

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Department of the Environment**
(DLS Control No. 15-382)

Overview and Legal and Fiscal Impact

The regulations repeal obsolete provisions relating to the federal Clean Air Interstate Rule, update references relating to ozone seasons for nitrogen oxides emissions, and clarify the requirements for a specified emissions monitoring system at Kraft pulp mills.

The regulations present no legal issues of concern.

There is no fiscal impact on State or local agencies.

Regulations of COMAR Affected

Department of the Environment:

Air Quality: General Administrative Provisions: COMAR 26.11.01.01

Control of Emissions from Kraft Pulp Mills: COMAR 26.11.14.07

Clean Air Interstate Rule: COMAR 26.11.28.01 through .08

Legal Analysis

Background

The federal Clean Air Act requires the U.S. Environmental Protection Agency (EPA) to establish National Ambient Air Quality Standards (NAAQS) for six criteria pollutants – carbon monoxide, lead, nitrogen dioxide (which includes nitrogen oxides (NO_x)), ozone, particulate matter, and sulfur dioxide (SO₂). States are responsible for developing State Implementation Plans (SIPs) to meet the standards. As a part of its SIP, a state must prohibit emissions that will significantly contribute to nonattainment of NAAQS, or interfere with maintenance of a NAAQS, in a downwind state.

In 2015, EPA initiated the implementation of the Cross-State Air Pollution Rule (CSAPR), which requires 23 states to reduce annual NO_x and SO₂ emissions to help downwind areas attain NAAQS for ozone and fine particle pollution. This rule replaces the 2005 Clean Air Interstate Rule (CAIR), which also addressed the transport of air pollution across state boundaries. According to the Maryland Department of the Environment, the sources which were previously subject to the CAIR program are now covered by the CSAPR program.

To control NO_x emissions across state boundaries and address the regional transport of ozone in Northeast and Mid-Atlantic states, the NO_x Budget Program, a regional cap and trade

program, limits NO_x emissions from electric power generating facilities and industrial boilers from a variety of industry types during the “ozone season” (May 1 through September 30).

Summary of Regulations

The regulations repeal COMAR 26.11.28, which incorporates by reference the now obsolete CAIR program, and remove the obsolete cross references to Chapter 28. In provisions pertaining to NO_x ozone season allowances, the regulations substitute references to the CAIR NO_x Ozone Season Trading Program with references to the current federal trading program – the Transport Rule NO_x Annual Trading Program. Additionally, at the request of EPA, the regulations repeal the term “certified” in COMAR 26.11.14.07D(1)(a) to clarify that the continuous emission monitor system used by Kraft pulp mills to monitor NO_x emissions must meet all of the applicable federal requirements and not just the certification requirements.

Legal Issues

The regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The department cites § 1-101, 1-404, 2-103, and 2-301 through 2-303 of the Environment Article as statutory authority for the regulations. More specifically, § 1-404(b) provides the Secretary of the Environment with general authority to adopt regulations to carry out the provisions of the law that are within the jurisdiction of the Secretary and to review and revise these regulations. Section 2-103 provides the department with jurisdiction over air emissions and ambient air quality in the State and makes it the responsibility of the department to monitor ambient air quality in the State. Section 2-301 authorizes the department to adopt regulations for the control of air pollution in the State, including testing, monitoring, record keeping, and reporting requirements. Section 2-302 requires the department to adopt regulations that set emissions standards and ambient air quality standards for each of the air quality control areas in the State, consistent with federal requirements. Section 2-302 also details guidelines for the adoption of ambient air quality standards and emissions standards. Section 2-303 requires the department to follow the requirements of the Administrative Procedure Act when adopting regulations for ambient air quality control. The remaining cited authority is not relevant to these regulations.

The relevant cited authority is correct and complete. The regulations comply with the legislative intent of the law.

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The department advises that the regulations have no impact on State or local governments. The Department of Legislative Services concurs.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The department advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

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