

public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: September 9, 2009.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

[FR Doc. E9-24609 Filed 10-13-09; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2009-0339; FRL-8947-3]

#### Revisions to the Arizona State Implementation Plan, Maricopa County Air Quality Department

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the Maricopa County Air Quality Department (MCAQD) portion of the Arizona State Implementation Plan (SIP). These revisions concern particulate matter (PM) emissions and precursors from steam generating units, cogeneration units, stationary gas turbines, process heaters and internal combustion engines. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** Any comments on this proposal must arrive by November 13, 2009.

**ADDRESSES:** Submit comments, identified by docket number [EPA-R09-OAR-2009-0339], by one of the following methods:

1. *Federal eRulemaking Portal:* [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions.

2. *E-mail:* [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov).

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

*Instructions:* All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through <http://www.regulations.gov> or e-mail. <http://www.regulations.gov> is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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:* The index to the docket for this action 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:** Idalia Perez, EPA Region IX, (415) 972-3248, [perez.idalia@epa.gov](mailto:perez.idalia@epa.gov).

**SUPPLEMENTARY INFORMATION:** This proposal addresses the following local rules: 322, Power Plant Operations, 323, Fuel Burning Equipment from Industrial/Commercial/Institutional (ICI) Sources and 324, Stationary Internal Combustion (IC) Engines. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions

of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: July 10, 2009.

**Jane Diamond,**

*Deputy Regional Administrator, Region IX.*

[FR Doc. E9-24548 Filed 10-13-09; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 97

[EPA-R04-OAR-2009-0765; FRL-8968-7]

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

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the Tennessee State Implementation Plan (SIP) submitted by the State of Tennessee through the Tennessee Department of Environment and Conservation on July 13, 2009. This revision incorporates provisions related to the implementation of EPA's Clean Air Interstate Rule (CAIR), promulgated on May 12, 2005, subsequently revised on April 28, 2006, and December 13, 2006, and the CAIR Federal Implementation Plan (FIP) concerning Sulfur Dioxide (SO<sub>2</sub>), Nitrogen Oxides (NO<sub>x</sub>) annual, and NO<sub>x</sub> ozone season emissions for the State of Tennessee, promulgated on April 28, 2006, and subsequently revised December 13, 2006. Although the District of Columbia Circuit Court found CAIR to be flawed, the rule was remanded without vacatur and thus remains in place. EPA is continuing to approve CAIR provisions into SIPs as appropriate. EPA previously approved an "abbreviated SIP" for Tennessee, primarily consisting of rules governing allocation of allowances to electric generating units (EGUs) for use in the trading programs established pursuant to CAIR and providing for voluntary opt-in to these programs on August 20, 2007 (72 FR 46388), effective on October 19, 2007. Tennessee has now requested, in a revised submittal dated September 21, 2009, and a clarification letter dated September 24, 2009, that EPA act on a portion of the July 13, 2009, submittal as an abbreviated SIP.

Consequently, EPA is proposing to approve a SIP revision that addresses the transition of the State's NO<sub>x</sub> Budget Trading Program (Tennessee Air Pollution Control Regulations [TAPCR] Rule 1200-03-27-.06) to the State's CAIR NO<sub>x</sub> Ozone Season Trading Program (TAPCR 1200-03-27-.11); the expansion of the current applicability provisions in the CAIR NO<sub>x</sub> Ozone Season Trading program to include units that are not otherwise subject to the trading program but are subject to the States NO<sub>x</sub> Budget Trading Program; and the methodology to be used to allocate ozone season NO<sub>x</sub> allowances to these units under the CAIR FIPs. Tennessee is also seeking approval of technical corrections to the CAIR NO<sub>x</sub> Ozone Season Trading Program opt-in provisions, as noted in the August 20, 2007, approval. EPA is not making any changes to the CAIR FIP, but is amending the appropriate appendices to note EPA's approval of Tennessee's SIP revision.

**DATES:** Comments must be received on or before November 13, 2009.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2009-0765, by one of the following methods:

1. *http://www.regulations.gov*: Follow the online instructions for submitting comments.

2. *E-mail*: [benjamin.lynorae@epa.gov](mailto:benjamin.lynorae@epa.gov).

3. *Fax*: 404-562-9019.

4. *Mail*: EPA-R04-OAR-2009-0765, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960.

5. *Hand Delivery or Courier*: Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA-R04-OAR-2009-0765. 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 through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. 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. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

*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 at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Steven Scofield, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW.,

Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9034. Mr. Scofield can also be reached via electronic mail at [scofield.steve@epa.gov](mailto:scofield.steve@epa.gov).

#### SUPPLEMENTARY INFORMATION:

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##### I. What Action Is EPA Proposing to Take?

EPA is proposing to approve a revision to Tennessee's SIP, submitted by Tennessee on July 13, 2009, as clarified herein, that would modify the application of certain provisions of the CAIR FIP concerning NO<sub>x</sub> Ozone season emissions. (As discussed below, this less comprehensive CAIR SIP is termed an abbreviated SIP). Tennessee is subject to the CAIR FIPs that implement the CAIR requirements by requiring certain EGUs to participate in the EPA-administered CAIR cap-and-trade programs addressing SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season emissions. This SIP revision provides a methodology for allocating NO<sub>x</sub> allowances for the NO<sub>x</sub> ozone season trading program for NO<sub>x</sub> SIP Call trading sources that are not EGUs as defined by CAIR, but are subject to the CAIR NO<sub>x</sub> ozone season trading program. The CAIR FIPs provide that this methodology, if approved, will be used to allocate NO<sub>x</sub> Ozone Season allowances to sources in Tennessee. Consistent with the flexibility provided in the FIPs, these provisions will also be used to replace or supplement, as appropriate, the corresponding provisions in the CAIR FIP for Tennessee. EPA is also proposing to approve technical corrections to the CAIR NO<sub>x</sub> Ozone Season Trading Program opt-in provisions, as noted in the August 20, 2007, approval. Since EPA will no longer administer the NO<sub>x</sub> Budget Trading Program, Tennessee has chosen to terminate its NO<sub>x</sub> Budget Trading program rules (TAPCR Rule 1200-03-27-.06). EPA is, therefore, proposing to approve provisions which terminate the State's NO<sub>x</sub> Budget

Trading Program because those requirements are now addressed by the CAIR NO<sub>x</sub> Ozone Season FIP, as modified by the State's abbreviated SIP. Finally, EPA is not making any changes to the CAIR FIP, but is amending the appropriate appendices to note EPA's approval of Tennessee's SIP revision.

## II. What Is the Regulatory History of the CAIR and the CAIR 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 national ambient air quality standard (NAAQS) for fine particles (PM<sub>2.5</sub>) 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 SO<sub>2</sub>, which is a precursor to PM<sub>2.5</sub> formation, and/or NO<sub>x</sub>, which is a precursor to both ozone and PM<sub>2.5</sub> formation. For jurisdictions that contribute significantly to downwind PM<sub>2.5</sub> nonattainment, CAIR sets annual state-wide emission reduction requirements (*i.e.*, budgets) for SO<sub>2</sub> and annual state-wide emission reduction requirements for NO<sub>x</sub>. Similarly, for jurisdictions that contribute significantly to 8-hour ozone nonattainment, CAIR sets State-wide emission reduction requirements or budgets for NO<sub>x</sub> for the ozone season (May 1 to September 30). 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 PM<sub>2.5</sub> 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, 3 years after the promulgation of the 1997 8-hour ozone and PM<sub>2.5</sub> 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 SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season trading programs, as appropriate. The CAIR FIP SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> 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 effectively create a single trading program for each regulated pollutant (SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season) in all states covered by the CAIR FIP or SIP trading program for that pollutant. The CAIR FIPs also allow states to submit abbreviated SIP revisions that, if approved by EPA, will automatically replace or supplement the corresponding CAIR FIP provisions (*e.g.*, the methodology for allocating NO<sub>x</sub> 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<sub>2.5</sub> 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 Tennessee.

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

CAIR establishes state-wide emission budgets for SO<sub>2</sub> and NO<sub>x</sub> and is to be implemented in two phases. The first phase of NO<sub>x</sub> reductions starts in 2009 and continues through 2014, while the first phase of SO<sub>2</sub> reductions starts in 2010 and continues through 2014. The second phase of reductions for both NO<sub>x</sub> and SO<sub>2</sub> 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 SO<sub>2</sub> and NO<sub>x</sub> 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<sub>x</sub> SIP Call trading programs in their CAIR NO<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> SIP Call trading sources that are not EGUs under CAIR in the CAIR NO<sub>x</sub> ozone season trading program;
2. Provide for State allocation of NO<sub>x</sub> annual or ozone season allowances using a methodology chosen by the State;
3. Provide for State allocation of NO<sub>x</sub> 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 SO<sub>2</sub>, NO<sub>x</sub> annual, or NO<sub>x</sub> ozone season trading programs under the opt-in provisions in the model rules.

With the approval of an abbreviated SIP revision, the CAIR FIP remains in place, as tailored to sources in the State by that approved SIP revision.

Abbreviated SIP revisions can be submitted in lieu of, or as part of, CAIR full SIP revisions, states may want to designate part of their full SIP as an abbreviated SIP for EPA to act on first when the timing of the State's submission might not provide EPA with sufficient time to approve the full SIP prior to the deadline for NO<sub>x</sub> allocations. This will help ensure that the elements of the trading programs where flexibility is allowed are implemented according to the State's decisions. Submission of an abbreviated SIP does not preclude future submission of a CAIR Full SIP revision. In this case the July 13, 2009, submittal (revised on September 21, 2009, and clarified on September 24, 2009) from Tennessee has been submitted as an abbreviated SIP revision.

## V. Analysis of Tennessee's CAIR SIP Submittal

### A. Elements of Tennessee's Submittal

In response to CAIR, Tennessee adopted rules that it submitted on September 8, 2006. These rules were intended to constitute a full SIP submittal, addressing the requirements under CAIR without reliance on the CAIR FIPs. Nevertheless, to expedite

action on key provisions, Tennessee requested that EPA act on a subset of these rules constituting an abbreviated SIP (the rules defining the allocation of NO<sub>x</sub> allowances to EGUs under the CAIR FIP and provisions for sources voluntarily to opt into the SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season trading programs), while deferring action on the remainder of the rules necessary to constitute a full SIP.

Rulemaking on a full SIP submittal involves a broader range of issues than rulemaking on an abbreviated SIP submittal. EPA wished to expedite action on Tennessee's NO<sub>x</sub> allowance allocations and its rules allowing sources voluntarily to opt into the trading programs. Therefore, as requested by Tennessee, EPA took action on the abbreviated SIP portion of Tennessee's submittal and did not act on the remaining portions of Tennessee's September 8, 2006, submittal. EPA promulgated a direct final approval of these abbreviated SIP portions of Tennessee's rules on August 20, 2007 (72 FR 46388), which became effective on October 19, 2007.

On February 11, 2009, Tennessee adopted revisions to its CAIR NO<sub>x</sub> Ozone Season Trading Program and on July 13, 2009, submitted a request to EPA for approval of these revisions into the SIP. That request was revised on September 21, 2009, and supplemented by letter to EPA dated September 24, 2009, clarifying portions of the submittal.

### B. State Budgets for Allowance Allocations

The CAIR NO<sub>x</sub> 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 pounds per million British thermal unit (lb/mmBtu) for phase 1, and 0.125 lb/mmBtu, for phase 2, to obtain regional NO<sub>x</sub> budgets for 2009–2014 and for 2015 and thereafter, respectively. EPA derived the State NO<sub>x</sub> annual and ozone season budgets from the regional budgets using State heat input data adjusted by fuel factors.

The CAIR State SO<sub>2</sub> 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 0.50 ton of SO<sub>2</sub> 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 SO<sub>2</sub> emissions in the CAIR trading program.

The CAIR FIPs established budgets for Tennessee as 50,973 (2009–2014) and 42,478 (2015–thereafter) tons for NO<sub>x</sub> annual emissions, 22,842 (2009–2014) and 19,035 (2015–thereafter) tons for NO<sub>x</sub> Ozone season emissions, and 137,216 (2010–2014) and 96,051 (2015–thereafter) tons for SO<sub>2</sub> emissions. In Tennessee's SIP revision, submitted on July 13, 2009, Tennessee has chosen to include all NO<sub>x</sub> SIP Call trading sources that are not EGUs under CAIR in the CAIR NO<sub>x</sub> ozone season trading program. As a result of this SIP revision, the CAIR NO<sub>x</sub> ozone season budget will be increased annually by 5,666 tons to account for such NO<sub>x</sub> SIP Call trading sources. The total Tennessee CAIR NO<sub>x</sub> Ozone Season budgets are, therefore, 28,508 (2009–2014) and 24,701 (2015 and thereafter) tons. EPA is proposing to approve Tennessee's State trading budgets under TAPCR 1200–3–27–.11(2)(c).

EPA notes that, in *North Carolina*, 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. 531 F.3d at 916–21. 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. *Id.* at 1178. Pursuant to the Court's ruling, EPA is developing a new rule that will undergo notice and comment which will result in a final replacement rule for CAIR. In the meantime, EPA is implementing CAIR by approving 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.

### C. CAIR Cap-and-Trade Programs

The CAIR NO<sub>x</sub> annual and ozone-season model trading rules both largely mirror the structure of the NO<sub>x</sub> SIP Call model trading rule in 40 CFR Part 96, subparts A through I. While the provisions of the NO<sub>x</sub> annual and ozone-season model rules are similar, there are some differences. For example, the NO<sub>x</sub> annual model rule (but not the NO<sub>x</sub> ozone season model rule) provides for a CSP, which is discussed below and under which allowances may be awarded for early reductions of NO<sub>x</sub> annual emissions. As a further example, the NO<sub>x</sub> ozone season model rule

reflects the fact that the CAIR NO<sub>x</sub> ozone season trading program replaces the NO<sub>x</sub> SIP Call trading program after the 2008 ozone season and is coordinated with the NO<sub>x</sub> SIP Call program. The NO<sub>x</sub> ozone season model rule provides incentives for early emissions reductions by allowing banked, pre-2009 NO<sub>x</sub> SIP Call allowances to be used for compliance in the CAIR NO<sub>x</sub> ozone-season trading program. In addition, states have the option of continuing to meet their NO<sub>x</sub> SIP Call requirement by participating in the CAIR NO<sub>x</sub> ozone season trading program and including all their NO<sub>x</sub> SIP Call trading sources in that program.

The provisions of the CAIR SO<sub>2</sub> model rule are also similar to the provisions of the NO<sub>x</sub> annual and ozone season model rules. However, the SO<sub>2</sub> model rule is coordinated with the ongoing Acid Rain SO<sub>2</sub> cap-and-trade program under CAA title IV. The SO<sub>2</sub> 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 SO<sub>2</sub> cap-and-trade program, with each such allowance authorizing 1 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 SO<sub>2</sub> 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 SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season trading rules and the respective CAIR FIP trading rules are designed to work together as integrated SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season trading programs.

Tennessee is subject to the CAIR FIPs concerning SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season emissions and the CAIR FIP trading programs for SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season apply to sources in Tennessee. Consistent with the flexibility it gives to the states, the CAIR FIPs provide that states may submit abbreviated SIP revisions that will replace or supplement, as appropriate, certain provisions of the CAIR FIP trading programs. The July 13, 2009, submission of Tennessee is such an abbreviated SIP revision.

#### D. Applicability Provisions

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 megawatt electrical (MWe) producing electricity for sale.

States have the option of bringing in, for the CAIR NO<sub>x</sub> ozone season program only, those units in the state's NO<sub>x</sub> 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<sub>x</sub> SIP Call trading rule for non-EGUs to the applicability provisions in 40 CFR 96.304 in order to include in the CAIR NO<sub>x</sub> ozone season trading program all units required to be in the state's NO<sub>x</sub> SIP Call trading program that are not already included under 40 CFR 96.304. Under this option, the CAIR NO<sub>x</sub> 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<sub>x</sub> SIP Call trading program.

In this SIP revision, Tennessee has chosen to expand the applicability provisions of the CAIR NO<sub>x</sub> ozone season trading program to include all units required to be in the state's NO<sub>x</sub> SIP Call trading program that are not already included under 40 CFR 96.304. EPA is proposing to approve Tennessee's CAIR NO<sub>x</sub> ozone season applicability provisions, under TAPCR 1200–3–27–.11(2)(b)3. In addition, Tennessee has revised the definitions for “commence commercial operation” and “commence operation” in order to support the expanded applicability. Although omitted by error from its original request, by a submittal dated September 21, 2009, Tennessee has requested that EPA approve Tennessee's revised definitions. Through this action, EPA is proposing to approve Tennessee's revised definitions, *i.e.*, TAPCR 1200–3–27–.11(2)(a).

#### E. NO<sub>x</sub> Allowance Allocations

Under the NO<sub>x</sub> allowance allocation methodology in the CAIR model trading rules and in the CAIR FIP, NO<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> 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.

Consistent with the flexibility given to states in the CAIR FIPs, Tennessee, in a SIP revision submitted to EPA on September 8, 2006, chose to distribute CAIR NO<sub>x</sub> annual and CAIR NO<sub>x</sub> ozone season allowances with its own methodology. That SIP revision was approved by EPA on August 20, 2007, and became effective on October 19, 2007 (see 72 FR 46388; August 20, 2007). In today's SIP revision, Tennessee is seeking approval of the expansion of the current applicability provisions in the CAIR NO<sub>x</sub> ozone season trading program to include units that are not otherwise subject to the CAIR trading program but are subject to Tennessee's NO<sub>x</sub> SIP Call trading program. Consistent with the expansion of the CAIR NO<sub>x</sub> ozone season trading program applicability, Tennessee is revising the allocation methodology provisions in the CAIR NO<sub>x</sub> ozone season trading program to cover these units. Tennessee's SIP revision indicates that the units that are being brought into CAIR NO<sub>x</sub> ozone season as a result of the expansion of the CAIR NO<sub>x</sub> ozone season trading program applicability will be allocated allowances in the amounts specified in the SIP.

EPA understands, and it is explained in a revised submission by Tennessee on September 21, 2009, that the reference to the SIP in Tennessee's SIP revision (TAPCR 1200–3–27–.11(2)(d)2.(ii)) refers to the allocation methodology identified in the State's NO<sub>x</sub> SIP Call and that the Tennessee does not intend to change the allocation methodology for these sources, just to

include it in the new rules. In addition, the allocation provisions in section (d)1.(ii)(I) reference the "State trading budget under part (b)1. of this paragraph." However, the Tennessee State trading budgets are now located in part "TAPCR 1200-3-27-.11(2)(c)1." Tennessee has identified the reference to the "State budget under part (b)1." as a typographical error and explained that the reference should instead be to the "State trading budget under part (c)1. of this paragraph" in a letter dated September 24, 2009.

Finally, the Tennessee revision under TAPCR 1200-3-27-.11(2)(d)2.(iii) refers to CAIR NO<sub>x</sub> ozone season units identified in "part (2)(b)2. of this rule" that do not yet have a baseline heat input. Since it is Tennessee's intention to describe the procedure for allocating CAIR NO<sub>x</sub> ozone season allowances to units that are being brought into the CAIR NO<sub>x</sub> ozone season trading program from the NO<sub>x</sub> Budget Trading Program under TAPCR 1200-3-27-.11(2)(b)3., Tennessee has clarified in a letter dated September 24, 2009, that the reference to units identified in "part (2)(b)2." is a typographical error and should instead reference units identified in "part (2)(b)3." EPA is proposing to approve Tennessee's allocation procedures under TAPCR 1200-3-27-.11(2)(d), as explained and clarified in the September 24, 2009, letter.

#### F. Individual Opt-in Units

The opt-in provisions allow for 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.

In an earlier SIP revision approved by EPA on August 20, 2007, Tennessee chose to allow non-affected units meeting certain requirements to participate in the CAIR NO<sub>x</sub> annual trading program, CAIR NO<sub>x</sub> Ozone Season Trading program and CAIR SO<sub>2</sub> Trading Program by adopting by reference EPA's model rule provisions for opt-in units in 40 CFR part 96, subpart II, subpart III and subpart IIII, respectively. In adopting by reference the CAIR opt-in provisions, Tennessee had included in its rule a full written version of those provisions, which contained some technical errors, and did not specifically reference the CAIR model rule provisions related to opt-in units in other subparts of the CAIR model trading rules. Because Tennessee intended to adopt entirely the CAIR model rule opt-in provisions and because Tennessee indicated that it would correct the minor errors in the rule text, in the August 20, 2007, approval, EPA interpreted the Tennessee provisions as substantively identical to the CAIR model rule opt-in. As a result, the opt-in provisions in the CAIR FIP trading programs apply to units in Tennessee. In this SIP revision, Tennessee submitted corrections to the CAIR NO<sub>x</sub> Ozone Season rule that had been identified in the earlier submittal approved by EPA on August 20, 2007. Today, EPA is proposing to approve those corrections to the CAIR NO<sub>x</sub> Ozone Season trading program opt-in provisions.

#### VI. Proposed Action

EPA is proposing to approve Tennessee's SIP revision that includes an abbreviated CAIR SIP submitted on July 13, 2009, and revised September 21, 2009, as clarified herein. Tennessee is covered by the CAIR FIPs which require participation in the EPA administered CAIR FIP cap and trade programs for SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season emissions. Under this SIP revision and consistent with the flexibility given to the states in the FIPs, EPA is proposing to approve Tennessee's CAIR NO<sub>x</sub> ozone season provisions expanding the current applicability provisions in the CAIR NO<sub>x</sub> ozone season trading program to include units that are not otherwise subject to the trading program but are subject to Tennessee's NO<sub>x</sub> Budget Trading Program; revisions to the allocation methodology provisions (interpreted as discussed above) in the CAIR NO<sub>x</sub> ozone season trading program to cover these units; and corrections to the CAIR NO<sub>x</sub> Ozone

season trading program opt-in provisions (as discussed above).

As provided for in the CAIR FIPs, the provisions in the abbreviated SIP revision will replace or supplement the corresponding provisions of the CAIR FIPs in Tennessee. The abbreviated SIP revision meets the applicable requirements in 40 CFR 51.123(ee), with regard to NO<sub>x</sub> ozone season emissions. EPA is not making any changes to the CAIR FIP, but is amending the appropriate appendices to note EPA's approval of Tennessee's SIP revision.

This action also approves the termination of the State's NO<sub>x</sub> Budget Trading Program as discussed in Section I.

#### VII. Statutory and Executive Order Reviews

Under the CAA, 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 CAA. Accordingly, this proposed 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 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 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 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.

#### List of Subjects

##### 40 CFR Part 52

Environmental protection, Air pollution control, Electric utilities, Intergovernmental relations, Incorporation by reference, Carbon monoxide, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

##### 40 CFR Part 97

Environmental protection, Air pollution control, Electric utilities, Intergovernmental relations, Incorporation by reference, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: October 5, 2009.

**Beverly H. Banister,**

*Acting Regional Administrator, Region 4.*

[FR Doc. E9-24705 Filed 10-13-09; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 60, 61, and 63

[EPA-HQ-OAR-2009-0174; FRL-8968-8]

RIN 2060-AP63

#### Emissions Factors Program Improvements

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

**ACTION:** Advanced notice of proposed rulemaking.

**SUMMARY:** The purpose of this Advanced Notice of Proposed Rulemaking (ANPRM) is to convey issues raised by stakeholders about EPA's emissions factors program, inform the public of our initial ideas on how to address these issues, and solicit comments on our current thinking to resolve these issues.

Our goal is to develop a self-sustaining emissions factors program that produces high quality, timely emissions factors, better indicates the precision and accuracy of emissions factors, encourages the appropriate use of emissions factors, and ultimately improves emissions quantification.

Although initially developed for emissions inventory purposes only, use of emissions factors has been expanded to a variety of air pollution control activities including permitting, enforcement, modeling, control strategy development, and risk analysis. This ANPRM discusses the appropriateness of using emissions factors for these activities.

**DATES:** Comments must be received on or before November 13, 2009.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2009-0174. All documents in the docket are listed in the Federal Docket Management System index at <http://www.regulations.gov>. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the EPA Docket Center, Public Reading Room, ANPRM Docket, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

**Instructions:** Direct your comments to Docket ID No. EPA-HQ-OAR-2009-0174. The U.S. Environmental Protection Agency's (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. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**Docket:** All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Public Reading Room.

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas A. Driscoll, Measurement Policy Group (MPG), Office of Air Quality Planning and Standards (D243-05), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number: (919) 541-5135; fax number: (919) 541-1039; e-mail address: [driscoll.tom@epa.gov](mailto:driscoll.tom@epa.gov).

#### SUPPLEMENTARY INFORMATION:

**Outline.** The information in this preamble is organized as follows:

- I. General Information
  - A. Does this action apply to me?
  - B. What should I consider as I prepare my comments for EPA?
  - C. Where can I get a copy of this document and other related information?
- II. Background Information
  - A. The Role of Emissions Factors and Stakeholder Comments
  - B. Overview of the Emissions Factors Improvement Program
  - C. Goals for the Emissions Factors Improvement Program
- III. Emissions Factors Development Process and Tools
  - A. WebFIRE
  - B. Electronic Reporting Tool (ERT)
  - C. Emissions Factors Development Guidance
- IV. Changes to the Emissions Factors Program, Emissions Factors Development, and Associated Tools
  - A. Potential Revisions to the Emissions Factors Development Process: Overview and Issues
  - B. Test Data Submittal Requirements
  - C. Emissions Factors Content and Format
  - D. Interacting with the SPECIATE Database