



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2016-0238; FRL-9962-73-Region 3]

**Approval and Promulgation of Air Quality Implementation Plans; Maryland;
Control of Nitrogen Oxide Emissions from Coal-Fired Electric Generating Units**

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. The revision consists of a Maryland regulation that regulates nitrogen oxides (NO_x) emissions from coal-fired electric generating units (EGUs) in the State. EPA is approving this revision 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-2016-0238. 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: Marilyn Powers, (215) 814-2308, or by e-mail at powers.marilyn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On January 11, 2017 (82 FR 3233), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. In the NPR, EPA proposed approval of a Maryland regulation to control emissions of NO_x from coal fired EGUs. The formal SIP revision (#15-06) was submitted by the Maryland Department of the Environment (MDE) on November 20, 2015. On September 8, 2016, MDE provided a letter to EPA to clarify that the November 20, 2015 submission was submitted as a SIP strengthening measure and not as a submission to address reasonably available control technology (RACT) requirements for coal-fired EGUs.

As noted in the NPR, this action pertains only to the changes to COMAR 26.11.38 that were submitted by MDE on November 20, 2015 with a State effective date of August 31, 2015, namely COMAR 26.11.38.01-.05. Subsequent revisions and amendments to this regulation have been made by MDE, but have not yet been submitted to EPA for incorporation into the Maryland SIP.

II. Summary of SIP Revision

The revision consists of Maryland regulation COMAR 26.11.38 – Control of NO_x Emissions from Coal-Fired Electric Generating Units (effective August 31, 2015). The regulation establishes NO_x emissions standards for 14 EGUs at 7 coal-fired power plants, and requires an affected EGU to minimize NO_x emissions by operating and optimizing the use of all installed pollution controls and combustion controls during all times that the unit is in operation while burning coal. Additional monitoring and recordkeeping are required to demonstrate compliance with these requirements, and the owner or operator is required to submit a plan to MDE and to EPA for approval, which summarizes the data to be collected and make a showing that each affected EGU is operating its installed controls. Other specific requirements of COMAR 26.11.38 and the rationale supporting EPA’s proposed rulemaking action are explained in the NPR and Technical Support Document (TSD) supporting EPA’s analysis for approval of Maryland’s regulation into the SIP and will not be restated here. The NPR and TSD are available in the docket for this rulemaking at <https://www.regulations.gov>, Docket ID Number EPA-R03-OAR-2016-0238.

III. Public Comments and EPA’s Responses

EPA received two anonymous comments on the January 11, 2017 proposed approval of COMAR 26.11.38 for the Maryland SIP.

Comment 1: One commenter expressed support for strengthening the NO_x emissions limits in Maryland.

Response 1: EPA thanks the commenter for the submitted statement.

Comment 2: Another commenter expressed support for the proposed rulemaking as a SIP strengthening measure needed to reduce pollution and to meet the requirements of the national ambient air quality standards (NAAQS) “to keep the air clean.” However, the commenter also stated, “This regulation was submitted as a SIP strengthening measure which seems to be necessary because of how it does not include nitrogen oxides (NO_x) emissions from seven coal-fired electric generating units which is a great amount.” The commenter also stated it is an important measure to regulate clean air in “already polluted skies” and acknowledged this regulation was SIP strengthening and was not submitted to meet RACT requirements.

Response 2: EPA thanks the commenter for supporting our approval of the Maryland regulation into the State’s SIP. EPA notes that the commenter is incorrect in stating that COMAR 26.11.38, entitled “Control of Nitrogen Oxides Emissions from Coal Fired Electric Generating Units,” does not apply to NO_x emissions from seven coal-fired EGUs. The language of COMAR 26.11.38 specifically contains NO_x limitations for these EGUs as well as other control measures related to NO_x emissions as discussed in the NPR and TSD. As EPA discussed in the NPR, because NO_x is a precursor to ozone formation, the NO_x limitations and measures for these EGUs identified in COMAR 26.11.38 will reduce NO_x emissions and ozone formation in Maryland which should assist Maryland with attaining and maintaining the ozone NAAQS. Finally, the commenter correctly acknowledged that Maryland had not submitted COMAR 26.11.38 for SIP inclusion to address any RACT requirements which Maryland confirmed with its September 8, 2016 letter to EPA. The September 8, 2016 letter is available in the docket for this rulemaking. EPA expects subsequent rulemaking action on Maryland’s obligations for

RACT under the 2008 ozone NAAQS.

III. Final Action

EPA is approving Maryland regulation COMAR 26.11.38, submitted in the November 20, 2015 SIP submission, which has a state effective date of August 31, 2015, as a revision to the Maryland SIP as a SIP strengthening measure in accordance with section 110 of the CAA. COMAR 26.11.38.01-.05 imposes NO_x emissions limits on coal fired EGUs subject to the regulation, and EPA expects the regulation will lower NO_x emissions within the State which should reduce ozone formation. The NO_x emissions limits plus the operation and optimization of the existing NO_x controls whenever the units are in operation strengthens the Maryland SIP and will help the State's attainment and maintenance of the ozone NAAQS.

IV. Incorporation by Reference

In this rule, 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 Maryland regulation COMAR 26.11.38.01-.05 described in the amendments to 40 CFR part 52 set forth below. 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 by the Director of the Federal Register in the next update to the SIP compilation.¹ EPA has made, and will continue to make, these materials generally available through <http://www.regulations.gov> and/or at the EPA Region III Office

¹ 62 FR 27968 (May 22, 1997).

(please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

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);
- 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 approving Maryland regulation COMAR 26.11.38 into the Maryland SIP 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirement.

Dated: May 5, 2017.

Cecil Rodrigues,
Acting 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) is amended by adding the heading “26.11.38 Control of Nitrogen Oxide Emissions from Coal-Fired Electric Generating Units” and the entries “26.11.38.01 through 26.11.38.05” in numerical order to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c)* * *

EPA-APPROVED REGULATIONS, TECHNICAL MEMORANDA, AND STATUTES 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
*	*	*	*	*

Code of Maryland Administrative Regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100
26.11.38 Control of Nitrogen Oxide Emissions from Coal-Fired Electric Generating Units				
26.11.38.01	Definitions	8/31/2015	[Insert date of publication in the Federal Register] [Insert Federal Register citation]	
26.11.38.02	Applicability	8/31/2015	[Insert date of publication in the Federal Register] [Insert Federal Register citation]	
26.11.38.03	2015 NOx Emission Control Requirements	8/31/2015	[Insert date of publication in the Federal Register] [Insert Federal Register citation]	
26.11.38.04	Compliance Demonstration Requirements	8/31/2015	[Insert date of publication in the Federal Register] [Insert Federal Register citation]	
26.11.38.05	Reporting Requirements	8/31/2015	[Insert date of publication in the Federal Register] [Insert Federal Register citation]	
* * * * *				

* * * * *

[FR Doc. 2017-10912 Filed: 5/26/2017 8:45 am; Publication Date: 5/30/2017]