

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2018-0507; FRL-9984-97-Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Nitrogen Oxides (NO_x) Ozone Season Emissions Caps for Non-Trading Large NO_x Units and Associated Revisions to General Administrative Provisions and Kraft Pulp Mill Regulation

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 (Maryland SIP Revision #18-03) pertains to a new Maryland regulation that establishes ozone season nitrogen oxides (NO_x) emissions caps and other requirements for large non-electric generating units (non-EGU) in Maryland and includes associated revisions to two other Maryland regulations. The revision will enable Maryland to meet NO_x reduction requirements related to interstate transport of pollution that contributes to other states' nonattainment or interferes with other states' maintenance of the ozone national ambient air quality standards (NAAQS). EPA is approving these revisions in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on November 13, 2018.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2018-0507. 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: Marilyn Powers, (215) 814-2308, or by email at powers.marilyn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On August 8, 2018 (83 FR 39014), EPA published a notice of proposed rulemaking (NPRM) for the State of Maryland. In the NPRM, EPA proposed approval of new Code of Maryland Regulation (COMAR) 26.11.40—*NO_x Ozone Season Emission Caps for Non-Trading Large NO_x Units* and revisions to two regulations presently included in the Maryland SIP, COMAR 26.11.01.01—*General Administrative Provisions* and COMAR 26.11.14—*Control of Emissions from Kraft Pulp Mills*. The formal SIP revision was submitted by Maryland on May 15, 2018. The SIP revision was submitted to address Maryland's requirements under the NO_x SIP Call. (63 FR 57356, October 27, 1998.)

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.¹ 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. 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.² For the large non-EGUs, states needed to take regulatory action to ensure that their obligations under the NO_x 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 NO_x 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 NO_x Budget Trading Program. When the CAIR NO_x Ozone Season trading program replaced the NO_x 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 NO_x Ozone Season trading program.³ 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 NO_x SIP Call non-EGU requirements in Maryland through a NO_x 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 NO_x SIP Call as the units have heat input ratings greater than 250 MMBtu/hr. A review of the applicability of the NO_x SIP Call to large non-EGUs in the State showed that there are three additional facilities having non-EGUs that are covered under the NO_x SIP Call. Maryland adopted new regulation COMAR 26.11.40 to reallocate the statewide NO_x emissions cap among the affected sources, and concurrently revised COMAR 26.11.14.07 to reflect a reduced cap for Luke.

II. Summary of SIP Revision and EPA Analysis

New COMAR 26.11.40 establishes NO_x ozone season tonnage caps and

² EPA approved a CAIR SIP revision replacing the CAIR FIP for Maryland on October 30, 2009 (74 FR 56118).

³ EPA stopped administering the CAIR trading programs upon implementation of the Cross-State Air Pollution Rule (CSAPR) trading programs. Maryland subsequently took action rescinding its CAIR regulation (COMAR 26.11.28), and submitted a SIP revision to EPA which sought removal of the regulation in its entirety from the approved Maryland SIP. On July 17, 2017 (82 FR 32641), EPA approved the SIP revision removing the CAIR regulation from Maryland's SIP.

¹ In October 27, 1998 (63 FR 57356), EPA finalized the "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone"—commonly called the NO_x SIP Call.

NO_x monitoring requirements for large non-EGUs in the State that are not covered under the CSAPR NO_x Ozone Season Group 2 Trading Program to meet requirements of the NO_x SIP Call. NO_x emissions caps are 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. 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).

COMAR 26.11.14 was revised to reflect the changed NO_x caps for Luke Paper Mill in COMAR 26.11.40. COMAR 26.11.14 was also revised to remove the provision for paper mills to acquire NO_x allowances if the facility's ozone season NO_x cap is exceeded. With the removal of the requirement to purchase NO_x allowances, a corresponding definition in COMAR 26.11.01 for NO_x allowances was also removed.

EPA finds that this May 2018 SIP submittal meets Maryland's NO_x SIP Call requirements (including requirements in CAA section 110 and 40 CFR 51.121) for non-EGUs through new regulation COMAR 24.11.40, including (1) the applicability provisions in COMAR 24.11.40.02, which update the State's requirements to include all currently applicable large non-EGUs and any new non-EGUs under the NO_x SIP Call; (2) the specified statewide ozone season NO_x emissions cap of 1,013 tons in COMAR 24.11.40.03, 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; and (3) the 40 CFR part 75 monitoring, recordkeeping and reporting requirements in COMAR 24.11.40.04, which apply for the affected non-EGUs. In addition, the revisions remove the ability of Kraft pulp mills that exceed their NO_x limits and caps to comply by purchasing or otherwise acquiring NO_x allowances from EPA's ozone season NO_x Trading Program by removing these provisions in COMAR 26.11.14 and 26.11.01. The removal of the provisions allowing purchase of additional allowances removes the potential for increased local NO_x emissions. Other specific requirements of Maryland's May 15, 2018 SIP submittal and the rationale for EPA's proposed action are explained in the NPRM and will not be restated here. The SIP submittal does not result in increased NO_x emissions in the State,

and therefore EPA finds it 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 for SIP revisions.

III. Public Comments and EPA's Responses

EPA received three anonymous comments on the NPRM, all of which are in the docket for this rulemaking at www.federalregister.gov. Two of the comments did not concern any of the specific issues raised in the NPRM, nor did they address EPA's rationale for the proposed approval of MDE's submittal. Therefore, EPA is not responding to those comments. One comment was addressed as follows:

Comment: A comment was made about a term used in EPA's completeness determination for the Maryland SIP submittal. EPA's completeness determination is available in the docket for this rulemaking. The commenter states: "The docket contains a document entitled [*sic*] "MD 305 Completeness Checklist 2018–08–27–033843." In that document, EPA Requirement number 8 (Compliance/enforcement strategies, including how compliance will be determined in practice) says "DITTO" under the "State Submittal" column. What does "DITTO" mean here? I don't believe this is an environmental, regulatory, or technical term. I can't understand how you determined this submittal to be complete if you use such terms."

Response: EPA used the word "DITTO" in EPA Requirement 8 on page 5 of the "SIP Submittal Completeness Checklist" (completeness checklist) as shorthand to indicate that EPA found the State SIP submittal is meeting the EPA requirements for item 8 with the same COMAR regulations as that listed and shown by EPA in the completeness checklist in response to item 7 in the "State Submittal" column directly above item 8. In effect, EPA's use of the word "DITTO" in the completeness checklist for item 8 means that the EPA found the requirements for "Compliance/Enforcement strategies, including how compliance will be determined in practice." is met by the requirements in COMAR 26.11.40 and COMAR 26.11.14.07 for monitoring, recordkeeping, and reporting in accordance with 40 CFR part 75 as explained in EPA's response to item 7 which contains those regulatory citations. According to the Merriam-Webster dictionary, "ditto" means "a thing mentioned previously or above—used to avoid repeating a word

—often symbolized by inverted commas or apostrophe." Thus, EPA employed this commonly used word "ditto" in the completeness checklist in response to item 8 instead of repeating our answer from item 7 as our answers were intended to be identical to both. As this comment does not concern any of the specific issues raised in the NPRM nor EPA's rationale for approval of MDE's SIP submittal, EPA provides no further response.

IV. Final Action

EPA is approving Maryland's May 15, 2018 SIP revision submittal as a revision to the Maryland SIP in accordance with section 110 of the CAA as the SIP meets requirements in the CAA and in 40 CFR 51.121 related to the NO_x SIP Call requirements.

V. Incorporation by Reference

In this document, 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 new Maryland regulation COMAR 26.11.40 and revisions to COMAR 26.11.01 and 26.11.17 to meet the requirements for non-EGUs under the NO_x SIP Call. 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 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 in the next update to the SIP compilation.⁴

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

⁴ 62 FR 27968 (May 22, 1997).

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);
- is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted 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 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 December 10, 2018. 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 new Maryland regulation COMAR 26.11.40 and revisions to COMAR 26.11.01 and COMAR 26.11.14 to address the requirements of the NO_x SIP Call 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, Ozone, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: September 24, 2018.

Cosmo Servidio,

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 “26.11.01.01” and “26.11.14.07”; and
 - b. Adding a heading and the entries “26.11.40.01” through “26.11.40.04” in numerical order.

The revisions and additions read 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 | 04/23/18 | 10/11/18, [Insert Federal Register citation]. | Section .01B is revised to remove definition 24–1 for “NO _x ozone season allowance” Previous approval 7/17/2017. |
| * | * | * | * | * |
| 26.11.14 Control of Emissions From Kraft Pulp Mills | | | | |
| 26.11.14.07 | Control of NO _x Emissions from Fuel Burning Equipment. | 04/23/18 | 10/11/18, [Insert Federal Register citation]. | Sections .07A and .07B are revised, Section .07C is removed, Section .07D is revised and recodified as Section .07C. |
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EPA-APPROVED REGULATIONS, TECHNICAL MEMORANDA, AND STATUTES IN THE MARYLAND SIP—Continued

| Code of Maryland Administrative Regulations (COMAR) citation | Title/subject | State effective date | EPA approval date | Additional explanation/citation at 40 CFR 52.1100 |
|--|--|----------------------------|--|--|
| * | * | * | * | * |
| 26.11.40 NO_x Ozone Season Emission Caps for Non-trading Large NO_x Units | | | | |
| 26.11.40.01 | Definitions | 04/23/18 | 10/11/18, [Insert Federal Register citation]. | |
| 26.11.40.02 | Applicability | 04/23/18 | 10/11/18, [Insert Federal Register citation]. | |
| 26.11.40.03 | NO _x Ozone Season Emission Caps. | 04/23/18 | 10/11/18, [Insert Federal Register citation]. | |
| 26.11.40.04 | Monitoring and Reporting Requirements. | 04/23/18 | 10/11/18, [Insert Federal Register citation]. | |
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[FR Doc. 2018–21653 Filed 10–10–18; 8:45 am]

BILLING CODE 6560–50–P

**DEPARTMENT OF HEALTH AND
HUMAN SERVICES****45 CFR Part 102****RIN 0991–AC0****Annual Civil Monetary Penalties
Inflation Adjustment**

AGENCY: Office of the Assistant Secretary for Financial Resources, Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services is updating its regulations to reflect required annual inflation-related increases to the civil monetary penalties in its regulations, pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

DATES: This rule is effective October 11, 2018.

FOR FURTHER INFORMATION CONTACT: Shaunta Johnson, Office of Grants and Acquisition Policy and Accountability, Office of the Assistant Secretary for Financial Resources, Room 514–G, Hubert Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201; 202–690–6396; FAX 202–690–5405.

SUPPLEMENTARY INFORMATION:**I. Background**

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Pub. L. 114–74) (the “2015 Act”), which is intended to improve the effectiveness of civil

monetary penalties (CMPs) and to maintain the deterrent effect of such penalties, requires agencies to adjust the civil monetary penalties for inflation annually.

The Department of Health and Human Services (HHS) lists the civil monetary penalty authorities and the penalty amounts administered by all of its agencies in tabular form in 45 CFR 102.3.

II. Calculation of Adjustment

The annual inflation adjustment for each applicable civil monetary penalty is determined using the percent increase in the Consumer Price Index for all Urban Consumers (CPI–U) for the month of October of the year in which the amount of each civil penalty was most recently established or modified. In the December 15, 2017, Office of Management and Budget (OMB) Memorandum for the Heads of Executive Agencies and Departments, M–18–03, *Implementation of the Penalty Inflation Adjustments for 2018, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015*, OMB published the multiplier for the required annual adjustment. The cost-of-living adjustment multiplier for 2018, based on the CPI–U for the month of October 2017, not seasonally adjusted, is 1.02041.

Using the 2018 multiplier, HHS adjusted all its applicable monetary penalties in 45 CFR 102.3.

III. Statutory and Executive Order Reviews

The 2015 Act requires federal agencies to publish annual penalty inflation adjustments notwithstanding section 553 of the Administrative Procedure Act (APA).

Section 4(a) of the 2015 Act directs federal agencies to publish annual adjustments no later than January 15th of each year thereafter. In accordance with section 553 of the APA, most rules are subject to notice and comment and are effective no earlier than 30 days after publication in the **Federal Register**. However, section 4(b)(2) of the 2015 Act provides that each agency shall make the annual inflation adjustments “notwithstanding section 553” of the APA.

According to OMB’s Memorandum M–18–03, the phrase “notwithstanding section 553” means that “the public procedure the APA generally requires—notice, an opportunity for comment, and a delay in effective date—is not required for agencies to issue regulations implementing the annual adjustment.” Consistent with the language of the 2015 Act and OMB’s implementation guidance, this rule is not subject to notice and an opportunity for public comment and will be effective immediately upon publication.

Pursuant to OMB Memorandum M–18–03, HHS has determined that the annual inflation adjustment to the civil monetary penalties in its regulations does not trigger any requirements under procedural statutes and Executive Orders that govern rulemaking procedures.

IV. Effective Date

This rule is effective October 11 2018. The adjusted civil monetary penalty amounts apply to penalties assessed on or after October 11, 2018, if the violation occurred on or after November 2, 2015. If the violation occurred prior to November 2, 2015, or a penalty was assessed prior to September 6, 2016, the pre-adjustment civil penalty amounts in