



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2016-0576; FRL-9966-79-Region 3]

### Approval and Promulgation of Air Quality Implementation Plans; Maryland; Permits, Approvals, and Registrations

**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 administrative procedures for the issuance, denial, and appeal of permits issued by the Maryland Department of the Environment (MDE). 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-2016-0576. 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:** David Talley, (215) 814-2117, or by e-mail at talley.david@epa.gov.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On June 23, 2017 (82 FR 28614), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. In the NPR, EPA proposed approval of amendments to the Code of Maryland Administrative Regulations (COMAR) as a revision to the Maryland SIP. The formal SIP revision (#16-01) was submitted by Maryland on February 22, 2016.

**II. Summary of SIP Revision and EPA Analysis**

Maryland’s SIP revision submittal includes several amended administrative provisions under COMAR 26.11.02 (Permits, Approvals, and Registration) for inclusion in the Maryland SIP. Specifically, 26.11.02.07 (Procedures for Denying, Revoking, or Reopening and Revising a Permit or Approval), 26.11.02.11 (Procedures for Obtaining Permits to Construct Certain Significant Sources), and 26.11.02.12 (Procedures for Obtaining Approvals of PSD Sources and NSR Sources, Certain Permits to Construct, and Case-by-Case MACT Determinations in Accordance with 40 CFR part 63, Subpart B) have been revised. Maryland has requested EPA add the amended provisions to the Maryland SIP.

The amended COMAR provisions with State effective dates of December 10, 2015 address MDE’s administrative processes for permit issuance and denial. Specifically, the amended

COMAR provisions eliminate the “contested case” process and the Office of Administrative Hearings’ adjudicatory hearing process for major permits, and substitute direct judicial review. Additionally, the revisions expand standing for challenges to those major permits, and include additional public notice requirements for certain sources. The amended COMAR provisions are described in more detail in the NPR and will not be repeated here.

MDE’s February 22, 2016 SIP submittal is consistent with all applicable requirements of the CAA and its implementing regulations. The COMAR public notice requirements meet or exceed the requirements of 40 CFR 51.160 and 51.161. Additionally, the revisions are approvable under section 110 of the CAA (specifically section 110(a)(2)(A) and (C) and section 173 for NSR programs). Under section 110(a)(2)(C), the SIP must include a program to enforce the emission limits and control measures in a state’s SIP (as required by section 110(a)(2)(A)) and must also contain a program to regulate modification/construction of sources so that the NAAQS are achieved. Section 173 requires the permits program for nonattainment NSR and requires states to have a SIP with a permit program that ensures sources are required to comply with certain things like stringent emission limitations (i.e., lowest achievable emission rates) and offsets. While having a permits program in the SIP that addresses denial or revocation of permits and addresses permit appeals does not address the required substance of a NSR program, these provisions do make the NSR program enforceable, and therefore EPA finds the SIP submission and revisions to COMAR 26.11.02 approvable under CAA sections 173 and 110(a)(2)(A) and (C). EPA finds the revisions approvable under section 110 and 173 of the CAA and the CAA’s implementing regulations. In addition, because none of the revisions to COMAR 26.11.02 will affect emissions of pollutants from sources and are largely administrative in nature, EPA finds that none of the revisions to COMAR 26.11.02 will interfere with reasonable further progress,

any NAAQS, or any other applicable requirements in the CAA. Thus, EPA finds the submittal is approvable for section 110(l) of the CAA.

Other specific requirements of MDE's February 22, 2016 SIP submittal and the rationale for EPA's approval of the submittal are explained in the NPR and will not be restated here. No public comments were received on the NPR.

### **III. Final Action**

EPA is approving MDE's February 22, 2016 SIP submittal as a revision to the Maryland SIP. Specifically, EPA is approving revised COMAR 26.11.02.07, 26.11.02.11 and 26.11.02.12 for inclusion in the Maryland SIP in accordance with sections 110 and 173 of the CAA.

### **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 the MDE rules regarding permit issuance and denial as described in Section II of this preamble. 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).

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.<sup>1</sup>

## **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 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);

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<sup>1</sup> 62 FR 27968 (May 22, 1997).

- 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 MDE’s rules regarding permit issuance and denial 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, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 12, 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 revising the entries “26.11.02.07,” “26.11.02.11,” and “26.11.02.12” to read as follows:

**§52.1070 Identification of plan.**

\* \* \* \*

(c) \* \* \*

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

<b>Code of Maryland Administrative Regulations (COMAR) citation</b>	<b>Title/subject</b>	<b>State effective date</b>	<b>EPA approval date</b>	<b>Additional explanation/citation at 40 CFR 52.1100</b>
* * * *				
<b>26.11.02 Permits, Approvals, and Registration</b>				
* * * *				
26.11.02.07	Procedures for Denying, Revoking, or Reopening and Revising a Permit or Approval	12/10/15	[insert date of publication in the Federal Register], [insert Federal Register citation]	Previous Approval 2/27/2003, 68 FR 9012, (c) (182)
* * * *				
26.11.02.11	Procedures for Obtaining	12/10/15	[insert date	Previous

Code of Maryland Administrative Regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100
	Permits to Construct Certain Significant Sources		of publication in the Federal Register], [insert Federal Register citation]	Approval 2/27/2003, 68 FR 9012, (c) (182)
26.11.02.12	Procedures for Obtaining Approvals of PSD Sources and NSR Sources, Certain Permits to Construct, and Case-by-Case MACT Determinations in Accordance with 40 CFR part 63, Subpart B	12/10/15	[insert date of publication in the Federal Register], [insert Federal Register citation]	Previous Approval 8/2/2012, 77 FR 45949
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[FR Doc. 2017-17865 Filed: 8/25/2017 8:45 am; Publication Date: 8/28/2017]