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6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2016-0304; FRL-9957-20-Region 3]

**Approval and Promulgation of Air Quality Implementation Plans;
Maryland; Control of Volatile Organic Compounds Emissions from Fiberglass Boat
Manufacturing Materials**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the State of Maryland. This revision pertains to Maryland's adoption of the requirements in EPA's control technique guidelines (CTG) for fiberglass boat manufacturing materials. EPA is approving this Maryland SIP submittal as it is in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2016-0304. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information (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 through <http://www.regulations.gov>, or please contact the person identified in the “For Further Information Contact” section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Gavin Huang, (215) 814-2042, or by e-mail at huang.gavin@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On August 1, 2016 (81 FR 50427 and 81 FR 50336), EPA simultaneously published a notice of proposed rulemaking (NPR) and a direct final rule (DFR) for the State of Maryland. On September 16, 2016 (81 FR 63701), EPA withdrew the DFR due to the receipt of a comment on the proposed rulemaking. In the NPR, EPA proposed to include in the Maryland SIP a Maryland regulation which adopted the requirements in EPA’s CTG for fiberglass boat manufacturing materials. The formal SIP revision (#15-07) was submitted by Maryland on December 23, 2015.

As described in the DFR published on August 1, 2016 (81 FR 50336), section 172(c)(1) of the CAA provides that SIPs for nonattainment areas must include reasonably available control measures (RACM), including reasonably available control technology (RACT), for sources of emissions. Additionally, Maryland is in the Ozone Transport Region (OTR) established under section 184(a) of the CAA. Pursuant to section 184(b)(1)(B) of the CAA, all areas in the OTR must submit SIP revisions that include implementation of RACT with respect to all sources of volatile organic compounds (VOC) in the states covered by a CTG. *See* CAA section 184(b)(1).

In September 2008, EPA developed a CTG entitled Control Techniques Guidelines for Fiberglass Boat Manufacturing Materials (Publication No. EPA 453/R-08-004). The CTG for

fiberglass boat manufacturing materials provides control recommendations for reducing VOC emissions from the use of gel coats, resins, and materials used to clean application equipment in fiberglass boat manufacturing operations. This CTG applies to facilities that manufacture hulls or decks of boats from fiberglass or build molds to make fiberglass boat hulls or decks.

II. Summary of SIP Revision

On December 23, 2015, the Maryland Department of the Environment (MDE) submitted on behalf of the State of Maryland to EPA SIP revision #15-07 concerning implementation of RACT requirements for the control of VOC emissions from fiberglass boat manufacturing materials. Maryland adopted EPA's CTG standards for fiberglass boat manufacturing materials through a regulation found at Code of Maryland Regulations (COMAR) 26.11.19 (relating to VOC from specific processes). This SIP revision adds COMAR 26.11.19.26-1 (control of VOC emissions from fiberglass boat manufacturing materials) to the Maryland SIP and also includes an amendment to COMAR 26.11.19.26 (control of VOC emissions from reinforced plastic manufacturing) which was previously approved into the Maryland SIP. In addition to adopting EPA's CTG standards, COMAR 26.11.19.26-1 includes numerous terms and definitions to support the interpretation of the measures, as well as work practices for cleaning, compliance and monitoring requirements, sampling and testing, and record keeping requirements. The amendment to COMAR 26.11.19.26 at COMAR 26.11.19.26A exempts fiberglass boat manufacturing from provisions within COMAR 26.11.19.26 to avoid duplicative or conflicting requirements. Prior to Maryland's new COMAR 26.11.19.26-1, fiberglass boat manufacturing materials were covered under COMAR 26.11.19.26 which did not address fully EPA's CTG requirements. Thus, with COMAR 26.11.19.26-1 now addressing fiberglass boat manufacturing

materials, Maryland has revised COMAR 26.11.19.26A to clarify and exempt fiberglass boat manufacturing materials from COMAR 26.11.19.26A as these are now clearly addressed in COMAR 26.11.19.26-1. EPA finds the provisions in COMAR 26.11.19.26-1 identical to the CTG standards for fiberglass boat manufacturing materials and therefore approvable in accordance with sections 172(c)(1) and 184(b)(1)(B) of the CAA.

III. Public Comments and EPA's Responses

EPA received a comment from the Export Inspection Council of India within the Ministry of Commerce and Industry, Government of India (hereinafter referred to as "Commenter") on the August 1, 2016 NPR.

Comment: The Commenter sought clarification to determine if Maryland's adoption of EPA's CTG guidelines for fiberglass boat manufacturing materials applied to international manufacturing facilities that export fiberglass boats into the United States. Additionally, if the proposed guidelines are applicable to imported boats, the Commenter questioned how EPA will implement the guidelines and if they will add to the international import requirements of fiberglass boats into the United States.

Response: EPA thanks the Commenter for its submission seeking clarification of the Maryland regulation on fiberglass boat manufacturing. COMAR 26.11.19.26-1 applies to fiberglass manufacturing facilities that manufacture hulls or decks of fiberglass boats, assemble fiberglass boats from premanufactured hulls and decks, or build molds to make hulls or decks of fiberglass boats. *See* COMAR 26.11.19.26-1(B)(5). As such, the regulation applies only to manufacturing, assembling or building occurring within Maryland and does not apply to fiberglass boats

imported into the State from other locations, including from locations overseas. In addition, under Annotated Code of Maryland § 2-103(b), Maryland and the Maryland Department of the Environment specifically only have jurisdiction over emissions into the air in the State and over ambient air quality in the State of Maryland. Because Maryland's regulatory authority therefore does not extend to regulating activities outside the State, EPA is clarifying that COMAR 26.11.19.26-1 does not regulate nor apply to fiberglass boat manufacturing done outside the State of Maryland. Because the regulation does not apply to fiberglass boat manufacturing outside the State of Maryland, EPA need not respond to the Commenter's inquiry as to how COMAR 26.11.19.26-1 would be implemented for imported fiberglass boats. Finally, EPA clarifies that COMAR 26.11.19.26-1 does not add to import requirements for fiberglass boats being imported into Maryland.

IV. Final Action

EPA is approving the December 23, 2015 Maryland SIP submittal, which revises the Maryland SIP by adding new regulation COMAR 26.11.19.26-1 and amending COMAR 26.11.19.26, because the SIP submittal meets the requirement to adopt RACT for sources covered by EPA's CTG standards for fiberglass boat manufacturing materials and is in accordance with requirements in CAA sections 172, 182 and 184.

V. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of COMAR 26.11.19.26-1 and an amendment to COMAR 26.11.19.26 addressing VOC content limits for fiberglass boat manufacturing into the Maryland SIP. Therefore, these materials have

been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.¹ EPA has made, and will continue to make, these materials generally available through <http://www.regulations.gov> and/or at the EPA Region III Office (please contact the person identified in the "For Further Information Contact" 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.);

¹ 62 FR 27968 (May 22, 1997).

- 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).

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. This action approving the Maryland SIP revision adding new regulation COMAR 26.11.19.26-1 and amending COMAR 26.11.19.26 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, Ozone, Volatile organic compounds.

Dated: December 7, 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 revising COMAR 26.11.19.26 and the entry for COMAR 26.11.19.26-1. The amended text reads as follows:

§ 52.1070 Identification of plan.

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(c) * * *

EPA-APPROVED REGULATIONS, TECHNICAL MEMORANDA, AND STATUTES 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
* * * * *				
26.11.19 Volatile Organic Compounds From Specific Processes				
* * * * *				
26.11.19.26	Control of Volatile Organic Compound Emissions from Reinforced Plastic Manufacturing	09/28/15	[Insert date of Federal Register publication] [Insert Federal Register citation]	Amendment to .26A
26.11.19.26-1	Control of Volatile Organic Compound Emissions from Fiberglass Boat Manufacturing	09/28/15	[Insert date of Federal Register publication] [Insert Federal Register citation]	New Regulation.
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