

Dated: August 4, 2009.

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*Rear Admiral, U.S. Coast Guard Commander,
Eighth Coast Guard District.*

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2009-0034; FRL-8946-9]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Maryland on October 24, 2007 and June 30, 2008, except for the 2009 nitrogen oxides (NO_x) ozone season and NO_x annual allocations, the 2009 set-aside allocations and the Compliance Supplement Pool (CSP) allocations. These revisions address the requirements of EPA's Clean Air Interstate Rule (CAIR). Although the District of Columbia (DC) Circuit found CAIR to be flawed, the rule was remanded without vacatur and thus remains in place. Thus, EPA is continuing to approve CAIR provisions into SIPs as appropriate. CAIR, as promulgated, requires States to reduce emissions of sulfur dioxide (SO₂) and NO_x 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 SO₂ and NO_x 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 SO₂, NO_x annual, and NO_x ozone season emissions. In the full SIP revisions that EPA is proposing to approve, Maryland will meet CAIR requirements by participating in these cap-and-trade programs. EPA is proposing to approve the full SIP revisions, as interpreted and clarified herein, as fully implementing the CAIR requirements for Maryland, except for the 2009 NO_x ozone season and NO_x

annual allocations, the 2009 set-aside allocations and the CSP allocations.

DATES: Written comments must be received on or before September 21, 2009.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R03-OAR-2009-0034 by one of the following methods:

A. <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

B. *E-mail:*
fernandez.cristina@epa.gov.

C. *Mail:* EPA-R03-OAR-2009-0034, Cristina Fernandez, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R03-OAR-2009-0034. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, *i.e.*, 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 in <http://www.regulations.gov> or in hard copy 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.

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I. What Action Is EPA Proposing?

EPA is proposing to approve, as interpreted and clarified herein, the full CAIR SIP revisions, submitted by Maryland on October 24, 2007 and June 30, 2008, as meeting the applicable CAIR requirements by requiring certain electric generating units (EGUs) to participate in the EPA-administered CAIR cap-and-trade programs addressing SO₂, NO_x annual, and NO_x ozone season emissions. The October 24, 2007 SIP revision consisted of new Maryland rule COMAR 26.11.28—Clean Air Interstate Rule (Maryland revision #07-14). The June 30, 2008 SIP revision consisted of revisions to Regulations .01

to .07 of COMAR 26.11.28 (Maryland revision #08–08).

II. What Is the Regulatory History of the CAIR and the CAIR Federal Implementation Plans (FIPs)?

EPA published CAIR on May 12, 2005 (70 FR 25162). In this rule, EPA determined that 28 States and the District of Columbia contribute significantly to nonattainment and interfere with maintenance of the NAAQS for fine particles (PM_{2.5}) and/or 8-hour ozone in downwind States in the eastern part of the country. As a result, EPA required those upwind States to revise their SIPs to include control measures that reduce emissions of SO₂, which is a precursor to PM_{2.5} formation, and/or NO_x, which is a precursor to both ozone and PM_{2.5} formation. For jurisdictions that contribute significantly to downwind PM_{2.5} nonattainment, CAIR sets annual State-wide emission reduction requirements (*i.e.*, budgets) for SO₂ and annual State-wide emission reduction requirements for NO_x. Similarly, for jurisdictions that contribute significantly to 8-hour ozone nonattainment, CAIR sets State-wide emission reduction requirements or budgets for NO_x for the ozone season (May 1st to September 30th). Under CAIR, States may implement these reduction requirements by participating in the EPA-administered cap-and-trade programs or by adopting any other control measures.

CAIR explains to subject States what must be included in SIPs to address the requirements of section 110(a)(2)(D) of the Clean Air Act (CAA) with regard to interstate transport with respect to the 8-hour ozone and 1997 PM_{2.5} NAAQS. EPA made national findings, effective on May 25, 2005, that the States had failed to submit SIPs meeting the requirements of section 110(a)(2)(D). The SIPs were due in July 2000, three years after the promulgation of the 8-hour ozone and PM_{2.5} NAAQS. These findings started a 2-year clock for EPA to promulgate a FIP to address the requirements of section 110(a)(2)(D). Under CAA section 110(c)(1), EPA may issue a FIP anytime after such findings are made and must do so within two years unless a SIP revision correcting the deficiency is approved by EPA before the FIP is promulgated.

On April 28, 2006, EPA promulgated FIPs for all States covered by CAIR in order to ensure the emissions reductions required by CAIR are achieved on schedule. The CAIR FIPs require EGUs to participate in the EPA-administered CAIR SO₂, NO_x annual, and NO_x ozone season trading programs, as appropriate. The CAIR FIP SO₂, NO_x annual, and

NO_x ozone season trading programs impose essentially the same requirements as, and are integrated with, the respective CAIR SIP trading programs. The integration of the FIP and SIP trading programs means that these trading programs will work together to create effectively a single trading program for each regulated pollutant (SO₂, NO_x annual, and NO_x ozone season) in all States covered by the CAIR FIP or SIP trading program for that pollutant. Further, as provided in a rule published by EPA on November 2, 2007, a State's CAIR FIPs are automatically withdrawn when EPA approves a SIP revision, in its entirety and without any conditions, as fully meeting the requirements of CAIR. Where only portions of the SIP revision are approved, the corresponding portions of the FIPs are automatically withdrawn and the remaining portions of the FIP stay in place. Finally, the CAIR FIPs also allow States to submit abbreviated SIP revisions that, if approved by EPA, will automatically replace or supplement certain CAIR FIP provisions (*e.g.*, the methodology for allocating NO_x allowances to sources in the State), while the CAIR FIP remains in place for all other provisions.

On April 28, 2006, EPA published two additional CAIR-related final rules that added the States of Delaware and New Jersey to the list of States subject to CAIR for PM_{2.5} and announced EPA's final decisions on reconsideration of five issues, without making any substantive changes to the CAIR requirements.

On October 19, 2007, EPA amended CAIR and the CAIR FIPs to clarify the definition of "cogeneration unit" and thus the applicability of the CAIR trading program to cogeneration units.

EPA was sued by a number of parties on various aspects of CAIR, and on July 11, 2008, the U.S. Court of Appeals for the District of Columbia Circuit issued its decision to vacate and remand both CAIR and the associated CAIR FIPs in their entirety. *North Carolina v. EPA*, 531 F.3d 836 (DC Cir. Jul. 11, 2008). However, in response to EPA's petition for rehearing, the Court issued an order remanding CAIR to EPA without vacating either CAIR or the CAIR FIPs. *North Carolina v. EPA*, 550 F.3d 1176 (DC Cir. Dec. 23, 2008). The Court thereby left CAIR in place in order to "temporarily preserve the environmental values covered by CAIR" until EPA replaces it with a rule consistent with the Court's opinion. *Id.* at 1178. The Court directed EPA to "remedy CAIR's flaws" consistent with its July 11, 2008 opinion, but declined to impose a schedule on EPA for

completing that action. *Id.* Therefore, CAIR and the CAIR FIP are currently in effect in Maryland.

III. What Are the General Requirements of CAIR and the CAIR FIPs?

CAIR establishes State-wide emission budgets for SO₂ and NO_x and is to be implemented in two phases. The first phase of NO_x reductions starts in 2009 and continues through 2014, while the first phase of SO₂ reductions starts in 2010 and continues through 2014. The second phase of reductions for both NO_x and SO₂ starts in 2015 and continues thereafter. CAIR requires States to implement the budgets by either: (1) Requiring EGUs to participate in the EPA-administered cap-and-trade programs; or (2) adopting other control measures of the State's choosing and demonstrating that such control measures will result in compliance with the applicable State SO₂ and NO_x budgets.

The May 12, 2005 and April 28, 2006 CAIR rules provide model rules that States must adopt (with certain limited changes, if desired) if they want to participate in the EPA-administered trading programs. With two exceptions, only States that choose to meet the requirements of CAIR through methods that exclusively regulate EGUs are allowed to participate in the EPA-administered trading programs. One exception is for States that adopt the opt-in provisions of the model rules to allow non-EGUs individually to opt into the EPA-administered trading programs. The other exception is for States that include all non-EGUs from their NO_x SIP Call trading programs in their CAIR NO_x ozone season trading programs.

IV. What Are the Types of CAIR SIP Submittals?

States have the flexibility to choose the type of control measures they will use to meet the requirements of CAIR. EPA anticipates that most States will choose to meet the CAIR requirements by selecting an option that requires EGUs to participate in the EPA-administered CAIR cap-and-trade programs. For such States, EPA has provided two approaches for submitting and obtaining approval for CAIR SIP revisions. States may submit full SIP revisions that adopt the model CAIR cap-and-trade rules. If approved, these SIP revisions will fully replace the CAIR FIPs. Alternatively, States may submit abbreviated SIP revisions. These SIP revisions will not replace the CAIR FIPs; however, the CAIR FIPs provide that, when approved, the provisions in these abbreviated SIP revisions will be used instead of or in conjunction with, as

appropriate, the corresponding provisions of the CAIR FIPs (e.g., the NO_x allowance allocation methodology).

A State submitting a full SIP revision may either adopt regulations that are substantively identical to the model rules or incorporate by reference the model rules. CAIR provides that States may only make limited changes to the model rules if the States want to participate in the EPA-administered trading programs. A full SIP revision may change the model rules only by altering their applicability and allowance allocation provisions to:

1. Include all NO_x SIP Call trading sources that are not EGUs under CAIR in the CAIR NO_x ozone season trading program;
2. Provide for State allocation of NO_x annual or ozone season allowances using a methodology chosen by the State;
3. Provide for State allocation of NO_x annual allowances from the compliance supplement pool (CSP) using the State's choice of allowed, alternative methodologies; or
4. Allow units that are not otherwise CAIR units to opt individually into the CAIR SO₂, NO_x annual, or NO_x ozone season trading programs under the opt-in provisions in the model rules. An approved CAIR full SIP revision addressing EGUs' SO₂, NO_x annual, or NO_x ozone season emissions will replace the CAIR FIP for that State for the respective EGU emissions. As discussed above, EPA approval in full, without any conditions, of a CAIR full SIP revision causes the CAIR FIPs to be automatically withdrawn.

V. Analysis of Maryland's CAIR SIP Submittal

A. State Budgets for Allowance Allocations

The CAIR NO_x annual and ozone season budgets were developed from historical heat input data for EGUs. Using these data, EPA calculated annual and ozone season regional heat input values, which were multiplied by 0.15 lb/mmBtu, for phase I, and 0.125 lb/mmBtu, for phase II, to obtain regional NO_x budgets for 2009–2014 and for 2015 and thereafter, respectively. EPA derived the State NO_x annual and ozone season budgets from the regional budgets using State heat input data adjusted by fuel factors.

The CAIR State SO₂ budgets were derived by discounting the tonnage of emissions authorized by annual allowance allocations under the Acid Rain Program under title IV of the CAA. Under CAIR, each allowance allocated

in the Acid Rain Program for the years in phase 1 of CAIR (2010 through 2014) authorizes 0.5 ton of SO₂ emissions in the CAIR trading program, and each Acid Rain Program allowance allocated for the years in phase 2 of CAIR (2015 and thereafter) authorizes 0.35 ton of SO₂ emissions in the CAIR trading program.

In today's action, EPA is proposing to approve a Maryland SIP revision that adopts by reference the budgets established for the State in CAIR. These budgets are 27,724 tons for NO_x annual emissions from 2009 through 2014, and 23,104 tons from 2015 and thereafter; 12,834 tons for NO_x ozone season emissions from 2009 through 2014, and 10,695 tons from 2015 and thereafter; and 70,697 tons for SO₂ annual emissions from 2009 through 2014, and 49,488 tons from 2015 and thereafter. Maryland's SIP revisions set these budgets as the total amounts of allowances available for allocation for each year under the EPA-administered cap-and-trade programs.

EPA notes that, in *North Carolina*, 531 F.3d at 916–21, the Court determined, among other things, that the State SO₂ and NO_x budgets established in CAIR were arbitrary and capricious.¹ However, as discussed above, the Court also decided to remand CAIR but to 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, DC 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 SO₂ and NO_x budgets for the CAIR trading programs) in order to “temporarily

¹ 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 SO₂ and NO_x 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.

preserve” the environmental benefits achievable under the CAIR trading programs.

B. CAIR Cap-and-Trade Programs

The CAIR NO_x annual and ozone-season model trading rules both largely mirror the structure of the NO_x SIP Call model trading rule in 40 CFR Part 96, subparts A through I. While the provisions of the NO_x annual and ozone-season model rules are similar, there are some differences. For example, the NO_x annual model rule (but not the NO_x ozone season model rule) provides for a CSP, which is discussed below and under which allowances may be awarded for early reductions of NO_x annual emissions. As a further example, the NO_x ozone season model rule reflects the fact that the CAIR NO_x ozone season trading program replaces the NO_x SIP Call trading program after the 2008 ozone season and is coordinated with the NO_x SIP Call program. The NO_x ozone season model rule provides incentives for early emissions reductions by allowing banked, pre-2009 NO_x SIP Call allowances to be used for compliance in the CAIR NO_x ozone-season trading program. In addition, States have the option of continuing to meet their NO_x SIP Call requirement by participating in the CAIR NO_x ozone season trading program and including all their NO_x SIP Call trading sources in that program.

The provisions of the CAIR SO₂ model rule are also similar to the provisions of the NO_x annual and ozone season model rules. However, the SO₂ model rule is coordinated with the ongoing Acid Rain SO₂ cap-and-trade program under CAA title IV. The SO₂ model rule uses the title IV allowances for compliance, with each allowance allocated for 2010–2014 authorizing only 0.50 ton of emissions and each allowance allocated for 2015 and thereafter authorizing only 0.35 ton of emissions. Banked title IV allowances allocated for years before 2010 can be used at any time in the CAIR SO₂ cap-and-trade program, with each such allowance authorizing one ton of emissions. Title IV allowances are to be freely transferable among sources covered by the Acid Rain Program and sources covered by the CAIR SO₂ cap-and-trade program.

EPA also used the CAIR model trading rules as the basis for the trading programs in the CAIR FIPs. The CAIR FIP trading rules are virtually identical to the CAIR model trading rules, with changes made to account for Federal rather than State implementation. The CAIR model SO₂, NO_x annual, and NO_x ozone season trading rules and the

respective CAIR FIP trading rules are designed to work together as integrated SO₂, NO_x annual, and NO_x ozone season trading programs.

In the SIP revisions, Maryland choose to implement its CAIR budgets by requiring EGUs to participate in EPA-administered cap-and-trade programs for SO₂, NO_x annual, and NO_x ozone season emissions. Maryland has adopted a full CAIR SIP revision that incorporates by reference the CAIR model cap and trade rules for SO₂, NO_x annual, and NO_x ozone season emissions, with modifications as allowed under the flexibilities of the program.

C. Applicability Provisions for Non-Electric Generating Units (Non-EGU) Sources

In general, the CAIR model trading rules apply to any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale. Maryland's CAIR rules incorporate by reference the CAIR model trading rule applicability described in 40 CFR 96.104, 96.204 and 96.304.

States have the option of bringing in, for the CAIR NO_x ozone season program only, those units in the State's NO_x SIP Call trading program that are not EGUs as defined under CAIR. EPA advises States exercising this option to add the applicability provisions in the State's NO_x SIP Call trading rule for non-EGUs to the applicability provisions in 40 CFR 96.304 in order to include in the CAIR NO_x ozone season trading program all units required to be in the State's NO_x SIP Call trading program that are not already included under 40 CFR 96.304. Under this option, the CAIR NO_x ozone season program must cover all large industrial boilers and combustion turbines, as well as any small EGUs (i.e. units serving a generator with a nameplate capacity of 25 MWe or less) that the State currently requires to be in the NO_x SIP Call trading program.

Maryland has chosen not to expand the applicability provisions of the CAIR NO_x ozone season trading program to include all non-EGUs in the State's NO_x SIP Call trading program. Therefore, Maryland must, in a separate submission, demonstrate that it is meeting 40 CFR 51.121(f)(2) and (h)(4), which sets forth requirements for control measures or other regulatory requirement(s) to demonstrate that the State will comply with its NO_x budget as established for the 2007 ozone

season. Continuous emissions monitoring (CEMS) in accordance with 40 CFR Part 75 is required.

D. NO_x Allowance Allocations

Under the NO_x allowance allocation methodology in the CAIR model trading rules and in the CAIR FIP, NO_x annual and ozone season allowances are allocated to units that have operated for five years, based on heat input data from a three-year period that are adjusted for fuel type by using fuel factors of 1.0 for coal, 0.6 for oil, and 0.4 for other fuels. The CAIR model trading rules and the CAIR FIP also provide a new unit set-aside from which units without five years of operation are allocated allowances based on the units' prior year emissions.

States may establish in their SIP submissions a different NO_x allowance allocation methodology that will be used to allocate allowances to sources in the States if certain requirements are met concerning the timing of submission of units' allocations to the Administrator for recordation and the total amount of allowances allocated for each control period. In adopting alternative NO_x allowance allocation methodologies, States have flexibility with regard to:

1. The cost to recipients of the allowances, which may be distributed for free or auctioned;
2. The frequency of allocations;
3. The basis for allocating allowances, which may be distributed, for example, based on historical heat input or electric and thermal output; and
4. The use of allowance set-asides and, if used, their size.

Maryland has chosen to incorporate by reference the allowance allocation methodology of the model rule for both the NO_x annual and NO_x ozone season trading programs, with the exception of the provisions pertaining to the distribution of allowances from the set aside pool under 96.142(d). Maryland has established a set-aside of five percent of the NO_x ozone season allowance budget for each control period during 2009 through 2014, and a set aside of five percent of the NO_x Annual allowance budget for each control period 2009 through 2014.² The

² Maryland anticipated that its CAIR SIP would be in effect in time to issue allocations from its set aside pool starting in 2009. Because the CAIR FIP is still in effect in Maryland, allocations from the new unit set aside have been allocated under the FIP for 2009. As a consequence, EPA is not approving the allowance allocations for new units, renewable energy projects and consumers of electric energy contained in Maryland's CAIR SIP for 2009. Those allocations will be issued in accordance with Maryland's CAIR SIP starting in 2010, contingent upon finalization of this proposed action.

allowances from these set-aside pools will be distributed to new affected units, with any remaining allowances to be distributed to renewable energy projects and consumers of electric power in the State. At the end of each control period, 20 percent of unused allowances from the set asides will be transferred to the State's retirement account in the CAIR allowance tracking system, and 80 percent of unused allowances will be returned to the affected trading sources listed in COMAR 26.11.28.08.

E. Allocation of NO_x Allowances From Compliance Supplement Pool

The CAIR establishes a CSP to provide an incentive for early reductions in NO_x annual emissions. The CSP consists of 200,000 CAIR NO_x annual allowances of vintage 2009 for the entire CAIR region, and a State's share of the CSP is based upon the projected magnitude of the emission reductions required by CAIR in that State. States may distribute CSP allowances, one allowance for each ton of early reduction, to sources that make NO_x reductions during 2007 or 2008 beyond what is required by any applicable State or Federal emission limitation. States also may distribute CSP allowances based upon a demonstration of need for an extension of the 2009 deadline for implementing emission controls. The CSP for the State of Maryland is comprised of 4,670 allowances.

The CAIR annual NO_x model trading rule establishes specific methodologies for allocations of CSP allowances. States may choose an allowed, alternative CSP allocation methodology to be used to allocate CSP allowances to sources in the States.

The deadline for requesting the CSP allowances was May 1, 2009, therefore, the CSP allowances will be distributed under the provisions of the CAIR FIP for the sources in the State of Maryland. EPA is, therefore, not approving the CSP allocation contained in Maryland's CAIR SIP.

F. Individual Opt-in Units

The opt-in provisions of the CAIR SIP model trading rules allow certain non-EGUs (i.e., boilers, combustion turbines, and other stationary fossil-fuel-fired devices) that do not meet the applicability criteria for a CAIR trading program to participate voluntarily in (i.e., opt into) the CAIR trading program. A non-EGU may opt into one or more of the CAIR trading programs. In order to qualify to opt into a CAIR trading program, a unit must vent all emissions through a stack and be able to meet monitoring, recordkeeping, and

recording requirements of 40 CFR part 75. The owners and operators seeking to opt a unit into a CAIR trading program must apply for a CAIR opt-in permit. If the unit is issued a CAIR opt-in permit, the unit becomes a CAIR unit, is allocated allowances, and must meet the same allowance-holding and emissions monitoring and reporting requirements as other units subject to the CAIR trading program. The opt-in provisions provide for two methodologies for allocating allowances for opt-in units, one methodology that applies to opt-in units in general and a second methodology that allocates allowances only to opt-in units that the owners and operators intend to repower before January 1, 2015.

States have several options concerning the opt-in provisions. States may adopt the CAIR opt-in provisions entirely or may adopt them but exclude one of the methodologies for allocating allowances. States may also decline to adopt the opt-in provisions at all. Maryland has chosen to incorporate by reference the provisions of the model rule pertaining to opt-ins for the NO_x annual, NO_x ozone season, and SO₂ annual trading program.

G. Clarification of Other Provisions in Maryland's CAIR Rule

1. 2009 CAIR NO_x Annual and CAIR NO_x Ozone Season Allowances

The tables in COMAR 26.11.28.08 specify allowances for 2009–2014. Maryland anticipated that its CAIR SIP would be in effect in time to issue the allowances for this allocation period. However, Maryland sources are currently subject to the FIP, therefore allocations for 2009 have been distributed under the FIP provisions. As a consequence, EPA is not approving Maryland's 2009 CAIR NO_x Annual and CAIR NO_x Ozone Season allowance allocation contained in the Maryland CAIR SIP. The tables in COMAR 26.11.28.08 will be used starting in 2010, contingent on finalization of this proposed action.

2. Deadline for Requests for Allowances From the Set Aside Pool

COMAR 26.11.28.04A(1) sets "March 15 of the year following the year the unit began commercial operation * * *" as the date by which the owner or operator of a "new affected trading unit" may request allowances from the set aside pool. Because this schedule is different from the schedule in 40 CFR 96.142(c)(2) and 40 CFR 96.342(c)(2) which are incorporated by reference, EPA clarifies that the schedule

established in COMAR 26.11.28.04A(1) applies to sources in Maryland.

3. Schedule for Recording Set Aside Pool Allowances

COMAR 26.11.28.05G establishes a July 1 deadline for EPA to transfer NO_x allowances for renewable energy projects to a general account for the owner or operator of a renewable energy project. Although not addressed in this provision, the owner or operator of the renewable energy project is responsible for establishing the general account in accordance with 40 CFR 96.151 and 96.152, or 96.351 and 96.352. Also, these accounts will need to be established sufficiently in advance of the July 1 deadline to ensure timely allowance transfers to the appropriate general accounts. EPA notes that the allocation information from the State must be received approximately two weeks before the deadline to give the Agency time to process the information and meet the July 1 deadline for recording the allowances.

4. Interaction of Maryland's CAIR Rule With COMAR 26.11.27

COMAR 26.11.27, entitled "Emission Limitations for Power Plants," was adopted by Maryland to implement the emission reductions required by the State's Healthy Air Act (Annotated Code of Maryland Environment Title 2 Ambient Air Quality Control Subtitle 10 Health Air Act Sections 2–1001–2–1005), and sets emissions caps for fifteen of the largest coal-fired power plants in the State. All of these sources are also subject to CAIR.

COMAR 26.11.27.03B(7)(a)(iii) requires that, if a unit exceeds its Ozone Season NO_x tonnage limitation as a result of certain specified actions and alerts invoked by the independent system operator PJM Interconnection, LLC (PJM), the unit is not in violation if, among other things, the owner or operator surrenders one "ozone season NO_x allowances" to the State's surrender account for every ton of NO_x emitted in excess of the cap. EPA interprets the reference to "ozone season NO_x allowance" to mean CAIR NO_x ozone season allowances because the NO_x Budget Trading Program was discontinued in 2008, and all banked ozone season NO_x allowances from that program have been converted to CAIR NO_x ozone season allowances.

An owner or operator is required to surrender CAIR NO_x ozone season allowances under this provision only if PJM invokes certain specified actions and alerts and the unit's emissions increase as a result. Since 1999, PJM has invoked these actions and alerts

relatively few times (generally a few times a year but up to 22 times in one year) and only for relatively short periods of time (generally about 24 hours and only once slightly exceeding 48 hours). However, the majority of these actions and alerts involve load reductions and so are not likely to result in increased emissions that would force a facility to exceed its Ozone Season NO_x tonnage limitation. Therefore, EPA believes that the potential for CAIR allowances to be used outside of the CAIR trading programs is very limited and will not interfere to any significant extent with the CAIR trading programs.

VI. Proposed Action

EPA is proposing to approve, as interpreted and clarified herein, Maryland's full CAIR SIP revisions submitted on October 24, 2007, and June 30, 2008, except for the 2009 NO_x ozone season and NO_x annual allocations, the 2009 set aside allocations and the CSP allocations. Under the SIP revisions, Maryland is choosing to participate in the EPA-administered CAIR cap-and-trade programs for SO₂, NO_x annual, and NO_x ozone season emissions. The SIP revisions, as interpreted and clarified herein, meets the applicable requirements of CAIR, which are set forth in 40 CFR 51.123(o) and (aa), with regard to NO_x annual and NO_x ozone season emissions, and 40 CFR 51.124(o), with regard to SO₂ emissions. Upon final approval, the CAIR FIP for Maryland will be automatically withdrawn.

VII. Statutory and Executive Order Reviews

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 proposed approval of Maryland's CAIR rule, with certain exceptions, 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, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: August 10, 2009.

William C. Early,

Acting Regional Administrator, Region III.

[FR Doc. E9-20047 Filed 8-19-09; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09-1805; MB Docket No. 09-147; RM-11554]

Television Broadcasting Services; New Orleans, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has before it a petition for rulemaking filed by Louisiana Media Company, LLC ("Louisiana Media"), the licensee of station WVUE-DT, channel 8, New Orleans, Louisiana. Louisiana Media requests the substitution of its pre-transition digital channel 29 for its post-transition digital channel 8 at New Orleans.

DATES: Comments must be filed on or before September 4, 2009, and reply comments on or before September 14, 2009.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Mace J. Rosenstein, Esq., Covington & Burling LLP, 1201 Pennsylvania Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT:

Joyce L. Bernstein,
joyce.bernstein@fcc.gov, Media Bureau,
(202) 418-1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 09-147, adopted August 12, 2009, and released August 14, 2009. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY-A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs/>). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 1-800-478-3160 or via e-mail <http://www.BCPIWEB.com>. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to fcc504@fcc.gov or call the Commission's Consumer and

Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Louisiana, is amended by adding DTV channel 29 and removing DTV channel 8 at New Orleans.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E9-20029 Filed 8-19-09; 8:45 am]

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