

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[EPA-R03-OAR-2024-0512; FRL-12099-01-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:** 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 (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: Written comments must be received on or before January 27, 2025.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R03-OAR-2024-0512 at www.regulations.gov, or via email to talley.david@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from 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

www.epa.gov/dockets/commenting-epa-dockets.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: On June 10, 2024, the State of Maryland, through the Maryland Department of the Environment (MDE), submitted for approval into the Maryland SIP amendments to the Code of Maryland Regulation (COMAR) 26.11.40-*NO_x Ozone Season Emission Caps for Non-Trading Large NO_x Units* to EPA.

I. Background

On 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. The NO_x SIP Call, issued pursuant to section 110 of the CAA, was designed to mitigate significant transport of NO_x one of the precursors of ozone. EPA developed the NO_x Budget Trading Program, an 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. Of specific relevance to this action, the NO_x SIP Call also established specific reduction requirements for other non-EGUs, including cement kilns and stationary internal combustion (IC) engines. On January 10, 2001 (66 FR 1866), EPA approved into the Maryland SIP two Maryland regulations, COMAR 26.11.29-*NO_x Reduction and Trading Program*, and COMAR 26.11.30-*Policies and Procedures Relating to Maryland’s NO_x Reduction and Trading Program*, to meet the requirements of the NO_x SIP Call. Under the approved trading program, large EGUs and large non-EGUs in Maryland participated in a regional cap and trade program that was administered by EPA.

On May 12, 2005 (70 FR 25162), EPA promulgated the Clean Air Interstate

Rule (CAIR), to address transported emissions that significantly contributed to downwind States’ nonattainment and maintenance of the 1997 ozone and fine particulate matter (PM_{2.5}) National Ambient Air Quality Standards (NAAQS). CAIR required 28 States, including Maryland, to reduce emissions of NO_x and sulfur dioxide (SO₂), which are precursors to ozone and PM_{2.5}. Under CAIR, EPA developed separate cap and trade programs for annual NO_x, ozone season NO_x, and annual SO₂ emissions. On April 28, 2006 (71 FR 25328), EPA also promulgated Federal implementation plans (FIPs) requiring the EGUs in each affected State, but not large non-EGUs, to participate in the CAIR trading programs. Subsequent to these actions, States needed to assess their NO_x SIP Call requirements and take other regulatory action as necessary to ensure that their obligations for the large non-EGUs continued to be met either through submission of a CAIR SIP or other NO_x regulation. States could comply with the requirements of CAIR by either remaining on the FIP, which applied only to EGUs, or by submitting a CAIR SIP revision that included EGUs as trading sources and the NO_x SIP Call covered non-EGUs either as trading sources, or subject to non-trading NO_x control regulations. EPA discontinued administration of the NO_x Budget Trading Program in 2009 upon the start of the CAIR trading programs.¹ The NO_x SIP Call requirements continued to apply, however, and EGUs that were formerly trading under the NO_x Budget Trading Program continued to meet their NO_x SIP Call requirements under the generally more stringent requirements of the CAIR ozone season trading program. EPA has implementing regulations for the NO_x SIP Call at 40 Code of Federal Regulations (CFR) 51.121.

In Maryland, Luke Paper Mill (formerly the Westvaco pulp and paper mill) had the only non-EGUs sources that had been covered under the NO_x SIP Call and 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

¹ CAIR was subsequently vacated and remanded. See *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008), modified by 550 F.3d 1176 (remanding CAIR). CAIR was replaced with the Cross-State Air Pollution Rule, or CSAPR (76 FR 48208, August 8, 2011), which, after legal challenges, was implemented starting in January 2015. The NO_x Ozone Season Trading Program under CSAPR was replaced in Maryland and most other States by a new trading program for ozone season NO_x under the CSAPR Update rule in January 2017 (81 FR 74504, October 26, 2016).

CAIR program as it applied to large EGUs, but chose not to include the non-EGU sources at Luke as participants in the CAIR NO_x Ozone Season trading program.² 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-EGU sources and monitoring, recordkeeping, and reporting in accordance with 40 CFR part 75. EPA conditionally approved COMAR 26.11.14.07 into the Maryland SIP on August 30, 2016 (81 FR 59486) and took final approval on July 17, 2017 (82 FR 32641).

In October 2018, Maryland adopted a COMAR 26.11.40—*NO_x Ozone Season Emission Caps for Non-Trading Large NO_x Units*. This regulation established NO_x ozone season tonnage caps and NO_x monitoring requirements for large non-EGUs in the State that were not covered under the CSAPR NO_x Ozone Season Group 2 Trading Program. The purpose of COMAR 26.11.40 is to meet requirements of the NO_x SIP Call. NO_x emissions caps that were specified for non-EGUs located at four facilities: American Sugar Refining, Dominion Energy Cove Point LNG, Luke Paper Mill, and the 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 CFR part 75, subpart H monitoring of NO_x emissions at non-EGUs in accordance with 40 CFR 51.121(i)(4). 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 to Maryland on May 8, 2020.

II. Summary of SIP Revision and EPA Analysis

On June 10, 2024, Maryland submitted for inclusion in the Maryland SIP regulation COMAR 26.11.40—*NO_x Ozone Season Emission Caps for Non-trading Large NO_x Units*. The revisions to sections .02 and .03 of COMAR 26.11.40 reallocate NO_x ozone season emission caps from affected source that have shutdown to new or modified SIP Call covered non-EGUs and in addition updates it’s regulatory cross-reference of the Federal ozone season trading programs to automatically incorporate by reference any future changes to those programs.

Section .02 lists the currently affected non-EGUs meeting the definition of “non-trading large NO_x unit” in table 1 of this document and includes a provision that any new unit installed after May 1, 2018, or an existing unit that is modified such that it meets the definition of a large non-EGU, will become subject to the requirements of COMAR 26.11.40. Section .02 updates the way the State references the EPA’s CSAPR Rule and removes Luke Paper Mill as an affected source. Prior to the update to section .02 of COMAR 26.11.40 the State referred to the CSAPR

Rule that was in effect in 2018, “the Federal Cross State Air Pollution Rule NO_x Ozone Season Group 2 Trading Program established under 40 CFR part 97, subpart EEEEE.” In 2019, EPA updated the CSAPR Rule and created the CSAPR NO_x Group 3 Trading Program. In this submission, the State of Maryland updates the CSAPR reference in section .02 COMAR 26.11.40 to a more generic trading program reference that will incorporate future changes in the rule. The updated language in COMAR 26.11.40.02 refers to “a 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).”

Section .03 of COMAR 26.11.40 establishes the NO_x annual tonnage caps for each source. This submission removes the NO_x ozone season emission caps from the shutdown Luke Paper Mill. Prior to the amendments of section .02 of COMAR 26.11.40, the State of Maryland allocated a cap of 656 tons to of NO_x Luke Paper Mill with 96 tons to set aside for new units or modified existing units. This submission reallocates the 656-ton cap from Luke Paper Mill to the set-aside cap for new and modified sources giving the set-aside a new cap of 752 tons of NO_x. The total of all sources in the State, which can be seen in the table below, remains at the cap of 1013 tons of NO_x and is consistent with the portion of the overall Maryland NO_x Budget Trading Program budget for large non-EGUs.

TABLE 1—MD LARGE NON EGU O3 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	1,013

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,

² CAIR was superseded upon implementation of the CSAPR program. Maryland rescinded its CAIR regulation (COMAR 26.11.28) and submitted a SIP

revision to EPA that 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.

recordkeeping and reporting requirements of the original 2018 submission. Finally, the changes to the CSAPR reference 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 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.

III. Proposed Action

EPA's review of this material indicates that Maryland's June 10, 2024 SIP revision submittal (Maryland SIP Revision #24-01) is approvable in accordance with CAA section 110. EPA is proposing to approve the Maryland SIP revision that reallocates the NO_x ozone season emission cap from Luke Paper Mill to the new source set-aside and updates its regulatory cross-reference of the Federal ozone season trading programs to automatically incorporate by reference any future changes to those programs 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 document, 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 the revised Maryland regulation COMAR 26.11.40.02 and the revised COMAR 26.11.40.03, as described in section II of this preamble. 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).

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 (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); 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;
- Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address "disproportionately high and adverse human health or environmental effects" of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." EPA further defines the term fair treatment to mean that "no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies."

The air agency did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

In addition, this proposed rulemaking, that amends Maryland's NO_x Ozone Season Emissions Caps for Non-Trading Large NO_x Units, 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Catherine A. Libertz,

Acting Regional Administrator, Region III.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2024-0417; FRL-12279-03-R9]

Air Plan Conditional Approval; California; Bay Area Air Quality Management District; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Environmental Protection Agency (EPA) is extending the comment period for a proposed rule published November 29, 2024, and corrected on December 11, 2024. The corrected comment period end date for the proposed rule was December 30, 2024. In response to commenter request, the EPA is now extending the comment period for the proposed rule to January 29, 2025.

DATES: The comment period for the proposed rule published on November