



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2024-0512; FRL-12099-02-R3]

Approval and Promulgation of Air Quality Implementation Plans;

Maryland; Nitrogen Oxides Ozone Season Emissions Caps for Non-Trading Large

Nitrogen Oxides Units; Amendments

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. This revision (Maryland Submittal #24-01) pertains to the re-allocation of nitrogen oxides (NO_x) ozone season emission caps for large non-electric generating units (non-EGUs, affected units). The amendment also updates a cross reference to the Cross State Air Pollution Rule (CSAPR). This action is being taken under 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: The EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2024-0512. All documents in the docket are listed on the 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 www.regulations.gov, or please contact the person identified in the **For Further Information Contact** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Amber Iglesias, Planning & Implementation

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SUPPLEMENTARY INFORMATION:

I. Background

On December 26, 2024 (89 FR 104941), the EPA published a notice of proposed rulemaking (NPRM) for the State of Maryland. In the NPRM, the EPA proposed approval of a revision to Code of Maryland Regulations (COMAR) 26.11.40 that involved the re-allocation of NO_x ozone season emission caps for large non-electric generating units (non-EGUs, affected units) as well as an updated cross reference to the CSAPR) The formal SIP revision (Maryland Submittal #24-01) was submitted by the State of Maryland on June 10, 2024.

The NO_x SIP Call, issued pursuant to Section 110 of the CAA and codified at 40 CFR 51.121 and 51.122, was designed to mitigate significant transport of NO_x, one of the precursors of ozone. The EPA developed the NO_x Budget Trading Program, an EPA-administered allowance trading program that states could adopt to meet their obligations under the NO_x SIP Call. The NO_x Budget Trading Program allowed electric generating units (EGUs) greater than 25 megawatts and industrial non-electric generating units, such as boilers and turbines, with a rated heat input greater than 250 million British thermal units per hour (MMBtu/hr), referred to as “large non-EGUs,” to participate in a regional NO_x cap and trade program. Maryland complied with the NO_x SIP call by participation of its large EGUs and large non-EGUs in the NO_x Budget Trading Program. The EPA discontinued administration of the NO_x Budget Trading Program in 2009 upon the start of the Clean Air Interstate Rule (CAIR) trading programs (70 FR 25162, May 12, 2005). The NO_x SIP Call requirements continued to apply, however, and EGUs in most states (including Maryland) that formerly participated in the NO_x Budget Trading Program continued to meet their NO_x SIP Call requirements under the generally more stringent requirements of the CAIR NO_x Ozone Season trading program, either pursuant to

CAIR federal implementation plans (FIP) (71 FR 25328, April 28, 2006) or pursuant to approved CAIR SIP revisions. For the large non-EGUs, states needed to take regulatory action to ensure that their obligations under the NOx SIP Call continued to be met, either through an option to submit a CAIR SIP revision that allowed the large non-EGUs to participate in the CAIR NOx Ozone Season trading program or through adoption of other replacement regulations.

In Maryland, Luke Paper Mill (formerly the Westvaco pulp and paper mill) was the only facility with large non-EGUs that participated in the NOx Budget Trading Program. When the CAIR NOx Ozone Season trading program replaced the NOx Budget Trading Program, Maryland adopted the CAIR program as it applied to large EGUs, but chose not to include the non-EGUs at Luke as participants in the CAIR NOx Ozone Season trading program. Instead, in 2010, Maryland adopted COMAR 26.11.14.07 – Control of Emissions from Kraft Pulp Mills, which, among other requirements, included provisions that address the NOx SIP Call non-EGU requirements in Maryland through a NOx ozone season tonnage cap of 947 tons for the Luke non-EGUs and monitoring, recordkeeping, and reporting in accordance with 40 CFR part 75.

Subsequent to adoption of COMAR 26.11.14.07, Maryland determined that additional applicable units have either started operation or were previously not subject but have become subject to the requirements for non-EGUs under the NOx SIP Call as the units have heat input ratings greater than 250 MMBtu/hr. A review of the applicability of the NOx SIP Call to large non-EGUs in the State showed that there are three additional facilities having non-EGUs that are covered under the NOx SIP Call. Maryland adopted new regulation COMAR 26.11.40 to reallocate the statewide NOx emissions cap among the affected sources, and concurrently revised COMAR 26.11.14.07 to reflect a reduced cap for Luke.

In October 2018, Maryland adopted a new COMAR 26.11.40 – NOx Ozone Season Emission Caps for Non-Trading Large NOx Units. This regulation established NOx ozone season tonnage caps and NOx monitoring requirements for large non-EGUs in the State that were not covered under the CSAPR NOx Ozone Season Group 2 Trading Program to meet

requirements of the NO_x SIP Call. NO_x emissions caps were specified for non-EGUs located at four facilities (American Sugar Refining, Dominion Energy Cove Point LNG, Luke Paper Mill, and National Institutes of Health). A portion of the statewide cap is set aside for new units or modified existing units that may become subject to the NO_x SIP Call in the future. The NO_x annual emissions cap for Maryland established for the NO_x SIP Call is 1013 tons per year of NO_x, as established by EPA in 40 CFR part 97, subpart E, appendix C. This regulation also requires 40 Code of Federal Regulations (CFR) part 75, subpart H monitoring of NO_x emissions at affected units in accordance with 40 CFR 51.121(i)(4). The EPA approved the SIP revision that included the new COMAR 26.11.40 in October 2018. On June 30, 2019, Luke Paper Mill was shut down by its owner, Verso, and surrendered all of its CAA operating permits for the facility on May 8, 2020.

II. Summary of SIP Revision and the EPA Analysis

COMAR 26.11.40 establishes NO_x ozone season tonnage caps and NO_x monitoring requirements for large non-EGUs in the State that are not covered Federal trading program for ozone season emissions of NO_x established under 40 CFR part 97 to address interstate transport of ozone and NO_x in accordance with 40 CFR 52.38(b), or a state trading program for ozone season emissions of NO_x approved by the EPA Administrator as meeting the requirements of 40 CFR 52.38(b) located at three facilities (American Sugar Refining, Dominion Energy Cove Point LNG, and National Institutes of Health). A portion of the statewide cap is set aside for new units or modified existing units that may become subject to the NO_x SIP Call in the future. Title 40 CFR part 75, subpart H, monitoring of NO_x emissions at affected units is required in accordance with 40 CFR 51.121(i)(4). This rule approves into the SIP Maryland's revisions to COMAR 26.11.40.02 and 26.11.40.03.

COMAR 26.11.14.02 updates the way the state references the EPA's Cross State Air Pollution Rule and removes Luke Paper Mill as an affected source (see table 1 in this preamble).

Table 1: NO_x Season Emission Caps

Facility	Unit	NO_x Ozone Season Cap (tons)
American Sugar Refining	C6	24
Dominion Energy Cove Point LNG	Frame 5-1 (Turbine S009) Frame 5-2 (Turbine S010) Frame 7-A, Frame 7-B Aux. A, Aux B	214
National Institutes of Health	5-1156	23
New unit set-aside		752
Total		1013

COMAR 26.11.14.03 was revised to reflect the re-allocation of emission caps from Luke Paper Mill to the portion of the statewide cap that is set aside for new units or modified existing units that may become subject to the NO_x SIP Call in the future due to Luke Paper Mill permanently shutting down operations.

The EPA finds that this June 2024 SIP submittal meets Maryland’s NO_x SIP Call obligations (including requirements in CAA section 110 and 40 CFR 51.121) for non-EGUs because the revisions to regulation COMAR 24.11.40 removes Luke Paper Mill as an affected source and reallocates the NO_x emission cap for that facility to a set aside for new and modified sources. This reallocation does not change or alter the specified state-wide ozone season NO_x emissions cap of 1013 tons which is consistent with the portion of the overall Maryland NO_x emissions budget under the NO_x Budget Trading Program attributable to non-EGUs. This revision does not change the 40 CFR part 75 monitoring, recordkeeping and reporting requirements of the original 2018 submission. Finally, the changes that reference to the EPA’s CSAPR are to ensure that the state is using a term that will be an applicable reference in the state’s SIP if the EPA is to update the rule again in the future.

The June 10, 2024, Maryland SIP submittal does not result in increased NO_x emissions, and therefore has no impact on any requirements related to attainment, reasonable further progress, or any other NAAQS requirements under the CAA. The submittal therefore meets section 110(l) of the CAA.

Other specific requirements of COMAR 26.11.40 and the rationale for the EPA’s

proposed action are explained in the NPRM and will not be restated here.

III. EPA's Response to Comments Received

No public comments were received on the NPRM.

IV. Final Action

The EPA is approving Maryland Submittal #24-01 as a revision to the Maryland SIP.

V. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of new Maryland regulation COMAR 26.11.40 to meet the requirements for non-EGUs under the NO_x SIP Call, as described in section II of this preamble. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region III Office (please contact the person identified in the **For Further Information Contact** section of this preamble for more information). Therefore, these materials have been approved by the EPA for inclusion in the SIP, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rule of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.¹

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. 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

¹ 62 FR 27968 (May 22, 1997).

Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

- Is not subject to Executive Order 14192 (90 FR 9065, February 6, 2025) because SIP actions are exempt from review under Executive Order 12866:
- 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 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- 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 Clean Air Act.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rule does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, 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 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,
Intergovernmental relations, Nitrogen dioxide, Reporting and recordkeeping requirements.

Amy Van Blarcom-Lackey,
Regional Administrator,
Region III.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 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. Amend § 52.1070, the table in paragraph (c) by revising the entries for “26.11.40.02” and “26.11.40.03” to read as follows:

§ 52.1070 Identification of plan.

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(c) * * *

EPA-APPROVED REGULATIONS, TECHNICAL MEMORANDA, AND STATUTES IN THE MARYLAND SIP

Citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100
Code of Maryland Administrative Regulations (COMAR)				
* * * * *				
26.11.40 NOx Ozone Season Emission Caps for Non-trading Large NOx Units				
* * * * *				
26.11.40.02	Applicability.	04/15/24	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], 90 FR [INSERT FEDERAL REGISTER PAGE WHERE THE DOCUMENT BEGINS]	
26.11.40.03	NO _x Ozone Season Emission Caps.	04/15/24	[INSERT DATE OF PUBLICATION IN	

Citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100
			<p>THE FEDERAL REGISTE R], 90 FR [INSERT FEDERAL REGISTE R PAGE WHERE THE DOCUME NT BEGINS]</p>	
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[FR Doc. 2025-13891 Filed: 7/23/2025 8:45 am; Publication Date: 7/24/2025]