

**DEPARTMENT OF THE ENVIRONMENT
AIR AND RADIATION ADMINISTRATION**

Response to Comments

On the Proposed Amendments to Regulations .02 under COMAR 26.11.20 – Mobile Sources, pertaining to Motor Vehicle Emission Control Devices.
Public Hearing Held in Baltimore, MD October 26, 2021

Purpose of Hearing: The purpose of the public hearing was to allow for public comment on the Maryland Department of the Environment’s (the Department or MDE) proposal regarding the repeal of existing Regulation .02 and the proposal for new Regulation .02 under **COMAR 26.11.20 Mobile Sources**, pertaining to Motor Vehicle Emission Control Devices.

The proposed 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, offering for 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 sale, offering for 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 condition 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 the regulation.

Date and Location: The public hearing was held virtually on October 26, 2021, at 10 a.m. GoToMeeting – Event Access Code: 649-543-693 - the Maryland Department of the Environment.

Attendance: Carolyn Jones of MDE served as the hearing officer. Other MDE attendees were Randy Mosier, John Artes, Marcia Ways, Susan Nash, Scott Thompson and Kelsey Sisko. The court recorder was George Quade. Two members of the public in attendance, Ari Plaut and Kevin Park.

Statement: The Department's statement was read by Mr. John Artes, Regulatory and Compliance Engineer of the Compliance Division of the Air and Radiation Administration, Department of the Environment. A transcript of the meeting has been prepared by For the Record, Inc. White Plains MD.

Comments and Responses:

Comments were received from:

Copart - Mark Binder, Director of Government Affair

Insurance Auto Auctions (IAA) Inc - Katerina Dotzeva, Director, Government Affair

National Auto Auction Association (NAAA) – Tricia Heon, Chief Executive Officer

American Property Causality Insurance Association(APCIA) - Alex Hageli, Director, Personal Auto, Electronic Issues, Specialty Lines & Counsel

A summary of the comments received and the Department’s responses to the comments are below.

Comment: Commenters stated that the proposed regulation applies to all vehicles sales and does not take into consideration wholesale transactions and non-owned vehicles sold by others at vehicle auction houses. Auction facilities and insurance companies that sell total loss vehicles acquired from the claims process have no knowledge of a vehicle's mechanical condition. Commenters mentioned that auction houses serve as conduits for the sale by the vehicle owners and have no historical background on the emission systems. Commenters requested exempting wholesale transactions from the proposed regulations.

Response: The Department acknowledges the comments received. However, to avoid significant delay in the ability to address present environmental harm, the Department will proceed with adopting the regulations as proposed. In the near future, the Department will be proposing amendments to COMAR 26.11.20.02 exempting the out-of-state, wholesale internet auction of motor vehicles. The amendments will clarify that the prohibitions concerning tampered vehicles will be regulated via the retail transaction of a vehicle that is being passed along to a consumer for operation on Maryland roadways.

Comment: Commenters stated that the exemptions under section C do not apply to a salvage vehicle that will be rebuilt. Commenters mentioned that if a salvaged vehicle had an air pollution control system that has been tampered with, it should be the rebuilder's responsibility to fix the system prior to the retail sale of the vehicle.

Response: The Department acknowledges the comments received. However, to avoid significant delay in the ability to address present environmental harm, the Department will proceed with adopting the regulations as proposed. In the near future, the Department will be proposing amendments to COMAR 26.11.20.02 clarifying that the intent of the proposed regulation is to address the retail transaction of a vehicle that is being passed along to a consumer for operation on Maryland roadways.

Comment: Commenters stated that the proposed exemptions under section C relating to salvage vehicles are too narrow and only specifies a Maryland-issued certificate of salvage. Auctions conducted in Maryland may handle vehicles covered by salvage ownership documents issued by other states. A suggested change to the proposed regulation would be that a salvage certificate could come from the Maryland Motor Vehicle Administration *or by another state*.

Response: The Department acknowledges the comments received. However, to avoid significant delay in the ability to address present environmental harm, the Department will proceed with adopting the regulations as proposed. In the near future, the Department will be proposing amendments to COMAR 26.11.20.02 addressing the issue of out-of-state certificates of salvage.

Comment: Commenters stated that there is no exemption for vehicles that do not have emission systems due to the age of the vehicle or for vehicles sold on a bill of sale for parts only.

Response: The Department acknowledges the comments received. However, to avoid significant delay in the ability to address present environmental harm, the Department will proceed with adopting the regulations as proposed. In the near future, the Department will be considering amendments to COMAR 26.11.20.02 concerning vehicles without emission control systems and vehicles sold for parts.

Comment: Commenters stated that the record keeping requirements under section F1(e) that require each vehicle to be inspected to confirm that all air pollution control systems are in place and in operating condition is not practical in an auction environment.

Response: The Department acknowledges the comments received. However, to avoid significant delay in the ability to address present environmental harm, the Department does not believe revisions are warranted at this time. The intent of the proposed regulation is meant to address the retail transaction of a vehicle that is being passed along to a consumer for operation on Maryland roadways. The Department will continue to collaborate with industry and other states to review this issue, and may consider amendments in the future, if necessary.

Comment: One commenter noted, “The statutory authority for this proposed action does not grant jurisdiction over the sale of motor vehicles of the state of Maryland. That jurisdiction remains with the licensing processes established and maintained by the Maryland Department of Transportation.”

Response: The Department disagrees with this comment. Authority granted to the Department under Environment Article §§2-102, 2-103, and 2-301, Annotated Code of Maryland provides broad authority for the Department to regulate industry and business practices that cause harm to public health and the environment.