

**MARYLAND DEPARTMENT OF THE ENVIRONMENT, AIR AND RADIATION ADMINISTRATION AND
MARYLAND DEPARTMENT OF TRANSPORTATION MOTOR VEHICLE ADMINISTRATION**

Response to Comments

On the Proposed Amendments to Regulations under COMAR11.14.08 pertaining to Vehicle Emissions Inspection Program.

Public Hearing Held on October 11, 2022

Purpose of Hearing: The purpose of the hearing was to give the public an opportunity to comment on the proposed amendments to regulations .01—.06 and .20, adoption of new regulation .07, and amendment and recodifying of existing regulations .07—.14 and .16—.18 to be regulations .08—.15 and .17—.19 respectively, recodifying existing regulation .15 to be regulation .16, and repealing existing regulation .19 under COMAR 11.14.08 Vehicle Emissions Inspection Program (VEIP). This is a joint proposal from the Secretary of the Environment and the Administrator of the Motor Vehicle Administration.

The proposed action implements the second phase of a VEIP modernization effort that began in 2018 with the goals of improving customer service and reducing financial and regulatory burden for Maryland motorists while minimizing the impact on air quality. These enhancements allow Marylanders to benefit from recent significant air quality progress in the State. The regulation was modified in 2018 and extended the date required for new, not previously titled, vehicles from two years to three years. The proposed regulation provides an additional three years for new, not previously titled, vehicles. Analysis by the Maryland Department of the Environment (MDE) shows that, due to the very low VEIP testing failure rate of new vehicles, the changes to delay the testing of new, not previously titled, vehicles from the current three model years of age to six model years of age has a negligible impact on air quality and will not affect the State's ability to attain or maintain the national ambient air quality standard (NAAQS) for any air pollutant.

This action will also establish VEIP Motorist Assistance Centers to support motorists in acquiring effective emissions repairs so their vehicles will pass VEIP testing and maintain the improved emissions performance into the future. The Centers will provide motorists with access to an emissions repair specialist to help ensure that vehicles are repaired correctly and in a timely manner, enhancing both customer service and air quality benefits. The proposal also includes minor clarifications and technical corrections to the regulations.

Date and Location: The public hearing was held virtually on October 11, 2022, at 10 a.m. GoToMeeting at <https://meet.goto.com/934722053> – Event Access Code 166-049-290 - the Maryland Department of the Environment (MDE).

Attendance: Carolyn Jones of the Maryland Department of the Environment (MDE) served as the hearing officer. Other MDE attendees were Daniel Newell, Megan Ulrich, Randy Mosier, Peggy Courtright, Katharine Daristotle, and Kathleen Field. Maryland Department of Transportation (MDOT) Motor Vehicle Administration (MDOT MVA) attendees were Leslie Dews, Philip Dacey, and Alan Holloway. The court recorder was Cameron Nelms. One member of the public was in attendance, Jonas Jacobson.

Statement: The Department's statement was read by Mr. Daniel Newell, Regulatory and Compliance Engineer of the Mobile Sources Control Program of the Air and Radiation Administration, MDE. A transcript of the meeting has been prepared by For the Record, Inc. located in White Plains, MD.

Comments and Responses:

Comments were received from Kelly McCrea, Alexandra Rickart, Richard Whitaker, Colleen Wilson, and the Baltimore Branch of the NAACP. A summary of the comments received and the Department's responses to the comments are below.

Comment: Three of the commenters asked about the timing of the regulation adoption. Specifically, when the proposed regulations, and therefore the program changes to VEIP, are intended to take effect and whether MDOT MVA and MDE intend to implement these VEIP changes prior to the start of the 2023 legislative session.

Response: The State urgently needs to proceed with a procurement to modernize the VEIP testing system. In July 2022, the Maryland Board of Public Works (BPW) approved an extension of the current contractor's VEIP contract. The original contract awarded in the amount of \$25,633,708.80, which expired in 2019, has now been extended multiple times for a total of \$191,702,908 and needs a new procurement.

Comment: Two of the commenters asked how the timing of the adoption of the regulations relates to the VEIP State Implementation Plan (SIP) revision that MDE will submit to the U.S. Environmental Protection Agency (EPA). Specifically, the questions center on when MDE will seek EPA approval for the regulatory changes, how long the process will take, whether MDOT MVA and MDE intend to implement these regulatory changes prior to formal EPA approval or only after approval is granted, and whether correspondence with EPA can be shared?

Response: MDE has been working with EPA Region III (EPA) on the planned VEIP modifications and will continue to do so moving forward. MDE has been consulting with EPA on an analysis to support a SIP revision to incorporate VEIP program updates. MDE's analysis shows that, due to the very low VEIP testing failure rate of newer vehicles, the changes to delay the testing of new, not previously titled vehicles from the current three model years of age to six model years of age has a negligible impact on air quality and will not affect the State's ability to attain or maintain the NAAQS for any air pollutant. Other states, including California, allow for longer delay in testing based on model years.

The federal Clean Air Act (CAA) sets forth a process by which a state may formally request that EPA amend its SIP after completion of the state's own regulatory process. Therefore, while MDE is working with EPA on possible SIP changes, MDE cannot seek approval and EPA's official approval cannot be obtained until the regulations are adopted at the state level. Accordingly, MDE does not have correspondence on EPA's approval of the proposed changes. After the regulations are adopted and effective at the State level, MDE will submit the SIP to EPA. The SIP approval process, while dependent on a number of factors, typically takes several years.

Comment: One commentator noted that the estimated impact to the Transportation Trust Fund (TTF) varies between the proposed regulations, the proposed regulations that were submitted to AELR in February of 2022, and the Department of Legislative Services' analysis of the February 2022 proposed regulations. The commentator asked that MDOT MVA confirm the estimated annual impact to the TTF and, if the impact is greater than the estimate contained in the current version of the proposed regulations, asked that MDOT MVA confirm that revenues will not adversely impact any planned TTF projects?

Response: The loss for the TTF associated with the proposed regulatory changes for Fiscal Year 2023 is \$2,323,998. The regulatory process to adopt these regulations has been underway for several years, and MDOT MVA and MDE have consistently re-evaluated impacts from the proposed regulations to ensure the most current information is provided. The projected revenue loss in the current Notice of Proposed Action is derived from more normalized testing data over time as the impact of COVID-19 has been absorbed and VEIP operations stabilized. While any excess VEIP revenue supports the TTF, every year the MDOT creates a six-year Consolidated Transportation Plan (CTP) to fund capital projects across all of the MDOT MVA Transportation Business Units. Annually, the CTP is adjusted based on projected revenues and expenditures.

Comment: One commentator noted that Chairman Barve, of the Maryland House of Delegates Environment and Transportation Committee, sent a letter to MDOT MVA and MDE advising that the Committee has 'voted to refer' HB 1079 *VEIP - Standards, Requirements, and Applications* introduced in the 2022 Maryland General Assembly to interim study. The commentator also notes that the Committee requested that "MDE/MVA withdraw the proposed regulations and resist making any significant program changes to VEIP until action is taken during the 2023 legislative session, if any." The commentator asks whether MDOT MVA and MDE are disregarding the Committee's request by publishing the proposed regulations in the Maryland Register?

Response: MDOT MVA and MDE have maintained consistent contact with the Committee and have received no notice of any action on the Committee's part to conduct an interim study beyond the letter from Chairman Barve. MDOT MVA and MDE sent a letter in response to Chairman Barve's letter. MDOT MVA and MDE have remained transparent and ready to provide information to the Committee during this process. In July 2022, the Board of Public Works (BPW) approved an extension of the current contractor's VEIP operations and maintenance contract for \$25,633,708.80. The original contract, which expired in 2019, has now been extended multiple times and is in urgent need of a new procurement. Prior to adopting the regulation, MDOT MVA and MDE are following all required steps listed in Title 10 Subtitle 1, Administrative Procedures Act – Regulations of the State Government Article, Annotated Code of Maryland.

Comment: One commentator noted that EPA recently reclassified ozone nonattainment areas in Maryland from "Marginal" to "Moderate" and that the federal CAA requires "that states implement additional measures to protect public health and to submit new plans to demonstrate how the area will attain as quickly as possible." The commentator asks that since areas of Maryland have "just been reclassified from Marginal to Moderate Non-Attainment, and since these proposed regulations were published prior to

this recent EPA announcement, are MDOT MVA and MDE required to revise these regulations to ensure compliance with the new EPA standards?"

Response: MDOT MVA and MDE are not required to revise these regulations per the recent reclassification by EPA. The reclassification requires the nonattainment areas to submit SIP revisions to EPA. These "Bump Up SIPs" require the nonattainment areas to comply with Clean Air Act requirements for Moderate Ozone Nonattainment Areas, which include emissions reductions estimates for 2023 from all sources and control programs within the nonattainment area. As long as the State's estimates show that the State is projected to reach attainment through its plan for emission reductions, Maryland has discretion over how to achieve those emissions reductions.

The recent reclassifications for various areas around the country are based on data from 2018-2020. As of this 2022 ozone season, Maryland is measuring attainment for all NAAQS, including ozone. Therefore, while Maryland still must submit the SIP, the State has achieved remarkable progress and is currently meeting all federal standards.

Comment: Two commenters stated that the regulations only benefit vehicle owners who are wealthy enough to purchase new vehicles. Specific concerns were the following: the proposal to exempt the six newest model year vehicles from VEIP fees will mean that people who can afford a new car will not have to pay VEIP fees or get a VEIP test for six years, whereas owners of cars older than six years will be subject to VEIP fees and up to \$450 in repairs; that this provision would increase the burdens on low income and minority communities and that the regulations do not take environmental justice considerations into account; and that the loss of VEIP fees collected will hurt the TTF and cause more impacts on those who can't afford new cars, and inquiring why Maryland does not require owners of exempt new vehicles to pay a clean air fee to assist poorer motorists in complying with VEIP, such as what is required in California.

Response: The loss to the TTF associated with the proposed regulatory changes for fiscal year 2023 is \$2,323,998. While any excess VEIP revenue supports the TTF, every year MDOT creates a six-year CTP to fund capital projects across all the MDOT Transportation Business Units. Annually, the CTP is adjusted based on projected revenues and expenditures.

MDOT MVA and MDE performed an extensive and detailed analysis of the proposed changes to determine if there would be a negative effect on a specific demographic, and determined that the programmatic change to a six-year initial testing delay does not transfer the economic impacts of the program to any specific demographic in the VEIP testing area. The economic impact will remain unchanged for customers with older model year vehicles. To mitigate the associated costs, program mechanisms such as waivers, extensions, and exemptions exist to provide relief to customers. The Motorist Assistance Centers established under the new regulations will provide additional resources to help customers achieve cost-effective, lasting emissions repairs. Further, Maryland's VEIP inspection fee of \$14 (\$10 at the self-service kiosk) biennially is among the lowest fees in the nation, compared to, for example, the average fee of \$71 paid by motorists in California. Though emissions inspection programs are federally mandated, each state has latitude in designing and implementing its program based on laws, regulations, and funding mechanisms as well as many other factors. Maryland is aware of how California implements its emissions program but has chosen a different approach.

Motorist assistance is a key component, and, as such the new regulation will add Motorist Assistance Centers which will have emissions repair specialists available to assist motorists and the repair industry in performing the correct emissions repairs work to avoid having to undergo repetitive repair attempts. The resulting improvements in repair success will carry through multiple VEIP test cycles and will reduce overall fail rates and customer inconvenience.