

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2008-0871; FRL-9164-5]

### Approval and Promulgation of Air Quality Implementation Plans; Maryland; Transportation Conformity Regulations

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the Maryland State Implementation Plan (SIP). The revisions establish transportation conformity regulations for the State of Maryland. EPA is approving these revisions in accordance with the requirements of the Clean Air Act.

**DATES:** This rule is effective on August 17, 2010 without further notice, unless EPA receives adverse written comment by July 19, 2010. 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 Number EPA-R03-OAR-2008-0871 by one of the following methods:

A. *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. *E-mail:* [fernandez.cristina@epa.gov](mailto:fernandez.cristina@epa.gov).

C. *Mail:* EPA-R03-OAR-2008-0871, Cristina Fernandez, Associate Director, Office of Air Planning Programs, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-R03-OAR-2008-0871. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise

protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) Web site is an anonymous access system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the electronic docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, *i.e.*, 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 either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

**FOR FURTHER INFORMATION CONTACT:** Martin Kotsch, (215) 814-3335, or by e-mail at [kotsch.martin@epa.gov](mailto:kotsch.martin@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, whenever "we," "us," or "our" is used, we mean EPA.

#### I. What is transportation conformity?

Transportation conformity is required under section 176(c) of the Clean Air Act to ensure that Federally supported highway, transit projects, and other activities are consistent with (conform to) the purpose of the SIP. Conformity currently applies to areas that are designated nonattainment, and those redesignated to attainment after 1990 (maintenance areas), with plans

developed under section 175A of the Clean Air Act for the following transportation related criteria pollutants: Ozone, particulate matter (PM<sub>2.5</sub> and PM<sub>10</sub>), carbon monoxide (CO), and nitrogen dioxide (NO<sub>2</sub>). Conformity for purposes of the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the relevant national ambient air quality standards (NAAQS). The transportation conformity regulation is found in 40 CFR part 93 ("Federal conformity rule") and provisions related to conformity SIPs are found in 40 CFR 51.390.

#### II. What is the background for this action?

On August 10, 2005, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) was signed into law. SAFETEA-LU revised certain provisions of section 176(c) of the Clean Air Act, related to transportation conformity. Prior to SAFETEA-LU, States were required to address all of the Federal conformity rule's provisions in their conformity SIPs. After SAFETEA-LU, State's SIPs were required to contain all or portions of only the following three sections of the Federal conformity rule, modified as appropriate to each State's circumstances: 40 CFR 93.105 (consultation procedures); 40 CFR 93.122(a)(4)(ii) (written commitments to implement certain kinds of control measures); and 40 CFR 93.125(c) (written commitments to implement certain kinds of mitigation measures). States are no longer required to submit conformity SIP revisions that address the other sections of the Federal conformity rule.

#### III. What did the State submit and how did we evaluate it?

On August 4, 1998, the Maryland Department of the Environment submitted a revision to its State Implementation Plan (SIP), Revision #98-14, to EPA for parallel processing for transportation conformity amendments adopted on May 4, 1995 and proposed for adoption on July 31, 1998. The SIP revision included regulations .01, .02, and .03 under COMAR 26.11.26 (Conformity). On January 29, 2003, the Maryland Department of the Environment submitted a revision to its SIP, Revision #03-02, for transportation conformity amendments that were adopted on July 12, 1999. The 2003 SIP revision included amendments to Regulations 26.11.26.02 and .03, new Regulations

.04 through .08, and recodification of Regulation .04 to Regulation .09 (excluding Regulation .06). On February 5, 2007, the Maryland Department of the Environment submitted a revision to its SIP, Revision #06–07, for transportation conformity purposes. The SIP revision included amendments to Regulation 26.11.26.01 through .05 and .07 through .09. This SIP revision addresses the three provisions of the EPA Conformity Rule required under SAFETEA–LU: 40 CFR 93.105 (consultation procedures); 40 CFR 93.122(a)(4)(ii) (control measures); and 40 CFR 93.125(c) (mitigation measures). On July 8, 2008, the Maryland Department of the Environment supplemented its SIP with Revision #06–07. The SIP submission corrected minor citation errors, removed COMAR 26.11.26.05E(4), and corrected a citation in COMAR 26.11.26.01 which was mislabeled as section 176(c) of the Clean Air Act and should have read section 176(c)(4)(E) of the Clean Air Act.

We reviewed the submittals to assure consistency with the February 14, 2006, “Interim Guidance for Implementing the Transportation Conformity provisions in SAFETEA–LU.” The guidance document can be found at <http://epa.gov/otaq/stateresources/transconf/policy.htm>. The guidance document states that each State is only required to address and tailor the aforementioned three sections of the Federal Conformity Rule to be included in their State conformity SIPs. EPA’s review of Maryland’s SIP Revision indicates that it is consistent with EPA’s guidance in that it includes the three aforementioned regulatory elements specified by SAFETEA–LU. Consistent with the EPA Conformity Rule at 40 CFR 93.105 (consultation procedures), COMAR 26.11.26.02, COMAR 26.11.26.04, and COMAR 26.11.26.05 identify the appropriate agencies, procedures, and allocation of responsibilities. In addition, COMAR 26.11.26.07 provides for appropriate public consultation/public involvement consistent with 40 CFR 93.105. With respect to the requirements of 40 CFR 93.122(a)(4)(ii) and 40 CFR 93.125(c), the SIP specifies that written commitments to implement control measures and mitigation measures for meeting these requirements will be provided as needed.

#### IV. Final Action

EPA is approving the Maryland SIP revisions for Transportation Conformity, which were submitted on August 4, 1998, January 29, 2003, February 5, 2007, and supplemented on July 8, 2008. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial

amendment and anticipates no adverse comment. However, in the Proposed Rules section of today’s **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on August 17, 2010 without further notice unless EPA receives adverse comment by July 19, 2010. 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. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

#### V. Statutory and Executive Order Reviews

##### A. General Requirements

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act 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 Clean Air Act. 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 Clean Air Act; 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 *August 17, 2010*. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this final rule 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 approve the Maryland transportation conformity regulation 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, Volatile organic compounds.

Dated: June 7, 2010.

**W.C. Early,**

*Acting Regional Administrator, Region III.*

■ 40 CFR part 52 is amended as follows:

**PART 52—[AMENDED]**

■ 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 removing the existing entries for COMAR 26.11.26.01 and 26.11.26.03, and adding new entries for COMAR 26.11.26.01, 26.11.26.02, 26.11.26.03, 26.11.26.04, 26.11.26.05, 26.11.26.07, 26.11.26.08, and 26.11.26.09. The amendments read as follows:

**§ 52.1070 Identification of plan.**

\* \* \* \* \*  
(c) \* \* \*

**EPA—APPROVED REGULATIONS 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>26.11.26 Conformity</b>				
26.11.26.01	Purpose	1/29/07	June 18, 2010	New Regulation.
26.11.26.02	Definitions	8/9/99 1/29/07	June 18, 2010	Definitions added for transportation conformity; definitions for general conformity were approved at (c)(136).
26.11.26.03	Transportation Conformity	6/5/95 1/29/07	June 18, 2010	New Regulation; current COMAR citation is 26.11.26.04.
26.11.26.04	Transportation Conformity— Consultation in General.	8/9/99 1/29/07	June 18, 2010	New Regulation; current COMAR citation is 26.11.26.05.
26.11.26.05	Transportation Conformity— Interagency Consultation Requirements.	8/9/99 1/29/07	June 18, 2010	New Regulation; current COMAR citation is 26.11.26.06.
26.11.26.07	Transportation Conformity— Public Consultation Procedures.	8/9/99 1/29/07	June 18, 2010	New Regulation; current COMAR citation is 26.11.26.08.
26.11.26.08	Transportation Conformity— Interagency Consultation.	8/9/99 1/29/07	June 18, 2010	New Regulation; current COMAR citation is 26.11.26.09.
26.11.26.09	General Conformity	1/29/07	June 18, 2010	Formerly SIP regulation 26.11.26.03.

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[FR Doc. 2010-14766 Filed 6-17-10; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 63**

[EPA-R01-OAR-2010-0207; A-1-FRL-9163-2]

**Approval of the Clean Air Act, Section 112(l), Authority for Hazardous Air Pollutants: Air Emission Standards for Halogenated Solvent Cleaning Machines: State of Rhode Island Department of Environmental Management****AGENCY:** Environmental Protection Agency ("EPA").**ACTION:** Direct final rule.

**SUMMARY:** Pursuant to section 112(l) of the Clean Air Act ("CAA") and Federal regulations promulgated thereunder, the Rhode Island Department of Environmental Management ("RI DEM") submitted a request for approval to implement and enforce Air Pollution Control Regulation Number 36, Control of Emissions from Organic Solvent Cleaning ("RI Regulation No. 36"), and the Rhode Island Air Pollution Control, General Definitions Regulation ("RI General Definitions Rule"), as a partial substitution for the National Emissions Standards for Halogenated Solvent Cleaning ("Halogenated Solvent NESHAP"), as it applies to organic solvent cleaning machines in Rhode Island, except continuous web cleaning machines, with respect to which the Halogenated Solvent NESHAP shall continue to apply. EPA has reviewed this request and has determined that RI Regulation No. 36 and the RI General Definitions Rule satisfy the requirements necessary for partial substitution approval. Thus, EPA is hereby granting RI DEM the authority to implement and enforce RI Regulation No. 36 and the RI General Definitions Rule in place of the Halogenated Solvent NESHAP for organic solvent cleaning machines, but EPA is retaining its authority with respect to continuous web cleaning machines in Rhode Island. This approval makes RI Regulation No. 36 and the RI General Definitions Rule Federally enforceable.

**DATES:** This direct final rule will be effective August 17, 2010, unless EPA receives adverse comments by July 19, 2010. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the

rule will not take effect. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of August 17, 2010.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R01-OAR-2010-0207 by one of the following methods:

1. *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.

2. *E-mail*: [mcdonnell.ida@epa.gov](mailto:mcdonnell.ida@epa.gov).

3. *Fax*: (617) 918-0653.

4. *Mail*: "EPA-R01-OAR-2010-0207", Ida McDonnell, U.S. Environmental Protection Agency, EPA New England Regional Office, Air Permits, Toxics and Indoor Programs Unit, Five Post Office Square, Suite 100 (mail code OEP05-2), Boston, MA 02109-3912.

5. *Hand Delivery or Courier*. Deliver your comments to: Ida McDonnell, Manager, Air Permits, Toxics and Indoor Programs Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, Five Post Office Square, Suite 100 (OEP05-2), Boston, MA 02109-3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA-R01-OAR-2010-0207. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information ("CBI") or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov*, or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any

disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. EPA will forward copies of all submitted comments to the Rhode Island Department of Environmental Management.

*Docket:* All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.*, 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 either electronically in *http://www.regulations.gov* or in hard copy at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, Five Post Office Square, Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

In addition, copies of the State submittal are also available for public inspection during normal business hours, by appointment at the Rhode Island Department of Environmental Management, 291 Promenade Street, Providence, RI, 02908.

**FOR FURTHER INFORMATION CONTACT:** Susan Lancey, Air Permits, Toxics and Indoor Programs Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, Five Post Office Square, Suite 100 (OEP05-2), Boston, MA 02109-3912, telephone number (617) 918-1656, fax number (617) 918-0656, e-mail [lancey.susan@epa.gov](mailto:lancey.susan@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

- I. Background and Purpose
- II. What requirements must a state rule meet to substitute for a section 112 rule?
- III. How will EPA determine equivalency for State alternative NESHAP requirements?
- IV. EPA Determination of Rule Equivalency