



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2016-0454; FRL-9961-25-Region 3]

**Approval and Promulgation of Air Quality Implementation Plans;
Maryland; New Regulations for Architectural and Industrial Maintenance Coatings**

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 a provision establishing new volatile organic compound (VOC) content limits and standards for architectural and industrial maintenance (AIM) coatings available for sale and use in Maryland. This action is being taken under 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-2016-0454. 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: Irene Shandruk, (215) 814-2166, or by e-mail at shandruk.irene@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In 2001, the Ozone Transport Commission (OTC), in collaboration with the Ozone Transport Region (OTR) states, developed several emission reduction measures, including a VOC model rule for AIM coatings (known as the Phase I AIM model rule), which addressed VOC reductions in the OTR. In 2004, consistent with the OTC Phase I AIM model rule, Maryland adopted COMAR 26.11.33 – *Architectural Coatings*, which established VOC content limits, recordkeeping and labeling requirements, and standard practices for use and application of coatings used in architectural and industrial maintenance.

The Phase I AIM model rule was replaced with an amended OTC model rule in 2011 (known as the Phase II AIM model rule). The Phase II AIM model rule was developed for states that needed additional VOC emission reductions in order to meet the ozone national ambient air quality standards (NAAQS). Consistent with the Phase II AIM model rule, Maryland developed and adopted COMAR 26.11.39 – *Architectural and Industrial Maintenance Coatings*, which is an updated version of COMAR 26.11.33.

On June 27, 2016, the Maryland Department of the Environment (MDE) submitted to EPA a SIP revision (16-09) containing new AIM regulations .01 through .08 under COMAR 26.11.39 – *Architectural and Industrial Maintenance Coatings* to be included in the Maryland SIP and

requesting removal of COMAR 26.11.33 from the SIP, as COMAR 26.11.39 supercedes COMAR 26.11.33. On November 28, 2016 (81 FR 85455), EPA published a notice of proposed rulemaking (NPR) proposing approval of Maryland’s new AIM regulations.

II. Summary of SIP Revision

The new AIM regulations apply to any person who manufactures, blends, thins, supplies, sells, offers for sale, repackages for sale, or applies architectural and industrial maintenance coatings in Maryland. Maryland’s new AIM regulations establish more stringent VOC content limits (Table 1) and standards for AIM coating categories than in COMAR 26.11.33, as well as establish container labeling requirements, reporting requirements, and compliance procedures. The requirements of COMAR 26.11.39 supersede those of COMAR 26.11.33. Other specific requirements and the rationale for EPA’s proposed action are explained in the NPR and technical support document for this rulemaking and will not be restated here. No public comments were received on the NPR.

Table 1: VOC Content Limits Under COMAR 26.11.39 for Various AIM Coating Categories

Architectural and Industrial Maintenance Coatings Category	Maryland’s New VOC Content Limits (grams/liter) Under COMAR 26.11.39
Flat coatings	50
Non-flat coatings	100
Non-flat – high gloss coatings	150
Specialty Coatings:	
Aluminum roof coatings	450
Basement specialty coatings	400
Bituminous roof coatings	270
Bituminous roof primers	350
Bond breakers	350
Calcimine recoater	475
Concrete curing compounds	350
Concrete/masonry sealers	100
Concrete surface retarders	780
Conjugated oil varnish	450

Conversion varnish	725
Driveway sealers	50
Dry fog coatings	150
Faux finishing coatings	350
Fire-resistive coatings	350
Floor coatings	100
Form-release coatings	250
Graphic arts coatings (Sign paints)	500
High-temperature coatings	420
Impacted immersion coatings	780
Industrial maintenance coatings	250
Low-solids coatings	120
Magnesite cement coatings	450
Mastic texture coatings	100
Metallic pigmented coatings	500
Multi-color coatings	250
Nuclear coatings	450
Pre-treatment wash primers	420
Primers, sealers, and undercoaters	100
Reactive penetrating sealers	350
Reactive penetrating carbonate stone sealers	500
Recycled coatings	250
Roof coatings	250
Rust preventative coatings	250
Shellacs:	
Clear	730
Opaque	550
Specialty primers, sealers, and undercoaters	100
Stains	250
Stone consolidant	450
Swimming pool coatings	340
Thermoplastic rubber coatings and mastic	550
Traffic marking coatings	100
Tub and tile refinish coatings	420
Waterproofing membranes	250
Wood coatings	275
Wood preservatives	350
Zinc-rich primers	340

III. Final Action

EPA is approving Maryland’s June 27, 2016 SIP submittal with new regulations for AIM coatings under COMAR 26.11.39, and adding these regulations to the Maryland SIP. With this

approval, EPA is also removing COMAR 26.11.33 from the Maryland SIP. COMAR 26.11.39 establishes VOC content limits and requirements for certain AIM coating categories which are more stringent than limits previously found in COMAR 26.11.33. Therefore, EPA believes these new regulations in the SIP strengthen the Maryland SIP and should lead to additional VOC reductions, which will reduce ozone formation and assist Maryland with attaining and maintaining the ozone NAAQS.

IV. 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 Maryland's new regulations for AIM coatings in COMAR 26.11.39. 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).

V. 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

¹ 62 FR 27968 (May 22, 1997).

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. This action pertaining to Maryland's new regulations for AIM coatings under COMAR 26.11.39 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, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 5, 2017.

Cecil Rodrigues,
Acting 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 heading “26.11.33 Architectural Coatings” and the entries “26.11.33.01-26.11.33.14.”

b. Adding the heading “26.11.39 Architectural and Industrial Maintenance (AIM) Coatings” and the entries “26.11.39.01-26.11.39.08” in numerical order.

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

Code of Maryland Administrative Regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100
* * * * *				
26.11.39 Architectural and Industrial Maintenance (AIM) Coatings				
26.11.39.01	Applicability and Exemptions	4/25/16	[insert date of publication in the Federal Register], [insert Federal Register	

			citation]	
26.11.39.02	Test Methods-Incorporation by Reference	4/25/16	[insert date of publication in the Federal Register], [insert Federal Register citation]	
26.11.39.03	Definitions	4/25/16	[insert date of publication in the Federal Register], [insert Federal Register citation]	
26.11.39.04	General Requirements and Standards	4/25/16	[insert date of publication in the Federal Register], [insert Federal Register citation]	
26.11.39.05	VOC Content Limits	4/25/16	[insert date of publication in the Federal Register], [insert Federal Register citation]	
26.11.39.06	Container Labeling Requirements	4/25/16	[insert date of publication in the Federal Register], [insert Federal Register	

			citation]	
26.11.39.07	Reporting Requirements	4/25/16	[insert date of publication in the Federal Register], [insert Federal Register citation]	
26.11.39.08	Compliance Procedures	4/25/16	[insert date of publication in the Federal Register], [insert Federal Register citation]	
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[FR Doc. 2017-09184 Filed: 5/5/2017 8:45 am; Publication Date: 5/8/2017]