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6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2018-0730; FRL-9999-75-Region 3]

#### Approval and Promulgation of Air Quality Implementation Plans; Maryland; Removal of Stage II Gasoline Vapor Recovery Program Requirements

**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 SIP revision removes requirements for gasoline vapor recovery equipment (also known as Stage II vapor recovery) on fuel dispensers at both new and upgrading gasoline dispensing facilities (GDFs) in Stage II subject areas of Maryland and also allows for decommissioning of Stage II equipment at existing stations currently equipped with Stage II equipment. GDF owners may elect to retain existing Stage II equipment, but in doing so remain subject to Stage II requirements and must continue to test and maintain Stage II equipment in accordance with program requirements. EPA determined that Maryland's August 25, 2017 SIP revision is approvable 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-2018-0730. 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:** Brian Rehn, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2176. Mr. Rehn can also be reached via electronic mail at [rehn.brian@epa.gov](mailto:rehn.brian@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On February 12, 2019 (84 FR 3369), EPA published a notice of proposed rulemaking (NPRM) for the State of Maryland. In the NPRM, EPA proposed approval of Maryland’s request to remove requirements for new and modified Stage II equipment in the Stage II subject areas of the State, while allowing the option to decommission Stage II equipment at subject GDFs that do not yet wish to decommission Stage II equipment. This SIP revision applies to GDFs in the Baltimore area, the Maryland portion of the Philadelphia-Wilmington-Trenton, PA-NJ-DE-MD area and the Maryland portion of the Washington, DC-MD-VA area. The formal SIP revision

being approved [Maryland SIP Revision #17-05] was submitted by the Maryland Department of the Environment (MDE) as a formal SIP revision on August 25, 2017. The details of Maryland's August 25, 2017 SIP submittal and the rationale for EPA's proposed action are explained in the NPRM and will not be restated here. See 84 FR 3369. That NPRM also contained a detailed analysis showing that Maryland's removal of the Stage II requirements would not interfere with any Maryland area's ability to attain or maintain any NAAQS, or any other applicable requirement of the CAA. The public comment period for this NPRM closed on March 14, 2019. EPA received no public comments on the NPRM.

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

Maryland's August 25, 2017 SIP revision [Maryland SIP Revision #17-05] consists of amendments and additions by MDE to COMAR 26.11.24, *Vapor Recovery at Gasoline Dispensing Facilities* (as finalized November 13, 2015 and state effective November 23, 2015). These state amendments allow new GDFs (and those undergoing major modifications) in affected Stage II areas the option to choose not to install Stage II equipment or to decommission existing Stage II equipment. The state revisions to COMAR 26.11.24 include the amendment to Regulations .01, .01-1, .02, .03, .04, .07 and the addition of a new Regulation .03-1. The SIP revision also contains a demonstration that removal of the Stage II program requirements does not interfere with the attainment or maintenance of any national ambient air quality standard (NAAQS) or any other applicable requirement of the CAA.

Stage II vapor recovery is an emission control system that is installed on gasoline dispensing equipment at GDFs for the purpose of capturing fuel vapor that would otherwise be released

from vehicle gas tanks into the atmosphere during vehicle refueling. Stage II vapor recovery systems installed on dispensing equipment capture these refueling emissions at the dispenser and route the refueling vapors back to the GDF's underground storage tank, preventing volatile organic compounds (VOCs) that comprise these vapors from escaping to the atmosphere. Stage II vapor recovery systems were required by section 182(b)(3) of the CAA, which required areas classified as moderate and above ozone nonattainment to implement Stage II vapor recovery programs and also under CAA section 184(b)(2), which required states in the Northeast Ozone Transport Region (OTR) to implement Stage II or comparable measures.

Section 202(a)(6) of the CAA also required EPA to regulate new vehicles to require capture of refueling vapor emissions under section 202(a)(6). Since model year 1998, newly manufactured gasoline-burning cars and trucks have been equipped with on-board refueling vapor recovery (ORVR) systems that utilize carbon canisters installed directly on the vehicle to capture refueling vapors in the vehicle to be later routed to the vehicle's engine for combustion during engine operation. Congress recognized that these two requirements would become redundant once sufficient new vehicles were introduced into commerce to alleviate the need for GDF-based gasoline refueling vapor control. Therefore, CAA section 202(a)(6) allows the EPA Administrator to waive the requirements for Stage II requirements in moderate ozone nonattainment areas upon determination that vehicle-based, onboard vapor recovery systems were in "widespread use." EPA issued this "widespread use" determination via a final rule published in the May 16, 2012 **Federal Register** (77 FR 28772).

In areas where certain types of vacuum-assist Stage II vapor recovery systems are used, the

interaction between ORVR systems and certain configurations of Stage II vapor recovery systems result in the reduction of overall control system efficiency in capturing VOC refueling emissions compared to what would otherwise be achieved by ORVR or Stage II acting in the absence of the other. In its May 16, 2012 widespread use rulemaking, EPA not only waived requirements for Stage II equipment at GDFs in new ozone nonattainment areas, but also allowed states currently implementing Stage II vapor recovery programs to submit SIP revisions that would discontinue requirements for new and existing Stage II vapor recovery systems.

### **III. Final Action**

EPA is approving Maryland's August 25, 2017 SIP revision to incorporate state revisions to the Stage II program to the Maryland SIP, applicable to the Baltimore area and Maryland portions of the Philadelphia-Wilmington-Trenton, PA-NJ-DE-MD and Washington, DC-MD-VA areas. Specifically, EPA is removing from the Maryland SIP requirements for the operation of a Stage II program in these areas, while adding new Stage II requirements for decommissioning programs and adding requirements applicable to GDFs that refrain from decommissioning existing stations.

### **IV. Incorporation by Reference**

In this document, 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 revisions to COMAR 26.11.24, *Vapor Recovery at Gasoline Dispensing Facilities* (as finalized November 13, 2015 and state effective November 23, 2015). This revised rule removes Stage II vapor recovery requirements for new and modified GDFs in subject Maryland areas. The

revised rule also adds decommissioning requirements for GDFs electing to decommission existing Stage II equipment, as well as new testing and other criteria applicable to GDFs with existing Stage II equipment that opt not to decommission existing Stage II equipment. EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and 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 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);

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

- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- 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 Stage II requirements for Maryland 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, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 29, 2019.

Cosmo Servidio,  
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) under the heading “26.11.24 Stage II Vapor Recovery at Gasoline Dispensing Facilities” is amended by:

- a. Revising the entries for “26.11.24.01”, “26.11.24.01-1”, “26.11.24.02”, and “26.11.24.03”;
- b. Adding an entry in numerical order for “26.11.24.03-1”; and
- c. Revising the entries “26.11.24.04” and “26.11.24.07”.

The revisions and addition read as follows:

### **§ 52.1070                      Identification of plan.**

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(c)\* \* \*

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

<b>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>26.11.24 Stage II Vapor Recovery at Gasoline Dispensing Facilities</b>				
26.11.24.01	Definitions	11/23/2015	<u>[Insert date of publication in the Federal Register, Insert Federal Register citation]</u>	Add to B. definitions 8-1 “major modification,” 14-1 “Stage I vapor balance system,” and 16-1 “Tank System.” Revise definition (14) “Owner.”  Previous approval 1/17/2008.
26.11.24.01-1	Incorporation by Reference	11/23/2015	<u>[Insert date of publication in the Federal Register, Insert Federal Register citation]</u>	Incorporate new test methods B.6, B.7, and B.8.  Previous approval (c)(178).
26.11.24.02	Applicability, Exemptions, and Effective Date	11/23/2015	<u>[Insert date of publication in the Federal Register,</u>	Remove paragraphs E and F.  Previous approval

<b>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>
			<u>Insert Federal Register citation]</u>	(c)(178).
26.11.24.03	General Requirements	11/23/2015	<u>[Insert date of publication in the Federal Register, Insert Federal Register citation]</u>	Revise paragraph A, add paragraph A-1, revise paragraph B, and add paragraph J. Prior approval (c)(178).
26.11.24.03-1	Decommissioning of the Stage II Vapor Recovery System	11/23/2015	<u>[Insert date of publication in the Federal Register, Insert Federal Register citation]</u>	
26.11.24.04	Testing Requirements	11/23/2015	<u>[Insert date of publication in the Federal Register, Insert Federal Register citation]</u>	Revise paragraph A and add A.6 and A.7. Add paragraph A-1. Revise C.2.
*	*	*	*	*

Citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100
26.11.24.07	Recordkeeping and Reporting Requirements	11/23/2015	<u>[Insert date of publication in the Federal Register, Insert Federal Register citation]</u>	Revise paragraph E and revise E.3.
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[FR Doc. 2019-20197 Filed: 9/20/2019 8:45 am; Publication Date: 9/23/2019]