

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

Code of Maryland Administrative Regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100
26.11.38.04 .....	Compliance Demonstration Requirements ...	8/31/2015	5/30/2017 [Insert <b>Federal Register</b> citation].	
26.11.38.05 .....	Reporting Requirements .....	8/31/2015	5/30/2017 [Insert <b>Federal Register</b> citation].	
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 BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[MD 204-3120; FRL-9959-24-Region 3]

**Air Plan Approval; Maryland; Update to Materials Incorporated by Reference**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; administrative change.

**SUMMARY:** The Environmental Protection Agency (EPA) is updating the materials that are incorporated by reference (IBR) into the Maryland state implementation plan (SIP). The regulations affected by this update have been previously submitted by the Maryland Department of the Environment (MDE) and approved by EPA. This update affects the SIP materials that are available for public inspection at the National Archives and Records Administration (NARA) and the EPA Regional Office. **DATES:** This action is effective May 30, 2017.

**ADDRESSES:** SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; or NARA. For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

**FOR FURTHER INFORMATION CONTACT:** Sharon McCauley, (215) 814-3376, or by email at [mccauley.sharon@epa.gov](mailto:mccauley.sharon@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The SIP is a living document which a state revises as necessary to address its

unique air pollution problems. Therefore, EPA, from time to time, must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference federally-approved SIPs, as a result of consultations between EPA and the Office of the Federal Register (OFR). The description of the revised SIP document, IBR procedures and “Identification of plan” format are discussed in further detail in the May 22, 1997 **Federal Register** document. On November 29, 2004 (69 FR 69304), EPA published a document in the **Federal Register** beginning the new IBR procedure for Maryland. On February 2, 2006 (71 FR 5607), May 18, 2007 (72 FR 27957), March 11, 2008 (73 FR 12895), March 19, 2009 (74 FR 11647), and August 22, 2011 (76 FR 52278), EPA published updates to the IBR material for Maryland.

Since the publication of the last IBR update, EPA has approved the following regulatory changes to the following regulations, statutes, and source-specific actions for Maryland:

*A. Added*

1. COMAR 26.11.09.10 (Requirements to Burn Used Oil and Waste Combustible Fluid as Fuel).
2. COMAR 26.11.09.12 (Standards for Biomass Fuel-Burning Equipment Equal to or Greater Than 350,000 Btu/hr).
3. COMAR 26.11.17.06 through .09 (Requirements for New Sources and Modifications).
4. COMAR 26.11.19.07-2 (Plastic Parts and Business Machines Coating).
5. COMAR 26.11.19.27-1 (Control of Volatile Organic Compounds from Pleasure Craft Coating Operations).
6. COMAR 26.11.26.01, 26.11.26.04 through .09 (Conformity).
7. COMAR 26.11.34.01 through .14 (Low Emissions Vehicle Program).
8. COMAR 26.11.35.01 through .07 (Volatile Organic Compounds from Adhesives and Sealants).
9. COMAR 20.79.01.01 (part), .02 (part), and .06 (Applications Concerning

the Construction or Modification of Generating Stations and Overhead Transmission Lines—General).

10. COMAR 20.79.02.01 through 20.79.02.03 (Applications Concerning the Construction or Modification of Generating Stations and Overhead Transmission Lines—Administrative Provisions).

11. COMAR 20.79.03.01 and 20.79.03.02 (part) (Applications Concerning the Construction or Modification of Generating Stations and Overhead Transmission Lines—Details of Filing Requirements—Generating Stations).

12. Public Utility Companies Article of the Annotated Code of Maryland, sections 7-205, 7-207 (part), 7-207.1 (part), and 7-208.

13. Annotated Code of Maryland, title 15 (Public Ethics) which was also removed and replaced (see section C of this rulemaking).

14. 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), section 5-103(a) through (c) (Designation of Individuals as Public Officials, section 5-208(a) (Determination of Public Official in Executive agency), section 5-501(a) and (c) (Restrictions on Participation), section 5-601(a) (Individuals Required to File Statement), section 5-602(a) (Financial Disclosure Statement—Filing Requirements), section 5-606(a) (Public Records), section 5-607(a) through (j) (Content of statements), and section 5-608(a) through (c) (Interests Attributable to Individual Filing Statement).

15. In 40 CFR 52.1070(d), a source specific requirement was added for the GenOn Chalk Point Generating Station—2011 Consent Decree for Chalk Point.

*B. Revised*

1. COMAR 26.11.01.01 (Definitions).
2. COMAR 26.11.01.04 (Testing and Monitoring).
3. COMAR 26.11.02.01 (Definitions), .09 (Sources Subject to Permits to Construct), .10 (Sources Exempt from Permits to Construct and Approvals),

and .12 (Procedures for Obtaining Approvals of PSD Sources and NSR Sources, Permits to Construct, Permit to Construct MACT Determinations On a Case-by-Case Basis in Accordance with 40 CFR part 63, subpart B, and Certain 100-Ton Sources).

4. COMAR 26.11.04.02 (Ambient Air Quality Standards, Definitions, Reference Conditions, and Methods of Measurement).

5. COMAR 26.11.06.14 (Control of PSD Sources).

6. COMAR 26.11.09.01 (Definitions), .04 (Prohibition of Certain New Fuel Burning Equipment), .06 (Control of Particulate Matter), .07 (Control of Sulfur Oxides from Fuel Burning Equipment), and .09 (Tables and Diagrams).

7. COMAR 26.11.10.03 (Visible Emissions).

8. COMAR 26.11.13.04 (Loading Operations) and .05 (Gasoline Leaks from Tank Trucks).

9. COMAR 26.11.17.01 (Definitions), .02 (Applicability), .03 (General Conditions), .04 (Creating Emission Reduction Credits (ERCs)), .05 (Information on Emission Reductions and Certification).

10. The following regulations in COMAR 26.11.19 (Volatile Organic Compounds from Specific Processes):

a. COMAR 26.11.19.02 (Applicability, Determining Compliance, Reporting, and General Requirements).

b. COMAR 26.11.19.07 (Paper, Fabric, Film, and Foil Coating).

c. COMAR 26.11.19.08 (Metal Parts and Products Coating).

d. COMAR 26.11.19.11 (Lithographic and Letterpress Printing).

e. COMAR 26.11.19.13 (Drum and Pail Coating).

f. COMAR 26.11.19.15 (Paint, Resin, and Adhesive Manufacturing and Adhesive and Sealant Applications).

g. COMAR 26.11.19.23 (Control of VOC Emissions from Vehicle Refinishing).

h. COMAR 26.11.19.30 (Control of Volatile Organic Compounds from Chemical Production and Fluoropolymer Material Installations).

11. COMAR 26.11.26.01 (Purpose), .02 (Definitions) and .03 (Transportation Conformity).

12. COMAR 26.11.34.01 (Purpose), .02 (Incorporation by Reference), .03 (Applicability and Exemptions), .04 (Definitions), .05 (Emission Requirements), .06 (Fleet Average NMOG Credit Account Balances), .07 (Initial NMOG Credit Account Balances), .08 (Fleet Average Greenhouse Gas Requirements), .09 (Zero Emission Vehicle (ZEV) Requirements), .10 (Initial ZEV Credit

Account Balances), .11 (Vehicle Testing), .12 (Warranty), .13 (Manufacturer Compliance Demonstration), and .14 (Enforcement).

#### C. Removed

1. COMAR 26.11.04.03 through .09 (State Ambient Air Quality Standards).

2. Annotated Code of Maryland, title 15 (Public Ethics).

3. Consent orders and/or consent decrees for Potomac Electric Power Company (PEPCO)—Chalk Point Units #1 and #2, Beall Junior/Senior High School, Mt. Saint Mary's College, and Maryland Slag Co.

#### II. EPA Action

In this action, EPA is announcing the update to the IBR material as of July 1, 2016 and revising the text within 40 CFR 52.1070(b).

EPA is revising our 40 CFR part 52 “Identification of Plan” for the State of Maryland regarding incorporation by reference, § 52.1070(b). EPA is revising § 52.1070(b)(1) to clarify that all SIP revisions listed in paragraphs (c) and (d), regardless of inclusion in the most recent “update to the SIP compilation,” are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking in which EPA approved the SIP revision, consistent with following our “Approval and Promulgations of Air Quality Implementation Plans; Revised Format of 40 CFR part 52 for Materials Being Incorporated by Reference,” effective May 22, 1997 (62 FR 27968). EPA is revising § 52.1070(b)(2) to clarify references to other portions of paragraph (b) with paragraph (b)(2). EPA is revising paragraph (b)(3) to update address and contact information.

In the table for 40 CFR 52.1070(c):

1. Revising the **Federal Register** date for COMAR 26.11.10.03.

2. Adding a **Federal Register** entry for COMAR 26.11.19.09–1 which is currently not shown in the Code of Federal Regulations but was previously approved by EPA on February 22, 2011 at 76 FR 9656.

3. Revising the title of the State Government Article of the Annotated Code of Maryland to read, “General Provisions Article of the Annotated Code of Maryland (formerly cited at Section 15 of State Government Article).”

In the table for 40 CFR 52.1070(d):

1. Restoring an entry for PEPCO—Dickerson which was inadvertently removed from the table during a prior final rulemaking action.

2. Revising an incorrect **Federal Register** page citation in the “EPA approval date” column for the Northeast

Maryland Waste Disposal Authority and Wheelabrator-Frye, Inc. and the Mayor and City Council of Baltimore and BEDCO Development Corp.

3. Reorganizing the table so that the entries appear in the order which EPA’s approval actions occurred.

#### III. Good Cause Exemption

EPA has determined that this rule falls under the “good cause” exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding “good cause,” authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). This rule simply codifies provisions which are already in effect as a matter of law in federal and approved state programs. Under section 553 of the APA, an agency may find good cause where procedures are “impractical, unnecessary, or contrary to the public interest.” Public comment is “unnecessary” and “contrary to the public interest” since the codification only reflects existing law. Immediate notice in the CFR benefits the public by removing outdated citations and incorrect table entries.

#### 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 previously EPA approved regulations promulgated by the State of Maryland and federally effective prior to July 1, 2016. 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> EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](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).

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

## V. Statutory and Executive Order Reviews

### A. General Requirements

Under the Clean Air Act (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 Order 12866 (58 FR 51735, October 4, 1993);
- 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 (Pub. L. 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 rule 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**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

### C. Petitions for Judicial Review

EPA has also determined that the provisions of section 307(b)(1) of the CAA pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the Maryland SIP compilations had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review for this "Identification of plan" update action for Maryland.

### 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: January 18, 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. Section 52.1070 is amended by:
  - a. Revising paragraph (b).

- b. In paragraph (c):

- i. Revising the entry for COMAR 26.11.10.03;
  - ii. Adding an entry in numerical order for COMAR 26.11.19.09-1; and
  - iii. Removing the heading "State Government Article of the Annotated Code of Maryland" and adding in its place the heading "General Provisions Article of the Annotated Code of Maryland (formerly cited at Section 15 of State Government Article)".
- c. In paragraph (d):
  - i. Adding an entry for Potomac Electric Power Company (PEPCO)—Dickerson as the first entry of the table;
  - ii. Revising the entry for the Northeast Maryland Waste Disposal Authority and Wheelabrator-Frye, Inc. and the Mayor and City Council of Baltimore and BEDCO Development Corp; and
  - iii. Removing the entry for GenOn Chalk Point Generating Station from the beginning of the table and adding an entry for GenOn Chalk Point Generating Station to the end of the table.

The revisions and additions read as follows:

#### § 52.1070 Identification of plan.

\* \* \* \* \*

(b) *Incorporation by reference.* (1) Material listed in paragraphs (c) and (d) of this section with an EPA approval date prior to July 1, 2016, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Entries in paragraphs (c) and (d) of this section with the EPA approval dates after July 1, 2016 for the State of Maryland, have been approved by EPA for inclusion in the state implementation plan and for incorporation by reference into the plan as it is contained in this section, and will be considered by the Director of the Federal Register for approval in the next update to the SIP compilation.

(2) EPA Region III certifies that the following materials provided by EPA at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated state rules/regulations which have been approved as part of the state implementation plan as of the dates referenced in paragraph (b)(1) of this section.

(3) Copies of the materials incorporated by reference into the state implementation plan may be inspected at the Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. To obtain the material, please call the Regional Office at (215) 814-3376. You may also inspect the material with an EPA approval date prior to July 1, 2016 for the State of Maryland at the National

Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>. (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
* * *				
<b>26.11.10 Control of Iron and Steel Production Installations</b>				
* * *				
26.11.10.03	Visible Emissions	6/29/09	7/27/12, 77 FR 44146	Revised paragraphs A. and D. of 26.11.10.03 for Sintering Plants.
* * *				
<b>26.11.19 Volatile Organic Compounds From Specific Processes</b>				
* * *				
26.11.19.09-1	Control of VOC Emissions from Industrial Solvent Cleaning Operations Other Than Cold and Vapor Degreasing..	4/19/10	2/22/11, 76 FR 9656	New Regulation.
* * *				

(d) \* \* \*

Name of source	Permit number/type	State effective date	EPA approval date	Additional explanation
Potomac Electric Power Company (PEPCO)—Dickerson.	#49352 Amended Consent Order.	7/26/78	12/6/79, 44 FR 70141	52.1100(c)(25).
Northeast Maryland Waste Disposal Authority and Wheelabrator-Frye, Inc. and the Mayor and City Council of Baltimore and BEDCO Development Corp.	Secretarial Order	2/25/83	8/24/83, 48 FR 38465	52.1100(c)(70) (Shutdown of landfill for offsets).
GenOn Chalk Point Generating Station.	The 2011 Consent Decree for Chalk Point.	3/10/11	5/4/12, 77 FR 26438	Docket No. 52.1070(d). The SIP approval includes specific provisions of the 2011 Consent Decree for which the State of Maryland requested approval on October 12, 2011.