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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2016-0042; FRL-9947-84-Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Revisions and Amendments to Regulations for Continuous Opacity Monitoring, Continuous Emissions Monitoring, and Quality Assurance Requirements for Continuous Opacity Monitors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the State of Maryland. This revision pertains to revisions to Maryland regulations for continuous opacity monitoring (COM or COMs) and continuous emissions monitoring (CEM or CEMs) and to an amendment adding requirements for Quality Assurance and Quality Control (QA/QC) as they pertain to COMs. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R03-OAR-2016-0042 at <http://www.regulations.gov>, or via email to fernandez.cristina@epa.gov. For comments submitted at [Regulations.gov](http://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.regulations.gov). For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or

other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers, (215) 814-2308, or by e-mail at powers.marilyn@epa.gov.

SUPPLEMENTARY INFORMATION: On November 24, 2015, the State of Maryland through the Maryland Department of the Environment (MDE) submitted a revision to the Maryland SIP comprised of revisions and amendments to COMAR 26.01.01 *General Administrative Requirements* related to requirements for COMs and CEMs and the addition of new COMAR 26.01.31 *Quality Assurance Requirements for Continuous Opacity Monitors (COMs)*. On February 26, 2016, MDE provided a supplemental letter indicating MDE was excluding portions of COMAR 26.11.01 submitted in the November 24, 2015 SIP submittal from EPA’s review and consideration as a SIP revision. The February 26, 2016 letter from MDE is available in the docket for this rulemaking and is available online at <http://www.regulations.gov>.¹

¹ Specifically, in the February 26, 2016 letter from MDE to EPA, MDE withdrew from EPA’s review and consideration the text in COMAR 26.11.01.10.A(4), in COMAR 26.11 .01.1 0.B(4), in COMAR 26.11.01.10D(2)(c), and in COMAR 26.11.01.10.F which had initially been included in the November 25, 2015 SIP submittal.

I. Background

On February 28, 1996 (61 FR 6418), EPA approved Maryland regulation COMAR 26.11.01.10 *Continuous Emissions Monitoring (CEM) Requirements* into the Maryland SIP. COMAR 26.11.01.10 required large fuel-burning equipment burning coal and residual oil to install COMs and demonstrate compliance using COM data. The regulation established monitoring requirements, CEM installation requirements, CEM installation and certification schedules, quality assurance procedures for opacity monitors, and record keeping and reporting requirements. The regulation incorporated by reference Maryland's Technical Memorandum 90-01 (TM 90), and required compliance determinations for the State's visible emissions limits and QA/QC for COMs in accordance with the procedures therein. The terms CEMs and COMs are used interchangeably in COMAR 26.11.01.10, therefore MDE determined it was necessary to establish separate requirements for each. The November 24, 2015 SIP submittal, as clarified and amended on February 26, 2016 by MDE, includes revisions to COMs and CEMs definitions in COMAR 26.11.01.01, a revised COMAR 26.11.01.10 for COMs, a new COMAR 26.11.01.11 for CEMs, and new COMAR 26.11.38 for QA/QC procedures related to COMs. TM 90, as incorporated in Maryland's SIP, establishes CEMs policies and procedures for enforcement actions, and sets forth levels of enforcement action responses based on a source's operating time during a calendar quarter. It also allows exceedances to occur up to 10 percent of a source's operating time in addition to an existing six minute per hour exclusion, and established specific enforcement actions based on a source's number of exceedances during the quarter and for repeated exceedances for consecutive calendar quarters. The November 24, 2015 submittal, as amended by MDE's February 26, 2016 letter, removes the requirement to use TM 90 for enforcement actions and for QA/QC requirements on applicable fuel-burning equipment and

removes references to TM 90.

II. Summary of SIP Revision

The revision is comprised of four State actions pertaining to adjusted requirements for COMs and CEMs in COMAR 26.11.01.01 and COMAR 26.11.01.10, new CEMs provisions in COMAR 26.11.01.11, and new QA/QC requirements in COMAR 26.11.31. These four actions are a series of regulatory actions that result in a recodification of some existing requirements for COMs and CEMs, establishment of separate regulations and requirements for COMs and CEMs, removal of applicability of TM 90 for certain fuel-burning equipment and removal of references to TM 90, and codification of the QA/QC requirements for COMs that were formerly incorporated by reference in TM 90. A summary of MDE's four regulatory actions are provided in this notice. Additional details regarding the four actions and EPA's analysis of the revised regulations are provided in EPA's Technical Support Document (TSD) dated April 5, 2016, and can be found in the docket for this proposed rulemaking action available online at <http://www.regulations.gov>.

First, on April 14, 2011, MDE adopted amendments to COMAR 26.11.01 *General Administrative Requirements*. To establish separate regulations for COMs and CEMs, the April 14, 2011 action clarified the definition for CEMs and added a definition of COMs at COMAR 26.11.01.01, repealed COMAR 26.11.01.10 in its entirety and replaced it with a new regulation for COMs (also at COMAR 26.11.01.10) entitled *Continuous Opacity Monitoring Requirements*, and added new COMAR 26.11.01.11 *Continuous Emissions Monitoring Requirements*. The April 14, 2011 action also made administrative changes to reporting and recordkeeping

requirements in COMAR 26.11.01.

Revised regulation COMAR 26.11.01.10 establishes requirements for COMs and applies to fuel-burning equipment burning coal, fuel oil, tars, or waste combustible fluid at any time that has a rated heat input capacity of 250 million British thermal units (Btu) per hour or greater, fuel burning equipment burning coal with a rated heat input capacity of 100 million Btu per hour or greater but less than 250 million Btu per hour and was constructed on or before June 19, 1984, cement kilns, fluidized bed combustors of any size, and municipal waste combustors with a burning capacity greater than 35 tons per day. The regulation at COMAR 26.11.01.10 establishes general requirements for installation of COMs, certification and quality assurance procedures, and record keeping and reporting requirements. Maryland removed the requirements for COMs on fuel-burning equipment to meet TM 90 in this action but retained at that time the QA/QC requirements contained in Part II of TM 90.

New COMAR 26.01.11 requires CEMs for fuel-burning equipment burning coal that has a rated heat input capacity of 100 million Btu per hour or greater, municipal waste combustors with a burning capacity greater than 35 tons per day, fluidized bed combustors, kraft pulp mills, and any owner or operator that is required to install a CEM under any federal requirement. This new regulation establishes general requirements for the installation of CEMs for each of the applicable source categories, quality assurance provisions, and monitoring and compliance requirements, and retains the applicability of TM 90.

Second, on May 16, 2011, MDE adopted COMAR 26.11.31 *Quality Assurance Requirements for*

Continuous Opacity Monitors (COMs), which codified the QA/QC procedures from TM 90 for COMs and incorporated by reference two federal performance and design specification requirements for the operation of opacity monitoring: Performance Specification 1 under 40 CFR part 60 Appendix B, and *Performance Audit Procedures for Opacity Monitors*, EPA 450/4-92-010 dated March 1992.

Third, on July 29, 2011, MDE adopted revisions to the provisions of COMAR 26.11.01.10 and 26.11.01.11 that were originally adopted on April 14, 2010. On July 29, 2011, MDE again revised COMAR 26.11.01.10 to correct the size of municipal waste combustors required to install continuous monitors (from greater than 35 mmBtu per hour to 35 mmBtu per hour or greater), to remove the requirement to meet TM 90 for QA/QC procedures and replace with a reference to the new QA/QC requirements in COMAR 26.11.31, and to clarify CEMs requirements regarding pollutants to be continuously measured for municipal waste combustors, Kraft pulp mills, and fluidized bed combustors. The action also added COMAR 26.11.01.10E for recordkeeping and reporting requirements for CEMs.

Finally, on July 29, 2011, MDE adopted further revisions to the provisions of COMAR 26.11.01.10 and COMAR 26.11.01.11 to remove remaining references to TM 90, and to clarify that the QA/QC procedures for COMs are now in COMAR 26.11.31. Further EPA analysis of the revisions to these Maryland regulations as well as the reasons supporting EPA's proposed approval of these revisions are provided in the TSD supporting this rulemaking which can be found in the docket for this proposed rulemaking action and is available online at <http://www.regulations.gov>.

III. Proposed Action

EPA's review of this material indicates that the November 24, 2015 submittal, as amended by MDE's February 26, 2016 letter, is in accordance with the CAA and is therefore approvable. Because TM 90 contains enforcement exemptions, its removal strengthens the Maryland SIP. EPA is proposing to approve the Maryland SIP revision submittal which contains revisions and amendments to provisions for COMs and CEMs in COMAR 26.11.01.01 and COMAR 26.11.01.10 and adds new provisions for COMs and CEMs at COMAR 26.11.01.11 and COMAR 26.11.31. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Incorporation by Reference

In this proposed action, EPA is proposing to include in a final EPA rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference revisions to the requirements for COMs and CEMs in Maryland regulation COMAR 26.01.01 and COMAR 26.01.31, discussed previously in section II of this rulemaking. EPA has made, and will continue to make, these documents generally available electronically through www.regulations.gov and/or may be viewed at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

V. Statutory and Executive Order Reviews

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 proposed 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 proposed rule to approve revisions to Maryland regulation COMAR 26.01.01 and to approve the addition of COMAR 26.01.31 into the Maryland SIP 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 et seq.

Dated: May 27, 2016.

Shawn M. Garvin,
Regional Administrator,
Region III.

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