



**6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R03-OAR-2017-0047; FRL-9965-23-Region 3]**

**Approval and Promulgation of Air Quality Implementation Plans; Maryland;  
Requirements for Continuous Emission Monitoring**

**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revision pertains to removing a discontinued Technical Memorandum 90-01 (TM 90-01) from Maryland's SIP, which is now superseded by a new continuous emission monitoring (CEM) regulation. EPA is approving this revision to remove TM 90-01 from Maryland's SIP 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-2017-0047. All documents in the docket are listed on the <https://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 <https://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](mailto:huang.gavin@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

On July 1, 2016, MDE submitted a SIP revision to remove discontinued TM 90-01 from Maryland’s SIP because TM 90-01 had been superseded by COMAR 26.11.01.11. EPA previously approved TM 90-01 into Maryland’s SIP on February 28, 1996. *See* 61 FR 7418. MDE also submitted a revised version of COMAR 26.11.10.06 “Control of Volatile Organic Compounds from Iron and Steel Production Installations” for inclusion in the Maryland SIP which removed a reference to TM 90-01 in section C(3)(b) of COMAR 26.11.10.06 and added a reference to COMAR 26.11.01.11 in COMAR 26.11.10.06. Maryland previously used TM 90–01 to govern the CEM requirements for fuel burning equipment. The formal SIP revision (#16-08) was submitted by Maryland on July 1, 2016.

In May 2010, the State of Maryland through the Maryland Department of the Environment (MDE) discontinued the use of TM 90-01 “Continuous Emission Monitoring Policies and Procedures” and codified these requirements for CEMs in Maryland regulation COMAR 26.11.01.11 “Continuous Emission Monitoring Requirements.” MDE had been in the process of establishing unique requirements for CEMs, separate from the requirements for continuous

opacity monitors (COMs), and broke out the requirements into separate COMAR regulations.

On November 7, 2016 (81 FR 78048), EPA approved these separate regulations into Maryland's SIP.

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

On May 1, 2017 (82 FR 20292), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. In the NPR, EPA proposed approval of removing a discontinued TM 90-01 from Maryland's SIP, which is now superseded by a new CEM regulation. EPA also proposed to approve for the Maryland SIP a revised version of COMAR 26.11.10.06 which removed a reference to TM 90-01 in section C(3)(b) of COMAR 26.11.10.06 and added a reference to COMAR 26.11.01.11 in COMAR 26.11.10.06 to address CEM issues. EPA's rationale was explained in detail in the NPR and will not be restated here. No comments were received in response to EPA's proposed approval of the July 1, 2016 Maryland SIP submittal.

## **III. Final Action**

EPA is approving the July 1, 2016 Maryland SIP revision submittal as a revision to the Maryland SIP. The submittal sought removal of discontinued TM 90-01 from the SIP in accordance with section 110 of the CAA. The CEM requirements for quality assurance, monitoring and other technical requirements under discontinued TM 90-01 have been superseded and codified under COMAR 26.11.01.11. EPA is also approving for the Maryland SIP a revised version of COMAR 26.11.10.06 "Control of Volatile Organic Compounds from Iron and Steel Production Installations" which removed a reference to TM 90-01 in section C(3)(b) of COMAR 26.11.10.06 and added a reference to COMAR 26.11.01.11 in COMAR 26.11.10.06.

#### **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 amended version of COMAR 26.11.10.06. 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 <https://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 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:

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

- 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 to remove discontinued TM 90-01 from Maryland's SIP and include revised COMAR 26.11.10.06 in the SIP 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, Volatile organic compounds.

Dated: July 11, 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. Amend § 52.1070:

a. In the table in paragraph (c) by revising the entry for “COMAR 26.11.10.06”; and

b. In the table in paragraph (e) by removing the entry for “TM#90-01—“Continuous Emission Monitoring Policies and Procedures”—October 1990”.

The revised 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**

<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>26.11.10 Control of Iron and Steel Production Installations</b>				
* * * * *				
26.11.10.06	Control of Volatile Organic Compounds from Iron and Steel Production Installations	05/09/2016	[Insert date of publication in the Federal Register] [Insert	Removed reference to TM 90-01 from C(3)(b) and added reference to COMAR 26.11.01.11.

Code of Maryland Administrative Regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100
			<u>Federal Register citation]</u>	
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[FR Doc. 2017-15733 Filed: 7/27/2017 8:45 am; Publication Date: 7/28/2017]