

MARYLAND REGISTER

Proposed Action on Regulations

Comparison to Federal Standards Submission and Response

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: Environment
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In accordance with Executive Order 01.01.1996.03 and memo dated July 26, 1996, the attached document is submitted to the Department of Business and Economic Development for review.

The Proposed Action is not more restrictive or stringent than corresponding federal standards.

COMAR Codification: 26.11.20.02

Corresponding Federal Standard:

Clean Air Act (CAA) § 203 and § 113

Discussion/Justification:

Maryland's existing and proposed regulations largely mirror and compliment federal regulations pertaining to the tampering of motor vehicles. The existing Code of Maryland Regulations 26.11.20.02, prohibits the tampering of motor vehicle emission controls and operation of a motor vehicle that has had the air pollution control equipment tampered or removed. Under CAA § 203(a)(3)(A), 42 U.S.C. § 7522(a)(3)(A), federal law prohibits anyone from removing or rendering inoperative any device or element of design that had previously been

installed on a motor vehicle or engine in order to comply with CAA regulations. Federal law also prohibits any person from manufacturing or selling, or offer for sale, or installing, a motor vehicle defeat device. 42 U.S.C. § 7522(a)(3)(B). Finally, CAA § 113(c)(2)(C), 42 U.S.C. § 7413(c)(2)(C), provides that it is a crime to knowingly falsify, tamper with, render inaccurate, or fail to install any "monitoring device or method" required under the CAA. The proposed Regulation will clarify and expand Maryland's regulations to prohibit the manufacture, sale, use, or installation of aftermarket defeat devices, prohibit the sale, auction or transfer of vehicles that have had their air pollution control systems tampered or removed, and prohibit the operation of motor vehicles that have had their air pollution control systems tampered or removed.

TO BE COMPLETED BY DBED

-Agree

-Disagree

Comments:

Name:

Date:

-Submit to Governor's Office

Governor's Office Response

Comments:

<p>Transmittal Sheet</p> <p>PROPOSED OR REPROPOSED</p> <p>Actions on</p>	<p>Date Filed with AELR Committee</p>	<p>TO BE COMPLETED BY DSD</p> <p>Date Filed with Division of State Documents</p>
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Title 26
DEPARTMENT OF THE ENVIRONMENT

Subtitle 11 AIR QUALITY

26.11.20 Mobile Sources

Authority: Environment Article, §§2-102, 2-103, and 2-301, Annotated Code of Maryland

Notice of Proposed Action

Regulations		Document Number
		Date of Publication in MD Register

□

The Secretary of the Environment proposes to repeal Regulations .02 and propose new Regulations .02 under chapter COMAR 26.11.20 Mobile Sources.

Statement of Purpose

The purpose of this action is to repeal existing Regulation .02 Sections A-C and propose new Regulation .02 Sections A-F under COMAR 26.11.20.02 pertaining to Motor Vehicle Emission Control Devices. This action clarifies and expands Maryland's regulations prohibiting (1) the removal or alteration of a motor vehicle's air pollution control systems, and (2) the operation of motor vehicles with removed, altered, or inoperative air pollution control systems. The proposed Regulation prohibits the manufacture, sale, installation, and use of any device that prevents a motor vehicle's air pollution control system from operating as originally designed. The proposed Regulation also prohibits the offering for sale, sale, lease, auction or transfer of any motor vehicle with removed, altered, or inoperative air pollution control systems. The proposed Regulation requires a vehicle dealer or business that sells, auctions or transfers a motor vehicle to maintain records confirming all air pollution control systems are in operating conditions at the time of sale. The proposed regulation also codifies the Department's rights to conduct inspections of new and used motor vehicles for the purposes of determining compliance with the requirements of this Regulation.

Motor vehicles contribute to nearly half of the air pollution in the United States. Tampering with the emission controls of a motor vehicle can allow a vehicle to emit hundreds to thousands of times more pollution than when properly controlled. By specifically targeting those vehicles which excessively and wantonly contribute pollution to our air, the Department believes significant emission reductions can be realized with efficient use of enforcement resources.

1. Desired date of publication in Maryland Register: 9/24/2021

2. COMAR Codification

Title	Subtitle	Chapter	Regulation
26	11	20	02

3. Name of Promulgating Authority

Department of the Environment

4. Name of Regulations Coordinator
Carolyn A Jones

Telephone Number
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Mailing Address

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Baltimore	MD	21230

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5. Name of Person to Call About this Document
Marcia Ways

Telephone No.
410-537-3270

Email Address
marcia.ways@maryland.gov

6. Check applicable items:

- New Regulations
- Amendments to Existing

Regulations

Date when existing text was downloaded from COMAR online: .

- Repeal of Existing Regulations

Recodification

Incorporation by Reference of Documents Requiring DSD Approval

Reproposal of Substantively Different Text:

: Md.
R

(vol.) (issue) (page nos) (date)

Under Maryland Register docket no.: --P.

7. Is there emergency text which is identical to this proposal:

Yes - No

8. Incorporation by Reference

Check if applicable: Incorporation by Reference (IBR) approval form(s) attached and 18 copies of documents proposed for incorporation submitted to DSD. (Submit 18 paper copies of IBR document to DSD and one copy to AELR.)

9. Public Body - Open Meeting

OPTIONAL - If promulgating authority is a public body, check to include a sentence in the Notice of Proposed Action that proposed action was considered at an open meeting held pursuant to General Provisions Article, §3-302(c), Annotated Code of Maryland.

OPTIONAL - If promulgating authority is a public body, check to include a paragraph that final action will be considered at an open meeting.

The proposed action pertaining to motor vehicle emission control devices will be submitted to the U.S. Environmental Protection Agency (EPA) for approval as part of Maryland’s SIP.

Background. Tampering with a vehicle's emissions control system is illegal under existing state regulations, COMAR 26.11.20.02, and the federal Clean Air Act (CAA), 42 U.S.C. § 7522. The CAA also prohibits manufacturing, selling, offering for sale and installing aftermarket devices which effectively defeat those controls. Tampering causes excess emissions of nitrogen oxides (NOx), particulate matter (PM), and other pollutants to the air we breathe. Both existing Maryland and federal law prohibit the removal, alteration or otherwise tampering with a vehicle’s pollution control equipment. Maryland regulations also currently prohibit the operation of a motor vehicle that has had its air pollution control equipment tampered or removed. Tampering can take two basic forms: (1) Removing hardware, filters and catalysts in the stock emission control system. This hardware can be located in the engine (e.g. Exhaust Gas Recirculation (EGR)) or in the exhaust system (e.g. Diesel Particulate Filter (DPF) or Selective Catalytic Reduction (SCR)), or (2) Replacing or altering the software or calibrations that control engine operation, sometimes referred to as "tuning." Tuning may increase engine emissions, allow a vehicle or engine to operate without emissions controls, or prevent the onboard diagnostic system from recognizing that the vehicle or engine is functioning differently than originally designed and certified. Violation of Maryland’s anti-tampering laws may result in a civil penalty of up to \$25,000 per day per violation (Environment Article, Annotated Code of Maryland, §§ 2-610 and 2-610.1). In addition, a person who knowingly tampers with a vehicle may be found guilty of a misdemeanor, and subject to a fine not exceeding \$25,000, imprisonment of up to 1 year, or both for a first offense (Environment Article, Annotated Code of Maryland, § 2-609.1).

10. Children's Environmental Health and Protection

X- Check if the system should send a copy of the proposal to the Children's Environmental Health and Protection Advisory Council.

11. Certificate of Authorized Officer

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by Michael F. Strande, Assistant Attorney General, (telephone #410-537-3421) on July 7, 2021. A written copy of the approval is on file at this agency.

Name of Authorized Officer

Benjamin H. Grumbles

Title

Secretary

Telephone No.

410-537-3055

Date

August 3, 2021

Federal Prohibitions. The CAA contains two relevant requirements – one related to tampering and the other to defeat devices. The following acts (and causing them to occur) are prohibited: (1) For anyone to remove or render inoperative any device or element of design that had previously been installed on a motor vehicle or engine in order to comply with CAA regulations. See CAA § 203(a)(3)(A), 42 U.S.C. § 7522(a)(3)(A), and (2) For any person to manufacture or sell, or offer to sell, or install, a part or component for a motor vehicle, where: a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design that had previously been installed on a motor vehicle or engine in order to comply with CAA regulations, and the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use. See CAA § 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B). The CAA states that it is a crime to knowingly falsify, tamper with, render inaccurate, or fail to install any monitoring device or method required under the CAA. See CAA § 113(c)(2)(C), 42 U.S.C. § 7413(c)(2)(C). Vehicle Onboard Diagnostics (OBD) systems are a "monitoring device or method" required under the CAA.

Federal Enforcement. On November 23, 2020, EPA updated its “Enforcement Policy on Vehicle and Engine Tampering and Aftermarket Defeat Devices”. Recent EPA enforcement activity is highlighted in the April 30, 2020 press release “EPA Highlights Enforcement Actions Against Those Who Violate The Defeat Device and Tampering Prohibitions under the Clean Air Act”. Violations are widespread and financial penalties are significant. Those who sell or install devices to defeat emission controls can be fined over \$4,800 per defeat device, and dealers can be fined over \$48,000 per tampered vehicle. Over the past five years, EPA has closed over 60 civil tampering cases, and the Department of Justice has filed criminal charges in others.

Sources Affected. The proposed action applies to:

a person who services any emissions-related aspect of any vehicle, engine, or piece of equipment; a person who manufactures, distributes, or installs emissions-related parts; a person who offers for sale, leases, auctions, sells or transfers a motor vehicle; and a person who operates a motor vehicle.

Requirements. The proposed action maintains Maryland's current prohibitions on the installation or use of defeat devices, and will expand Maryland's regulations to prohibit (1) the manufacture and sale of defeat devices, and (2) the sale, auction or transfer of vehicles that have had the air pollution control equipment tampered or removed. Specifically, the proposed Regulation will include the following prohibitions: a person may not tamper with any air pollution control system on a motor vehicle or on a motor vehicle engine. a person may not operate a motor vehicle originally equipped with an air pollution control system unless that system is in place and in operating condition. a person may not manufacture, offer for sale, sell, install or use a device that prevents any air pollution control system from functioning as designed by the original manufacturer. a person may not offer for sale, lease, sell, auction or transfer a motor vehicle with an air pollution control system that has been tampered with, removed, or is otherwise not functional as designed by the original manufacturer.

Exemptions. The proposed Regulation does not apply to the sale or transfer of a motor vehicle for the purpose of scrapping, dismantling, or destroying the motor vehicle if: (1) A certificate of salvage has been issued by the Maryland Motor Vehicle Administration that establishes a motor vehicle may not be operated on public roads; or (2) Sufficient documentation and proof is provided to the Department's satisfaction that a motor vehicle has been scrapped, or will be scrapped within 30 days.

Furthermore, the proposed Regulation does not prevent the service or repair of any air pollution

control system. Finally, the proposed Regulation does not apply to motorcycles.

Record Keeping Requirements. Records are to be maintained onsite for a period of 5 years by a vehicle dealer or business that sells, auctions or transfers motor vehicles. Records must be made available to the Department upon request. A vehicle dealer or business that sells, auctions or transfers a motor vehicle must maintain records including: date of sale or transfer of motor vehicle; fuel type of motor vehicle; motor vehicle description (i.e. make, model, year, GVWR); vehicle identification number (VIN); and statement that all air pollution control systems are in place and in operating condition.

Compliance Inspections. The Department or its agents have the right to conduct inspections of new and used motor vehicles for the purposes of determining compliance with the requirements of this proposed Regulation. The inspections may: be conducted on any premises owned, operated, used, leased, or rented by any vehicle dealer; extend to all emissions-related parts and their operation; require the on-premises operation and testing of an engine or vehicle; and require inspection of any related records, including records of emissions-related part repairs performed under warranty. Refusal to allow, or interference with, the inspections shall be considered a violation of this Regulation. A person who violates any provision of this proposed Regulation is subject to the sanctions set forth in Environment Article, Title 2, Annotated Code of Maryland. Each noncompliant vehicle is a separate violation.

Projected Emission Reductions. Tampering can cause a vehicle to emit more pollution than it otherwise would. Recent EPA investigations indicate that controls on over 500,000 diesel pickup trucks, or about 13 percent of those registered that were originally certified with emissions controls, have been fully removed or deleted through tampering. The excess NO_x emissions from these vehicles are the equivalent of

adding 9 million trucks to our roads. Even more pickups could be tampered with, as well as heavy duty trucks and off-road equipment used in agriculture and construction. In a letter from EPA AED to MARAMA dated Nov. 18, 2019, Re: Aggregated Evidence of Tampered Diesel Pickup Trucks, the EPA estimates that in the next decade close to 100,000 excess tons of NOx and 890 tons of PM could be emitted in the Mid-Atlantic States due to aftermarket tampering of diesel mobile sources. While the Mid-Atlantic region is already susceptible to increased mobile source emissions due to a dense population and the I-95 corridor, the use of after-market defeat devices and tampering in diesel-powered vehicles significantly exacerbates the problem of excess NOx, which is also a precursor to ground-level ozone formation. Each diesel-powered truck that does not have the proper emissions control system is estimated to emit more than one ton of excess NOx, which for Mid-Atlantic States could be the equivalent of 60,000 tons of excess NOx from 2009-2019. EPA estimates that roughly 58,000 diesel vehicles in Mid-Atlantic States had their emissions controls completely removed in the preceding decade, or “deleted,” which would be 8.5 percent of diesel vehicles registered in MidAtlantic States in 2016. EPA estimates that from 2009-2019, Maryland had 5,900 diesel trucks operating with deleted devices. Excess NOx emissions from these vehicles amounted to 6,000 tons during this period (600 tons per year or 1.64 tons per day). Excess PM emissions from these vehicles amounted to 64 tons during this period (6.4 tons per year).

Comparison to Federal Standards

There is a corresponding federal standard to this proposed action, but the proposed action is not more restrictive or stringent.

Estimate of Economic Impact

I. Summary of Economic Impact.

Tampering with a vehicle's emissions control system and operating a tampered motor vehicle is illegal under existing state regulations and the

federal CAA. The proposed regulations further prohibit the manufacture and sale of defeat devices, and the offering for sale, lease, sale, auction or transfer a motor vehicle with an air pollution control system that has been tampered with, removed or is otherwise not functional as designed by the original manufacturer. The CAA already prohibits the manufacture, sale, offering for sale, and installation of aftermarket devices which effectively defeat a motor vehicle's pollution controls. There will be an economic impact upon motor vehicle dealers that may need to restore the emission control equipment to normal operating conditions on all the tampered vehicles they may have in their possession. There will also be a minimal economic impact upon motor vehicle dealers that will need to maintain records and offer records and vehicles for inspection by the Department upon request. There will be an economic impact upon manufacturers and retailers of emission control defeat devices. The small business impact is expected to be minimal. The practice of tampering with vehicle emissions is currently prohibited by existing COMAR regulations.

There will be a minimal impact upon the Department as Compliance Inspectors will need to undergo training and inspect affected sources as needed. There will be a positive general public health benefit, especially to those with asthma, but the exact projected benefit is undetermined.

II. Types of Economic Impact.	Revenue (R+/R-)	Expenditure (E+/E-)	Magnitude
A. On issuing agency:	(E+)		Minimal
B. On other State agencies:		NONE	
C. On local governments:		NONE	

	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:	(-)	Indeterminate
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	(+)	Indeterminate

III. Assumptions. (Identified by Impact Letter and Number from Section II.)

A. Compliance Inspectors will need to undergo training

D. Confirm emission control equipment and maintain records.

F. Avoided emissions provide public health protection.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to , , , or call , or email to , or fax to . Comments will be accepted through . A public hearing will be held, The Department of the Environment will hold a virtual public hearing on the proposed action on October 26, 2021 at 10 a.m. See the Department’s website for virtual hearing information, <https://mde.maryland.gov/programs/Regulations/air/Pages/reqcomments.aspx>. Interested persons are invited to attend and express their views. Comments must be received by 5:00 pm on October 26, 2021. Comments may be submitted to

Marcia Ways, Mobile Sources Control Program Manager, Department of the Environment, 1800 Washington Boulevard, Suite 730, Baltimore, Maryland 21230-1720 or by email at marcia.ways@maryland.gov. For more information contact Marcia Ways at telephone (410) 537-3270 or email marcia.ways@maryland.gov.

Economic Impact Statement Part C

A. Fiscal Year in which regulations will become effective: FY 2022

B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?

Yes

C. If 'yes', state whether general, special (exact name), or federal funds will be used:

The Mobile Sources Control Program is funded through reimbursable funds from the Maryland Department of Transportation. The Compliance Program funding is a combination of Maryland Clean Air Funds (Special) and Air Pollution Control Program Grant Funds (Federal) will be used. No additional funds are required to implement these regulations.

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

E. If these regulations have no economic impact under Part A, indicate reason briefly:

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

G. Small Business Worksheet:

Attached Document:

Title 26 DEPARTMENT OF THE ENVIRONMENT

Subtitle 11 AIR QUALITY

Chapter 20 Mobile Sources

Authority: Environment Article, §§2-102, 2-103, and 2-301, Annotated Code of Maryland

.01 (text unchanged)

.02 Motor Vehicle Emission Control Devices.

A. — C. (repeal)

A. Definitions.

(1) "Air pollution control system" means any device or element of design installed on or in a motor vehicle or motor vehicle engine in order to comply with pollutant emission restrictions established for the motor vehicle or motor vehicle engine by federal or state statute or regulation.

(2) "Gross vehicle weight rating (GVWR)" means the value specified by the manufacturer as the maximum loaded weight of a single or combination vehicle.

(3) "Motor vehicle" means any self-propelled vehicle powered by an internal combustion engine and designed for use on public roads, such as automobiles, trucks, and buses.

(4) "Tamper" means to remove, alter or otherwise render inoperative an air pollution control system.

B. Applicability. The provisions of this Regulation apply to all motor vehicles, except as listed in §C of this Regulation.

C. Exemptions.

(1) This Regulation does not apply to the sale or transfer of a motor vehicle for the purpose of scrapping, dismantling, or destroying the motor vehicle if:

(a) A certificate of salvage has been issued by the Maryland Motor Vehicle Administration that establishes a motor vehicle may not be operated on public roads; or

(b) Sufficient documentation and proof is provided to the Department's satisfaction that a motor vehicle has been scrapped, or will be scrapped within 30 days.

(2) This Regulation does not prevent the service or repair of any air pollution control system.

(3) This Regulation does not apply to motorcycles.

D. Anti-Tampering Prohibitions.

(1) A person may not tamper with any air pollution control system on a motor vehicle or on a motor vehicle engine.

(2) A person may not operate a motor vehicle originally equipped with an air pollution control system unless that system is in place and in operating condition.

(3) A person may not manufacture, offer for sale, sell, install or use a device that prevents any air pollution control system from functioning as designed by the original manufacturer.

(4) A person may not offer for sale, lease, sell, auction or transfer a motor vehicle with an air pollution control system that has been tampered with, removed, or is otherwise not functional as designed by the original manufacturer.

E. Compliance Inspections.

(1) The Department or its agents have the right to conduct inspections of new and used motor vehicles for the purposes of determining compliance with the requirements of this Regulation.

(2) The inspections authorized under §E(1) of this Regulation may:

(a) Be conducted on any premises owned, operated, used, leased, or rented by any vehicle dealer;

(b) Extend to all air pollution control systems and their operation;

(c) Require the on-premises operation and testing of an engine or vehicle; and

(d) Require inspection of any related records, including records of emissions-related part repairs performed under warranty.

(3) Refusal to allow, or interference with, the inspections under this section shall be considered a violation of this Regulation.

(4) A person who violates any provision of this Regulation is subject to the sanctions set forth in Environment Article, Title 2, Annotated Code of Maryland. Each non-compliant vehicle is a separate violation.

F. Record Keeping.

(1) A vehicle dealer or business that sells, auctions or transfers a motor vehicle must maintain records including:

(a) Date of sale or transfer of motor vehicle;

(b) Fuel type of motor vehicle;

(c) Motor vehicle description (i.e. make, model, year, GVWR);

(d) Vehicle Identification Number (VIN); and

- (e) Statement that all air pollution control systems are in place and in operating condition.*
- (2) Records must be maintained onsite for 5 years and available to the Department upon request.*

.03 — .06 (text unchanged)