



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R03-OAR-2017-0484; FRL-9970-28-Region 3]

**Approval and Promulgation of Air Quality Implementation Plans;
Maryland; Continuous Opacity Monitoring Requirements for Municipal Waste
Combustors**

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 State of Maryland's Clean Air Act (CAA) section 111(d)/129 State Plan for municipal waste combustors (MWCs). The revisions contain Maryland's amendments to Regulations .07 and .08 under the Code of Maryland Regulations (COMAR) 26.11.08. These amendments update the MWC references to opacity compliance. The Maryland Department of the Environment (MDE)'s discontinued Technical Memorandum (TM 90-01) is no longer applicable and the regulations now refer to COMAR 26.11.31, which codifies quality assurance (QA) and quality control (QC) procedures for continuous opacity monitors (COMs). EPA is approving this revision to remove TM 90-01 from Maryland's CAA section 111(d)/129 State Plan in accordance with the requirements of the 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-2017-0484 at <https://www.regulations.gov>, or via email to aquino.marcos@epa.gov. For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). For either manner of submission, 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. 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: Emily Linn, (215) 814-5273, or by e-mail at linn.emily@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On May 10, 2016, the State of Maryland submitted a formal revision (MD Submittal #16-05) to

its CAA section 111(d)/129 State Plan for MWCs. The revisions contain Maryland's amendments to COMAR 26.11.08.08, "Requirements for an Existing Large MWC with a Capacity Greater Than 250 Tons Per Day." These amendments update the MWC references to opacity compliance previously made by MDE. MDE's discontinued technical memorandum which previously addressed QA/QC procedures for COMs, TM 90-01, is no longer state effective and the Maryland regulations therefore now refer to COMAR 26.11.31, which codifies similar QA and QC procedures for COMs.¹ In a state rulemaking action, MDE also revised the title of COMAR 26.11.08.07, "Requirements for Municipal Waste Combustors with a Capacity of 35 tons or greater per day and less than or equal to 250 Tons Per Day," to clarify that the state regulation applies to small MWCs. However, this clarification to the title of COMAR 26.11.08.07 is a minor administrative change and is not part of this action. The text of 26.11.08.07 remains unchanged, and thus the requirements for MWCs remain unchanged. EPA is approving this revision to remove TM 90-01 from Maryland's 111(d)/129 State Plan for MWCs in accordance with the requirements of the CAA as the changes are administrative in nature.

II. Summary of CAA Section 111(d)/129 State Plan Revision and EPA Analysis

EPA has reviewed Maryland's submittal to revise its CAA section 111(d)/129 State Plan for MWCs in the context of the requirements of 40 CFR Part 60, Subpart Eb. These amendments are largely administrative in nature. In this action, EPA is finalizing its determination that the submitted revision meets the above-cited requirements. EPA is revising 40 CFR Part 62, Subpart V (§62.5110 and §61.5112) to reflect this approval.

¹ EPA previously approved Maryland's State Plan for large MWCs on April 8, 2008 (*see* 73 FR 18970). In addition, EPA previously approved, as a revision to the Maryland state implementation plan, the regulatory requirements for QA/QC controls for COMs in COMAR 26.11.31. 81 FR 78048 (November 7, 2016).

III. Final Action

EPA is approving the May 10, 2016 Maryland CAA section 111(d)/129 State Plan revision submittal as a revision to Maryland's CAA section 111(d)/129 State Plan for MWCs. 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 this **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the 111(d)/129 State Plan 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.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the

Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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). This rule also does 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 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing Section 111(d)/129 plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a Section 111(d)/129 plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a Section 111(d)/129 plan submission, to use VCS in place of a Section 111(d)/129 plan submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National

Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

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 this **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 approving Maryland's revisions to their 111(d)/129 State Plan for MWCs may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: October 18, 2017.

Cosmo Servidio,
Regional Administrator,
Region III.

For the reasons stated in the preamble, 40 CFR Part 62 is amended as follows:

PART 62 – APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

1. The authority citation for part 62 continues to read as follows:

AUTHORITY: 42 U.S.C. 7401 *et seq.*

Subpart V—Maryland

2. Section 62.5110 is amended by adding paragraph (c) to read as follows:

§62.5110 Identification of plan.

* * * * *

(c) On May 10, 2016, Maryland submitted a revised State Plan and related COMAR 26.11.08.08 amendments.

3. Section 62.5112 is amended by adding paragraph (c) to read as follows:

§62.5112 Effective date.

* * * * *

(c) The plan revision is effective [insert date 60 days after date of publication in the Federal Register].

[FR Doc. 2017-24116 Filed: 11/3/2017 8:45 am; Publication Date: 11/6/2017]