



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2016-0514; FRL-9961-39-Region 3]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a July 7, 2016 state implementation plan (SIP) revision submitted by the State of Maryland. The revision includes revised regulations which repealed Maryland's Clean Air Interstate Rule (CAIR) Program in its entirety, and which removed references to CAIR from other Maryland regulations that relate to general air quality definitions and to the control of emissions from pulp mills in Maryland. Additionally, the revision includes 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 satisfies Maryland's obligation pursuant to an earlier rulemaking in which EPA granted final conditional approval of amendments regarding the control of emissions from Kraft pulp mills contingent upon Maryland addressing the monitoring issue. Final approval of the July 7, 2016 SIP revision will convert the prior conditional approval of the pulp mill regulations to a full approval. EPA is proposing to approve this revision to the Maryland SIP in accordance with the requirements of 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-2016-0514 at <http://www.regulations.gov>, or via email to pino.maria@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, 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. 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: Ellen Schmitt, (215) 814-5787, or by e-mail at schmitt.ellen@epa.gov.

SUPPLEMENTARY INFORMATION: On July 7, 2016, EPA received from the State of

Maryland a formal submittal (#16-07) seeking a revision to its SIP.

I. Background

To help reduce interstate transport of ozone and fine particulate matter (PM_{2.5}) pollution in the eastern half of the United States, EPA finalized CAIR in May 2005.¹ 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 For CAIR, EPA developed three separate cap and trade programs that could be used to achieve the required reductions: The CAIR NO_x ozone season trading program, the CAIR annual NO_x trading program, and the CAIR SO₂ trading program.

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. While EPA worked on developing a new rule to address the interstate transport of air pollution, the CAIR program continued as planned with the NO_x annual and ozone season programs beginning in 2009 and the SO₂ annual program beginning in 2010.

In response to the remand of CAIR, EPA promulgated the Cross State Air Pollution Rule (CSAPR) on July 6, 2011.³ CSAPR, which reduces emissions from electric generating units (EGUs), addresses 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 sunset CAIR-related

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).

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. On December 30, 2011, the D.C. Circuit stayed CSAPR prior to its implementation, and EPA was ordered to continue administering CAIR on an interim basis.⁴ In a subsequent decision on the merits, the Court vacated CSAPR based on a subset of petitioners' claims.⁵ However, on April 29, 2014, the U.S. Supreme Court reversed that decision and remanded the case to the D.C. Circuit for further proceedings.⁶ Throughout the initial round of D.C. Circuit proceedings and the ensuing Supreme Court proceedings, the stay on CSAPR remained in place, and EPA continued to implement CAIR.

Following the April 2014 Supreme Court decision, EPA filed a motion asking the D.C. Circuit to lift the stay in order to allow CSAPR to replace CAIR in an equitable and orderly manner while further D.C. Circuit proceedings were held to resolve remaining claims from petitioners.

Additionally, EPA's motion requested to toll, by three years, all CSAPR compliance deadlines that had not passed as of the approval date of the stay. On October 23, 2014, the D.C. Circuit granted EPA's request, and on December 3, 2014 (79 FR 71663), in an interim final rule, EPA set the updated effective date of CSAPR as January 1, 2015 and tolled the implementation of CSAPR Phase I to 2015 and CSAPR Phase 2 to 2017. In accordance with the interim final rule, the sunset date for CAIR was December 31, 2014, and EPA began implementing CSAPR on January 1, 2015.⁷

⁴ Order of December 30, 2011, in *EME Homer City Generation, L.P. v. EPA*, D.C. Cir. No. 11-1302.

⁵ *EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7 (D.C. Cir. 2012), cert. granted 133 U.S. 2857 (2013).

⁶ *EPA v. EME Homer City Generation, L.P.*, 134 S. Ct. 1584, 1600–01 (2014).

⁷ At the present time, CSAPR is implemented in Maryland via a federal implementation plan (FIP).

II. Summary of SIP Revision

On July 7, 2016, EPA received from the State of Maryland a formal submittal (#16-07) seeking a revision to its SIP. As a result of CSAPR replacing CAIR, Maryland, in its July 7, 2016 submittal, requested that EPA remove from the Maryland SIP the CAIR program in its entirety, and references to CAIR located in other sections of the Code of Maryland Regulations (COMAR). Maryland's submittal seeks to remove the CAIR program by removing, in its entirety, COMAR 26.11.28 from Maryland's SIP because the CAIR program is now moot and has been replaced entirely by CSAPR. The July 7, 2016 SIP submittal also includes an amended definition of "NO_x Ozone Season Allowance" in COMAR 26.11.01.01B(24-1) which removed reference to CAIR, thereby directing affected sources to the "NO_x ozone season emission trading program," which is currently CSAPR. The SIP revision also includes a revised version of COMAR 26.11.14. In COMAR 26.11.14.07C(1), there was a specific reference to COMAR 26.11.28, Maryland's CAIR program, which is now moot and which Maryland requested EPA remove from the SIP. Maryland revised COMAR 26.11.14.07C(1) to remove reference to COMAR 26.11.28, while permitting the continued practice of allowing certain sources to use NO_x ozone season allowances as an alternative compliance method. Maryland has included revised COMAR 26.11.01.01 and 26.11.14.07, which includes 26.11.01.01B(24-1) and 26.11.14.07C(1), respectively, for incorporation by reference into the Maryland SIP.

Finally, the July 7, 2016 SIP submission includes an amended COMAR 26.11.14.07D(1) which removes the word "certified" in order to clarify that for Kraft pulp mill combustion units and boilers to meet the monitoring and reporting requirements, CEM systems must meet all the requirements of 40 CFR 75, subpart H, and not just the certification requirements for CEMs.

III. Summary of EPA Analysis

In this action, EPA proposes to approve the removal of COMAR 26.11.28, which incorporated the CAIR program, from the Maryland SIP. EPA also proposes to approve the removal of references to CAIR from other Maryland regulations located in the Maryland SIP that relate to general air quality definitions and to the control of emissions from pulp mills in Maryland. As mentioned previously in this preamble, the D.C. Circuit remanded CAIR to EPA in 2008; however, the Court left CAIR in place while EPA worked to develop a new interstate transport rule. CSAPR was promulgated to respond to the court's concerns and to replace CAIR. The implementation of CSAPR was delayed for several years beyond its originally expected implementation timeframe of 2012 and therefore the sunset of CAIR was also deferred. CAIR was implemented through the 2014 compliance periods and was sunset and replaced by CSAPR on January 1, 2015, thereby making CAIR moot and any reference to CAIR inconsequential. Additionally, as a result of CSAPR replacing CAIR and the removal of Maryland's CAIR program under COMAR 26.11.28, reference to CAIR in other Maryland regulations is inaccurate and misleading. Thus, removing reference to CAIR or COMAR 26.11.28 from the other Maryland regulations mentioned in this action does not affect the sources impacted by the federal cap and trade program. Additionally, although EPA's proposed action here removes the CAIR program from the Maryland SIP, this action is overall SIP strengthening as it removes a moot program no longer in operation. EPA has already replaced CAIR with CSAPR which operates through FIPs, and which yields overall NO_x and ozone reductions that are at least equal to or better than reductions from CAIR.^{8,9}

⁸ 76 FR 48208 (August 8, 2011).

⁹ According to section 110(l) of the CAA, the Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress), or any other applicable requirement of the Act.

In addition, Maryland's amendments to COMAR 26.11.01.01 and COMAR 26.11.14 (to remove references to CAIR) are 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 in the Maryland SIP and included amendments to COMAR 26.11.14 – Control of Kraft Pulp Mills.¹⁰ In a letter dated September 18, 2015, the Maryland Department of the Environment (MDE) committed to removing references to CAIR, which sunset on December 31, 2014, through a SIP revision. The amendments to COMAR 26.11.01.01 and COMAR 26.11.14, provided by Maryland's SIP submittal #16-07, 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 remove the conditional nature of the August 30, 2016 approval. At that time, the October 8, 2014 SIP submission #14-04 will receive full approval status.¹¹

Finally, regarding Maryland's amendments to COMAR 26.11.14.07D(1), the removal of the word "certified" from this portion of the Maryland regulation is merely an administrative action to make clear that CEMs used by Kraft pulp mill combustion units and boilers must meet all of the requirements of 40 CFR part 75, subpart H, and not just the certification requirements for CEMs.

¹⁰ The final rulemaking notice for EPA's conditional approval of SIP submission #14-04 was published on August 30, 2016 (81 FR 59486) and addressed NO_x reductions for pulp mills in Maryland.

¹¹ Thus, once this proposed action to approve the July 7, 2016 SIP submission #16-07 is finalized, thereby finding Maryland has met the conditions within our August 30, 2016 conditional approval (81 FR 59486), the conditional approval of Maryland's October 8, 2014 SIP submission #14-04 will be converted to full approval.

Based upon its review, EPA finds Maryland's July 7, 2016 SIP submittal approvable under section 110 of the CAA as a SIP strengthening measure which removes moot provisions and makes minor administrative changes.

IV. Proposed Action

This action proposes to approve Maryland's July 7, 2016 SIP submittal which seeks removal of Maryland's CAIR program, in its entirety, from the SIP and also seeks the removal of references to CAIR from other Maryland regulations that relate to general air quality definitions and to the control of emissions from Kraft pulp mills in the State. EPA is also proposing to approve the amended version of COMAR 26.11.14.07D(1) for inclusion in the Maryland SIP as the amended version removes the word "certified" from COMAR 26.11.14.07D(1) in order to clarify the CEM system requirements for monitoring and reporting emissions from Kraft pulp mill boilers and combustion units.

Additionally, EPA proposes to find 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 the Agency granted final conditional approval of amendments regarding the control of NO_x emissions at Kraft pulp mills. For this reason, EPA also proposes to remove the conditional nature of the August 30, 2016 conditional approval and proposes to grant full approval to the Maryland SIP revision regarding the control Kraft pulp mill emissions from various processes and fuel-burning equipment, submitted as #14-04 on October 15, 2014.

EPA is proposing to approve the Maryland SIP revision which was submitted on July 7, 2016. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

V. Incorporation by Reference

In this proposed rule, 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 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 which were discussed in section II (Summary of SIP Revision) of this preamble. EPA is also proposing to incorporate by reference the portion of COMAR 26.11.14 which removed the word “certified” from COMAR 26.11.14.07D(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 (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

VI. 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, regarding the removal of the CAIR program under COMAR 26.11.28 from the Maryland SIP and amendments to COMAR 26.11.01 and 26.11.14, 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, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: March 21, 2017.

Cecil A. Rodrigues,
Acting Regional Administrator,
Region III.

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