

(iv) That the statement filed shall be made available to anyone the record is disclosed to, together with a brief statement by the WHS-Serviced Component summarizing its reasons for refusing to amend the records.

(10) If the Chief, OSD/JS Privacy Office, determines that the record should be amended in accordance with the individual's request, the WHS-Serviced Component shall amend the record, advise the individual, and inform previous recipients where a disclosure accounting has been maintained in accordance with 32 CFR 310.25.

(11) All appeals should be processed within 30 workdays after receipt by the proper office. If the Chief, OSD/JS Privacy Office, determines that a fair and equitable review cannot be made within that time, the individual shall be informed in writing of the reasons for the delay and of the approximate date the review is expected to be completed.

(g) *Disclosure of Disputed Information.* (1) If the OSD/JS Privacy Office determines the record should not be amended and the individual has filed a statement of disagreement under paragraph (f)(8) of this section, the WHS-Serviced Component shall annotate the disputed record so it is apparent to any person to whom the record is disclosed that a statement has been filed. Where feasible, the notation itself shall be integral to the record. Where disclosure accounting has been made, the WHS-Serviced Component shall advise previous recipients that the record has been disputed and shall provide a copy of the individual's statement of disagreement in accordance with 32 CFR 310.21.

(i) This statement shall be maintained to permit ready retrieval whenever the disputed portion of the record is disclosed.

(ii) When information that is the subject of a statement of disagreement is subsequently disclosed, the WHS-Serviced Component designated official shall note which information is disputed and provide a copy of the individual's statement.

(2) The WHS-Serviced Component shall include a brief summary of its reasons for not making a correction when disclosing disputed information. Such statement shall normally be limited to the reasons given to the individual for not amending the record.

(3) Copies of the WHS-Serviced Component summary will be treated as part of the individual's record; however, it will not be subject to the amendment procedure outlined in paragraph (f) of this section.

(h) *Penalties.* (1) *Civil Action.* An individual may file a civil suit against the WHS-Serviced Component or its employees if the individual feels certain provisions of the Privacy Act have been violated.

(2) *Criminal Action.* (i) Criminal penalties may be imposed against an officer or employee of a WHS-Serviced Component for these offenses listed in the Privacy Act:

(A) Willful unauthorized disclosure of protected information in the records;

(B) Failure to publish a notice of the existence of a record system in the **Federal Register**; and

(C) Requesting or gaining access to the individual's record under false pretenses.

(ii) An officer or employee of a WHS-Serviced Component may be fined up to \$5,000 for a violation as outlined in paragraphs (h)(2)(i)(A) through (h)(2)(i)(C) of this section.

(i) *Litigation Status Sheet.* Whenever a complaint citing the Privacy Act is filed in a U.S. District Court against the Department of Defense, a WHS-Serviced Component, or any employee of a WHS-Serviced Component, the responsible system manager shall promptly notify the OSD/JS Privacy Office, which shall notify the DPO. The litigation status sheet in Appendix H of 32 CFR part 310 provides a standard format for this notification. (The initial litigation status sheet shall, as a minimum, provide the information required by items 1 through 6). A revised litigation status sheet shall be provided at each stage of the litigation. When a court renders a formal opinion or judgment, copies of the judgment or opinion shall be provided to the OSD/JS Privacy Office with the litigation status sheet reporting that judgment or opinion.

(j) *Computer Matching Programs.* 32 CFR 310.52 prescribes that all requests for participation in a matching program (either as a matching agency or a source agency) be submitted to the DPO for review and compliance. The WHS-Serviced Components shall submit a courtesy copy to the OSD/JS Privacy Office at the time of transmittal to the DPO.

#### **§ 311.7. OSD/JS Privacy Office Processes.**

The OSD/JS Privacy Office shall:

(a) Exercise oversight and administrative control of the OSD/JS Privacy Program for the WHS-Serviced Components.

(b) Provide guidance and training to the WHS-Serviced Components as required by 32 CFR 310.37.

(c) Collect and consolidate data from the WHS-Serviced Components and submit reports to the DPO, as required

by 32 CFR 310.40 or otherwise requested by the DPO.

(d) Coordinate and consolidate information for reporting all record systems, as well as changes to approved systems, to the DPO for final processing to the Office of Management and Budget, the Congress, and the **Federal Register**, as required by 32 CFR part 310.

(e) In coordination with DPO, serve as the appellate authority for the WHS-Serviced Components when a requester appeals a denial for access as well as when a requester appeals a denial for amendment or initiates legal action to correct a record.

(f) Refer all matters about amendments of records and general and specific exemptions under 32 CFR 310.19, 310.28 and 310.29 to the proper WHS-Serviced Components.

Dated: October 26, 2009.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer,  
Department of Defense.*

[FR Doc. E9-26183 Filed 10-29-09; 8:45 am]

**BILLING CODE 5001-06-P**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

[EPA-R03-OAR-2009-0034; FRL-8975-2]

### **Approval and Promulgation of Air Quality Implementation Plans; Maryland; Clean Air Interstate Rule**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is approving State Implementation Plan (SIP) revisions submitted by the State of Maryland, with the exception of its 2009 nitrogen oxides (NO<sub>x</sub>) ozone season and NO<sub>x</sub> annual allocations, its 2009 set-aside allocations and the Compliance Supplement Pool (CSP) allocations. The revisions establish budget trading programs for nitrogen oxides (NO<sub>x</sub>) annual, NO<sub>x</sub> ozone season, and sulfur dioxides (SO<sub>2</sub>) annual emissions to address the requirements of EPA's Clean Air Interstate Rule (CAIR). Maryland will meet its CAIR requirements by participating in the EPA-administered regional cap-and-trade program for NO<sub>x</sub> annual, NO<sub>x</sub> ozone season, and SO<sub>2</sub> annual emissions. EPA is determining that the SIP revisions fully implement the CAIR requirements for Maryland. Although the DC Circuit found CAIR to be flawed, the rule was remanded without vacatur and thus remains in

place. Thus, EPA is continuing to take action on CAIR SIPs as appropriate. CAIR, as promulgated, requires States to reduce emissions of SO<sub>2</sub> and NO<sub>x</sub> that significantly contribute to, or interfere with maintenance of, the national ambient air quality standards (NAAQS) for fine particulates and/or ozone in any downwind state. CAIR establishes budgets for SO<sub>2</sub> and NO<sub>x</sub> for States that contribute significantly to nonattainment in downwind States and requires the significantly contributing States to submit SIP revisions that implement these budgets. States have the flexibility to choose which control measures to adopt to achieve the budgets, including participation in EPA-administered cap-and-trade programs addressing SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season emissions. In the SIP revisions that EPA is approving, Maryland will meet CAIR requirements by participating in these cap-and-trade programs. EPA is approving the SIP revisions, with the exceptions noted, as fully implementing the CAIR requirements for Maryland. Consequently, this action will also cause the CAIR Federal Implementation Plans (CAIR FIPs) concerning SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season emissions by Maryland sources to be automatically withdrawn.

**DATES:** *Effective Date:* The final rule is effective on October 30, 2009.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2009-0034. All documents in the docket are listed in the <http://www.regulations.gov> Web site. Although listed in the electronic docket, some information is not publicly available, i.e., 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 either electronically through <http://www.regulations.gov> or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland, 21230.

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

**SUPPLEMENTARY INFORMATION:**

## Table of Contents

- I. What Action Did EPA Propose?
- II. Summary of Maryland SIP Revision
- III. What Is the Final Action?
- IV. What Is the Effective Date?
- V. Statutory and Executive Order Reviews

### I. What Action Did EPA Propose?

On August 20, 2009 (74 FR 42038), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. No comments were received. The NPR proposed approval of revisions to the Maryland SIP that addresses EPA's CAIR requirements. The formal SIP revisions were submitted by Maryland on October 24, 2007 and June 30, 2008.

### II. Summary of Maryland SIP Revision

On October 24, 2007, the Maryland Department of the Environment (MDE) submitted a full CAIR SIP revision to meet the requirements of CAIR, which was promulgated on May 12, 2005 (70 FR 25162), and subsequently revised on April 28, 2006, and December 13, 2006. The SIP revision consisted of new Maryland rule COMAR 26.11.28—Clean Air Interstate Rule (Maryland revision #07-14). On June 30, 2008, MDE submitted a SIP revision that amended Regulations .01 to .07 of COMAR 26.11.28 (Maryland revision #08-08). The regulations address all the requirements of the 40 CFR part 96 model rules set forth in the May 12, 2005 CAIR rulemaking.

On August 20, 2009 (74 FR 27731), EPA published an NPR to approve Maryland's CAIR SIP revisions, with the exception of its 2009 NO<sub>x</sub> ozone season and NO<sub>x</sub> annual allocations, its 2009 set-aside allocations and the CSP allocations. A detailed discussion of the CAIR requirements, the CAIR history (including the CAIR remand), Maryland's CAIR submittals, and EPA's rationale for approval of Maryland's CAIR SIP revisions may be found in the NPR and will not be repeated here.

EPA notes that, in *North Carolina*, 531 F.3d at 916-21, the Court determined, among other things, that the State SO<sub>2</sub> and NO<sub>x</sub> budgets established in CAIR were arbitrary and capricious.<sup>1</sup> However, as discussed above, the Court also decided to remand CAIR but to

<sup>1</sup> The Court also determined that the CAIR trading programs were unlawful (*id.* at 906-8) and that the treatment of title IV allowances in CAIR was unlawful (*id.* at 921-23). For the same reasons that EPA is approving the provisions of Maryland's SIP revision that use the SO<sub>2</sub> and NO<sub>x</sub> budgets set in CAIR, EPA is also approving, as discussed below, Maryland's SIP revision to the extent the SIP revision adopts the CAIR trading programs, including the provisions, addressing applicability, allowance allocations, and use of title IV allowances.

leave the rule in place in order to "temporarily preserve the environmental values covered by CAIR" pending EPA's development and promulgation of a replacement rule that remedies CAIR's flaws. *North Carolina*, 550 F.3d at 1178. EPA had indicated to the Court that development and promulgation of a replacement rule would take about two years. *Reply in Support of Petition for Rehearing or Rehearing en Banc* at 5 (filed Nov. 17, 2008 in *North Carolina v. EPA*, Case No. 05-1224, D.C. Cir.). The process at EPA of developing a proposal that will undergo notice and comment and result in a final replacement rule is ongoing. In the meantime, consistent with the Court's orders, EPA is implementing CAIR by approving State SIP revisions that are consistent with CAIR (such as the provisions setting State SO<sub>2</sub> and NO<sub>x</sub> budgets for the CAIR trading programs) in order to "temporarily preserve" the environmental benefits achievable under the CAIR trading programs.

### III. What Is the Final Action?

EPA is approving Maryland's CAIR SIP revisions submitted on October 24, 2007 and June 30, 2008, with the exception of its 2009 NO<sub>x</sub> ozone season and NO<sub>x</sub> annual allocations, its 2009 set-aside allocations and the CSP allocations. Under the SIP revisions, Maryland will participate in the EPA-administered cap-and-trade programs for NO<sub>x</sub> annual, NO<sub>x</sub> ozone season, and SO<sub>2</sub> annual emissions. The SIP revisions meet the applicable requirements in 40 CFR 51.123(o) and (aa), with regard to NO<sub>x</sub> annual and NO<sub>x</sub> ozone season emissions, and 40 CFR 51.124(o), with regard to SO<sub>2</sub> emissions. As a consequence of the SIP approval, the CAIR FIPs for Maryland are automatically withdrawn, in accordance with the automatic withdrawal provisions of EPA's November 2, 2007 rulemaking (72 FR 62338). The automatic withdrawal is reflected in the rule text that accompanies this notice and deletes and reserves the provisions in Part 52 that establish the CAIR FIPs for Maryland sources.

### IV. What Is the Effective Date?

EPA finds that there is good cause for this approval to become effective upon publication because a delayed effective date is unnecessary due to the nature of the approval, which allows the State, as indicated in the NPR for this rulemaking, to use its own methodology for distribution of allowances from its set aside pool. The expedited effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides

that rule actions may become effective less than 30 days after publication if the rule “grants or recognizes an exemption or relieves a restriction” and section 5 U.S.C. 553(d)(3), which allows an effective date less than 30 days after publication “as otherwise provided by the agency for good cause found and published with the rule.”

CAIR SIP approvals relieve states and CAIR sources within states from being subject to provisions in the CAIR FIPs that otherwise would apply to them, allowing states to implement CAIR based on their SIP-approved state rule. The relief from these obligations is sufficient reason to allow an expedited effective date of this rule under 5 U.S.C. 553(d)(1). In addition, Maryland’s relief from these obligations provides good cause to make this rule effective immediately upon publication, pursuant to 5 U.S.C. 553(d)(3). The purpose of the 30-day waiting period prescribed in 5 U.S.C. 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Where, as here, the final rule relieves obligations rather than imposes obligations, affected parties, such as the State of Maryland and CAIR sources within the State, do not need time to adjust and prepare before the rule takes effect.

## V. Statutory and Executive Order Reviews

### A. General Requirements

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act 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 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 Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- 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 Clean Air Act; 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 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 December 29, 2009. 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 to approve Maryland’s CAIR rules 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.

Dated: October 20, 2009.

**William C. Early,**

*Acting Regional Administrator, Region III.*

- 40 CFR part 52 is amended as follows:

### PART 52—[AMENDED]

- 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 adding an entry for COMAR 26.11.28 after the existing entry for COMAR 26.11.27 to read as follows:

#### § 52.1070 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

EPA-APPROVED REGULATIONS 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
<b>26.11.28 Clean Air Interstate Rule</b>				
26.11.28.01	Definitions	6/16/08	10/30/09	[Insert page number where the document begins].
26.11.28.02	Incorporation by Reference	6/16/08	10/30/09	[Insert page number where the document begins].
26.11.28.03	Affected Units and General Requirements.	6/16/08	10/30/09	[Insert page number where the document begins].
26.11.28.04	Requirements for New Affected Trading Units and NO <sub>x</sub> Set Aside Pool.	6/16/08	10/30/09	[Insert page number where the document begins].
26.11.28.05	NO <sub>x</sub> Allowances for Renewable Energy Projects and Consumers of Electric Power.	6/16/08	10/30/09	[Insert page number where the document begins].
26.11.28.06	NO <sub>x</sub> Allowances To Be Distributed to Consumers of Electric Power.	6/16/08	10/30/09	[Insert page number where the document begins].
26.11.28.07	Distribution of Unused NO <sub>x</sub> Allowances in the Set Aside Pool.	6/16/08	10/30/09	[Insert page number where the document begins].
26.11.28.08	Allocation of NO <sub>x</sub> Allowances	6/16/08	10/30/09	[Insert page number where the document begins]. Annual and Ozone Season Allocations start in 2010 instead of 2009.

\* \* \* \* \*

**§ 52.1084 [Removed and Reserved]**  
 ■ 3. Section 52.1084 is removed and reserved.

**§ 52.1085 [Removed and Reserved]**  
 ■ 4. Section 52.1085 is removed and reserved.  
 [FR Doc. E9-26090 Filed 10-29-09; 8:45 am]  
 BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R09-OAR-2009-0371; FRL-8970-6]

**Revisions to the California State Implementation Plan, Northern Sierra Air Quality Management District and San Joaquin Valley Unified Air Pollution Control District**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing approval of revisions to the Northern Sierra Air Quality Management District (NSAQMD) and San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portions of the California State Implementation Plan (SIP). These revisions were proposed in the **Federal Register** on July 13, 2009, and concern volatile organic compound (VOC) emissions from asphalt paving, gasoline bulk storage tanks, and gasoline dispensing stations. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** *Effective Date:* This rule is effective on November 30, 2009.

**ADDRESSES:** EPA has established docket number EPA-R09-OAR-2009-0371 for this action. The index to the docket is available electronically at <http://www.regulations.gov> and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all

documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Mae Wang, EPA Region IX, (415) 947-4124, [wang.mae@epa.gov](mailto:wang.mae@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us” and “our” refer to EPA.

**Table of Contents**

I. Proposed Action  
 II. Public Comments and EPA Responses  
 III. EPA Action  
 IV. Statutory and Executive Order Reviews

**I. Proposed Action**

On July 13, 2009 (74 FR 33397), EPA proposed to approve the following rules into the California SIP:

Local agency	Rule No.	Rule title	Adopted or amended	Submitted
NSAQMD	227	Cutback and Emulsified Asphalt Paving Materials	11/27/06	03/07/08
SJVUAPCD	4621	Gasoline Transfer into Stationary Storage Containers, Delivery Vessels, and Bulk Plants.	12/20/07	03/07/08
SJVUAPCD	4622	Gasoline Transfer into Motor Vehicle Fuel Tanks	12/20/07	03/07/08