



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2016-0514; FRL-9964-79-Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Removal of Clean Air Interstate Rule Program Regulations (CAIR) and Reference to CAIR, and Amendments to Continuous Emission Monitor (CEM) Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a July 7, 2016 state implementation plan (SIP) revision submitted by the State of Maryland. The July 7, 2016 SIP submittal sought removal of a regulation in its entirety from the approved Maryland SIP which addressed Maryland's defunct Clean Air Interstate Rule (CAIR) program and sought removal from the SIP of additional provisions which referenced Maryland's CAIR program in Maryland regulations addressing general air quality definitions and the control of emissions from pulp mills in Maryland. Additionally, the July 7, 2016 SIP submittal included an amendment to a Maryland regulation regarding the use of continuous emission monitoring (CEM) systems at Kraft pulp mill boilers and combustion units in order to clarify that CEM systems must meet requirements beyond those only related to certification. The July 7, 2016 SIP submittal removing references to CAIR in Maryland's regulations satisfies Maryland's obligation pursuant to an earlier rulemaking in which EPA granted final conditional approval of Maryland's amended regulation regarding the control of emissions from Kraft pulp mills contingent upon Maryland addressing the removal of references to CAIR from its regulations and SIP. Today's

action thus also converts the prior conditional approval of the pulp mill regulation to a full approval. EPA's approval of the Maryland SIP is in accordance with the requirements of the Clean Air Act (CAA) and is under CAA authority.

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-2016-0514. All documents in the docket are listed on the <http://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 <http://www.regulations.gov> or please contact the person identified in the "For Further Information Contact" section for additional availability information.

FOR FURTHER INFORMATION, CONTACT: Ellen Schmitt, (215) 814-5787, or by e-mail at schmitt.ellen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On April 28, 2017 (82 FR 19648), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. The NPR proposed to approve Maryland's July 7, 2016 SIP submittal which sought removal of Maryland's CAIR program, in its entirety from the Maryland SIP, as well as the removal of references to CAIR from other Maryland regulations in the SIP. CAIR, a now

superseded program, was first promulgated in May 2005 to help reduce interstate transport of ozone and fine particulate matter (PM_{2.5}) pollution in the eastern half of the United States.¹ CAIR addressed both the 1997 ozone and PM_{2.5} national ambient air quality standards (NAAQS) and required 28 states, including Maryland, to limit emissions of nitrogen oxides (NO_x) and sulfur dioxide (SO₂).²

On December 23, 2008, CAIR was remanded to EPA by the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008), *modified on reh'g*, 550 F.3d 1176. The December 2008 D.C. Circuit ruling allowed CAIR to remain in effect until a new interstate transport rule consistent with the Court's opinion was developed. In response to the remand of CAIR, EPA promulgated the Cross State Air Pollution Rule (CSAPR) on July 6, 2011.³ CSAPR, which reduced emissions from electric generating units (EGUs), addressed the 1997 8-hour ozone NAAQS, the 1997 annual PM_{2.5} NAAQS, and the 2006 24-hour PM_{2.5} NAAQS. The rule also contained provisions that would end CAIR-related obligations on a schedule coordinated with the implementation of CSAPR compliance requirements. CSAPR was to become effective January 1, 2012; however, the timing of CSAPR's implementation was impacted by a number of court actions.⁴ On December 3, 2014 (79 FR 71663), in an interim final rule, EPA updated the effective date of CSAPR to January 1, 2015. Thus, in accordance with this interim final rule, the sunset date for CAIR was December 31, 2014, and EPA began implementing CSAPR on January 1, 2015.⁵

¹ 70 FR 25172 (May 12, 2005).

² SO₂ is a precursor to PM_{2.5} formation, and NO_x is a precursor to both ozone and PM_{2.5} formation.

³ 76 FR 48208 (August 8, 2011).

⁴ A detailed summary of these court actions in the United States Court of Appeals for the District of Columbia Circuit (DC Circuit) and the United States Supreme Court affecting CAIR and CSAPR was provided in the Background section of the NPR which is available online at www.regulations.gov, Docket number EPA-R03-OAR-2016-0514.

⁵ At the present time, CSAPR is implemented in Maryland via a federal implementation plan (FIP).

II. Summary of SIP Revision and EPA Analysis

In the April 28, 2017 NPR, EPA proposed approval of Maryland's request to remove Maryland's CAIR program, in its entirety, from the State's SIP as well as to remove references to CAIR from other Maryland regulations in the State's SIP that relate to general air quality definitions and to the control of emissions from Kraft pulp mills in the State. In this NPR, EPA also proposed approval of amended Code of Maryland Regulations (COMAR) 26.11.14.07D(1) which removed the word "certified" from that subsection in order to clarify that CEM systems from Kraft pulp mill boilers and combustion units must meet requirements for monitoring and reporting emissions in 40 CFR part 75, subpart H and not just "certification" requirements.

In addition, Maryland's submission of the amendments to COMAR 26.11.01.01 and COMAR 26.11.14 (to remove references to CAIR) was in response to EPA's conditional approval of a previous Maryland SIP submittal. Maryland SIP #14-04 was submitted on October 8, 2014 for inclusion of a pulp mill regulation in the Maryland SIP and included amendments to COMAR 26.11.14 – Control of Kraft Pulp Mills. In a letter dated September 18, 2015, the Maryland Department of the Environment (MDE) committed to removing references to CAIR, which had sunset, through a SIP revision.⁶ The amendments to COMAR 26.11.01.01 and COMAR 26.11.14, provided by Maryland's July 7, 2016 SIP submittal, complete the actions required by EPA's conditional approval of Maryland SIP submittal #14-04. 81 FR 59486 (August 30, 2016). Pursuant to section 110(k) of the CAA and as stated in the August 30, 2016 final conditional approval of COMAR 26.11.14 for Maryland's October 8, 2014 SIP submittal, once EPA determines that MDE has satisfied the condition to remove references to CAIR, EPA shall

⁶ The final rulemaking notice for EPA's conditional approval of SIP submission #14-04 was published on August 30, 2016 (81 FR 59486).

remove the conditional nature of the August 30, 2016 approval and COMAR 26.11.14 will receive full approval status for the Maryland SIP.

In the NPR, EPA proposed to approve Maryland's request to remove Maryland regulations addressing CAIR and referring to CAIR from the approved Maryland SIP and to approve the revised COMAR regulation addressing CEM requirements at Kraft pulp mills because the removal strengthens the Maryland SIP. This is considered a SIP strengthening action as it removes a moot program, CAIR, which was replaced by CSAPR, a program that yields at least equal or additional NO_x and SO₂ reductions to CAIR.

EPA proposed to approve the revision to COMAR 26.11.14.07D(1) which removed the word "certified" from the regulation because the revision met CAA section 110 requirements as the revision was merely an administrative action to make clear that CEMs at Kraft pulp mills must meet all requirements for monitoring and certification in 40 CFR part 75, subpart H. A detailed summary of Maryland's July 7, 2016 SIP submission and amended regulations as well as EPA's review of and rationale for approving this SIP revision submittal may be found in the NPR for this rulemaking action and will not be restated here.

In addition, in the NPR, EPA determined the amendments to COMAR 26.11.01.01 and COMAR 26.11.14 included in the July 7, 2016 SIP submittal completed the actions required by EPA's conditional approval of COMAR 26.11.14. 81 FR 59486 (August 30, 2016). Thus, this final approval of the July 7, 2016 SIP submittal converts the prior conditional approval of COMAR 26.11.14 in the Maryland SIP to a full approval. Two public comments were received on the NPR.

III. Public Comments and EPA's Responses

EPA received two comments on the April 28, 2017 proposed approval of the July 7, 2016 Maryland SIP revision submittal.

Comment 1: One commenter stated that no regulations should be repealed and that even stronger regulations are needed. The commenter expressed a feeling of security that the government will not allow, via corporations or negligence, the air the commenter breathes or water the commenter drinks to become toxic or mildly hazardous due to regulations. The commenter claimed New York State has toxic regions of land where the water and soil is unsafe, unfarmable and unlivable because government allowed businesses in the region to dispose of waste on the land before EPA existed.

Response 1: EPA thanks the commenter for the submitted statements and concern for clean air and water. In this rulemaking, EPA is approving the removal of regulations from the Maryland SIP because the regulations relate to the CAIR program which is moot and has been replaced by CSAPR which is at least as stringent in addressing emissions of NO_x and SO₂ from EGUs as CAIR was. As stated in the NPR, CSAPR was promulgated to replace CAIR and was EPA's response to court decisions addressing the CAIR program. Although the implementation of CSAPR was delayed for several years due to litigation, EPA began implementing CSAPR January 1, 2015 and the implementation of CAIR ceased on December 31, 2014. The Maryland regulations relating to the CAIR program and any regulations referencing CAIR became moot also as of that date as they refer to a defunct program. Thus, as discussed in the NPR, removing from the Maryland SIP the regulations which formed Maryland's CAIR program and removing references to CAIR from other COMAR provisions will not impact any emissions from EGUs or

other emitting sources as CAIR is moot and has been replaced by CSAPR as the federal interstate transport cap and trade program. As discussed in the NPR, EPA's action to remove the CAIR program and references to the CAIR program from the Maryland SIP is in accordance with CAA section 110(l) and will not impact the NAAQS, reasonable further progress, or any other CAA requirement as CAIR has sunset and no longer yields any NO_x, ozone, or SO₂ reductions as CSAPR now provides the program for those emission reductions. Further, the commenter's statements regarding protection of air and water via regulations do not identify with required specificity any protections of air or water impacted by the removal of the moot CAIR program regulations or suggest specific actions EPA should consider otherwise as CSAPR has replaced CAIR.

Comment 2: The commenter stated that he was opposed to the proposed action and that "there can be no financial or political reason for limiting the federal government's responsibility to assure clean water and clean air for every American regardless of which state in which they may reside." The commenter also stated that "states cannot keep the effects of their pollution from spilling over into neighboring states" and stated that saying "these regulations are job killers misses the moral imperative."

Response 2: EPA thanks the commenter for his support for clean water and air. In general, this comment lacks required specificity and does not identify specific provisions or actions EPA should address differently. EPA has explained in the NPR and in this final action why the removal of the Maryland regulations which addressed or referenced CAIR, a defunct program, met CAA requirements and why removal of these regulations would not impact any NAAQS, reasonable further progress or any CAA requirement. As mentioned, CAIR sunset in 2014 and

was replaced by CSAPR. The CAA's "good neighbor" provision in section 110(a)(2)(D) requires states to address in their SIPs the interstate transport of air pollution that affects the ability of downwind states to attain and maintain the NAAQS. Where states have not addressed the section 110(a)(2)(D) "good neighbor" provision in their SIPs, EPA promulgated FIPs such as CSAPR which address interstate pollution impacting attainment and maintenance of the 1997 and 2006 ozone and PM_{2.5} NAAQS, and the 2008 ozone NAAQS through a cap and trade program which reduces emissions of NO_x and SO₂ from EGUs. The CSAPR FIP applies to Maryland to address interstate transport of pollution, and thus removal of the moot CAIR program from the State's SIP will not interfere with requirements for addressing transport.

IV. Final Action

EPA is approving the removal of Maryland's CAIR program, in its entirety, from the Maryland SIP as well as the removal of references to CAIR from other Maryland regulations in the SIP that relate to general air quality definitions and to the control of emissions from Kraft pulp mills in the State. EPA is also approving the amended version of COMAR 26.11.14.07D(1) relating to CEM system requirements for inclusion in the Maryland SIP.

Additionally, because EPA determined that Maryland's July 7, 2016 SIP submittal satisfies Maryland's obligation pursuant to EPA's August 30, 2016 (81 FR 59486) rulemaking in which EPA granted final conditional approval of COMAR 26.11.14 regarding the control of NO_x emissions at Kraft pulp mills for SIP inclusion, EPA now grants full approval to the October 15, 2014 SIP revision which added COMAR 26.11.14 regarding Kraft pulp mill emissions to the Maryland SIP. EPA's approval of the July 7, 2016 SIP and full approval of the October 15, 2014 SIP is in accordance with requirements under section 110 of the CAA.

V. 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 portions of MDE regulations COMAR 26.11.01 and COMAR 26.11.14 regarding air quality definitions and Kraft pulp mill emission controls to remove reference to CAIR. EPA is also incorporating by reference the portion of COMAR 26.11.14 which removed the word “certified” from COMAR 26.11.14.07D(1). 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.⁷ 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 (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

VI. 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:

⁷ 62 FR 27968 (May 22, 1997).

- 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 regarding the removal of the CAIR program under COMAR 28.11.28 from the Maryland SIP and amendments to COMAR 26.11.01 and 26.11.14 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, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 29, 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:

- a. Revising the entries for COMAR 26.11.01.01, 26.11.14.06, and 26.11.14.07; and
- b. Removing the heading “26.11.28 Clean Air Interstate Rule” and the entries 26.11.28.01 through 26.11.28.08.

The revised text reads as follows:

§ 52.1070 Identification of plan.

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(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
26.11.01 General Administrative Provisions				
26.11.01.01	Definitions	05/09/2016	[Insert date of Federal Register publication], [Insert Federal Register citation]	Amends the definition of “NO _x Ozone Season Allowance” in 26.11.01.01B(24-1)
*	*	*	*	*
26.11.14 Control of Emissions From Kraft Pulp Mills				

Code of Maryland Administrative Regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100
26.11.14.06	Control of Volatile Organic Compounds	3/3/2014	[Insert date of Federal Register publication], [Insert Federal Register citation]	Amended to clarify volatile organic compound (VOC) control system and requirements at Kraft pulp mills. (8/30/2016, 81 FR 59488)
26.11.14.07	Control of NO _x Emissions from Fuel Burning Equipment	05/09/2016	[Insert date of Federal Register publication], [Insert Federal Register citation]	Removed reference to COMAR 26.11.28 in 26.11.14.07C(1) and removed the word "certified" in 26.11.14.07D(1)
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[FR Doc. 2017-14842 Filed: 7/14/2017 8:45 am; Publication Date: 7/17/2017]