated subordinate employee. The PSC also acts through its Commissioners or delegated subordinates to approve permits. In the February 17, 2016 SIP revision submittal, Maryland requested removal of outdated provisions of Title 15 of the Annotated Code which address disclosure of conflicts of interest as required by section 128 of the CAA and submitted recently revised provisions of Title 5 of the Annotated Code of Maryland for inclusion into the SIP as

required to continue to address requirements in section 128 of the CAA. Title 5 of the Annotated Code of Maryland applies to state employees including the head of the Maryland executive agencies or their delegates who approve CAA permits or enforcement orders and requires the disclosure of relevant financial information including the disclosure of any potential conflicts of interest. The February 17, 2016 SIP revision submittal reflects existing Maryland law and demonstrates that Maryland complies with the requirements of section 128 of the CAA through the Maryland Title 5 requirements for adequate disclosure of potential conflicts of interest. The revisions made only minor wording changes to the Maryland disclosure of conflict of interest provisions and moved these disclosure provisions from Title 15 to Title 5 of the Annotated Code.

IV. Final Action

EPA is approving Maryland's SIP revision that removes outdated state board provisions addressing disclosure of conflicts of interest by persons or entities within Maryland who approve permits and enforcement orders with recently revised and currently effective similar statutory provisions also addressing state board requirements for section 128 of the CAA including disclosure of conflicts of interest. EPA is publishing this rule without prior proposal because EPA 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 **[insert date 60 days after date of publication in the Federal Register]** without further notice unless EPA receives adverse comment by **[insert date 30 days after date of publication in the Federal Register]**. 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. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Incorporation by Reference

In this rulemaking action, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the relevant portions of Title 5 of the Annotated Code of Maryland as described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents generally available electronically through www.regulations.gov and/or may be viewed at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

VI. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA 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 CAA. 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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 CAA; 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking action. This action updating the Maryland SIP provisions to address state board requirements in section 128 of the CAA for all the NAAQS may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 8, 2016

Shawn M. Garvin,
Regional Administrator,
Region III.

40 CFR part 52 is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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:

a. Removing the entries under heading “State Government Article of the Annotated Code of Maryland” for Sections 15-102, 15-103, 15-601, 15-602, 15-607, 15-608; and

b. Adding entries under heading “State Government Article Annotated Code of Maryland” for Sections 5-101, 5-103, 5-208, 5-501, 5-601, 5-602, 5-606, 5-607, and 5-608.

The additions read as follows:

§ 52.1070 Identification of plan.

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(c) * * *

EPA-APPROVED REGULATIONS, TECHNICAL MEMORANDA, AND STATUTES IN THE MARYLAND SIP

| Annotated Code of Maryland Citation | Title/subject | State effective date | EPA approval date | Additional explanation/citation at 40 CFR 52.1100 |
|---|---|-----------------------------|---|--|
| * * * * * * * | State Government Article of the Annotated Code of Maryland | | | |
| Section 5-101 (a),(e),(f), (g)(1)and (2), (h), (i), (j), (m), (n), (p), (s),(t),(bb), (ff),(gg), (ll) | Definitions | 10/01/14 | [<u>Insert date of Federal Register publication</u>] [<u>Insert Federal Register citation</u>] | Added; addresses CAA section 128. |
| Section 5-103(a) through (c) | Designation of Individuals as Public Officials | 10/01/14 | [<u>Insert date of Federal Register publication</u>] [<u>Insert Federal Register citation</u>] | Added; addresses CAA section 128. |
| Section 5-208(a) | Determination of public official in executive agency | 10/01/14 | [<u>Insert date of Federal Register publication</u>] [<u>Insert Federal Register citation</u>] | Added; addresses CAA section 128. |
| Section 5-501(a) and (c) | Restrictions on participation | 10/01/14 | [<u>Insert date of Federal Register publication</u>] [<u>Insert Federal Register citation</u>] | Added; addresses CAA section 128. |
| Section 5-601(a) | Individuals required to file statement | 10/01/14 | [<u>Insert date of Federal Register</u> | Added; addresses CAA section 128. |

| Annotated Code of Maryland Citation | Title/subject | State effective date | EPA approval date | Additional explanation/ citation at 40 CFR 52.1100 |
|-------------------------------------|---|----------------------|---|--|
| | | | publication] [Insert Federal Register citation] | |
| Section 5-602(a) | Financial Disclosure Statement – Filing Requirements | 10/01/14 | [Insert date of Federal Register publication] [Insert Federal Register citation] | Added; addresses CAA section 128. |
| Section 5-606(a) | Public Records | 10/01/14 | [Insert date of Federal Register publication] [Insert Federal Register citation] | Added; addresses CAA section 128. |
| Section 5-607(a) through (j) | Content of statements | 10/01/14 | [Insert date of Federal Register publication] [Insert Federal Register citation] | Added; addresses CAA section 128. |
| Section 5-608(a) through (c) | Interests attributable to individual filing statement | 10/01/14 | [Insert date of Federal Register publication] [Insert Federal Register citation] | Added; addresses CAA section 128. |

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[FR Doc. 2016-09438 Filed: 4/29/2016 8:45 am; Publication Date: 5/2/2016]