

## V. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference of 310 CMR 7.37, High Occupancy Vehicle Lanes. The EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov> and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

## VI. 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 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- This action is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.
- 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, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

### List of Subjects in 40 CFR Part 52

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

Dated: December 10, 2018.

**Alexandra Dunn,**

*Regional Administrator, EPA Region 1.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2018-0631; FRL-9988-00-Region 4]

### Air Plan Approval; Tennessee; NO<sub>x</sub> SIP Call and CAIR

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to conditionally approve a portion of a State Implementation Plan (SIP) revision submitted by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC) with a letter dated February 27, 2017, to establish a SIP-approved state control program to comply with the obligations of the Nitrogen Oxides (NO<sub>x</sub>) SIP Call with respect to certain sources. EPA is also

proposing to fully approve the remaining portion of the same Tennessee SIP revision to remove the SIP-approved portions of the State's Clean Air Interstate Rule (CAIR) Program rules from the Tennessee SIP. In addition, EPA is proposing to fully approve a revision to the Tennessee SIP submitted with a letter dated April 3, 2018, to remove regulations related to a previous NO<sub>x</sub> trading program.

**DATES:** Comments must be received on or before January 16, 2019.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2018-0631 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

### FOR FURTHER INFORMATION CONTACT:

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### SUPPLEMENTARY INFORMATION:

#### I. Background

Under Clean Air Act (CAA or Act) section 110(a)(2)(D)(i)(I), which EPA has traditionally termed the good neighbor provision, states are required to address the interstate transport of air pollution. Specifically, the good neighbor provision requires that each state's implementation plan contain adequate provisions to prohibit air pollutant emissions from within the state that significantly contribute to

nonattainment of the national ambient air quality standards (NAAQS), or that interfere with maintenance of the NAAQS, in any other state.

In October 1998 (63 FR 57356), EPA finalized the “Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone”—commonly called the “NO<sub>x</sub> SIP Call.” The NO<sub>x</sub> SIP Call addressed the good neighbor provision for the 1979 1-hour ozone NAAQS and was designed to mitigate the impact of transported NO<sub>x</sub> emissions, one of the precursors of ozone.<sup>1</sup> The rule originally required 22 states—including Tennessee—and the District of Columbia to amend their SIPs to reduce NO<sub>x</sub> emissions that contribute to ozone nonattainment in downwind states. EPA developed the NO<sub>x</sub> Budget Trading Program, an allowance trading program that states could adopt to meet their obligations under the NO<sub>x</sub> SIP Call. The NO<sub>x</sub> Budget Trading Program allowed certain types of sources to participate in a regional NO<sub>x</sub> cap and trade program: Generally electric generating units (EGUs) greater than 25 megawatts; and industrial non-electric generating units, such as boilers and turbines, with a rated heat input greater than 250 million British thermal units per hour (MMBtu/hr), referred to as “large non-EGUs.”<sup>2</sup> On January 22, 2004, EPA approved into the Tennessee SIP the State’s NO<sub>x</sub> Budget Trading Program rule.<sup>3</sup> The NO<sub>x</sub> Budget Trading Program was implemented from 2003 to 2008, and in 2009 it was effectively replaced by the ozone season NO<sub>x</sub> program under CAIR.

On May 12, 2005 (70 FR 25162), EPA promulgated CAIR to address transported emissions that would significantly contribute to downwind states’ nonattainment or interfere with maintenance of the 1997 ozone and fine particulate matter (PM<sub>2.5</sub>) NAAQS. CAIR required SIP revisions in 28 states—including Tennessee—and the District of Columbia to reduce emissions of sulfur dioxide (SO<sub>2</sub>) and/or NO<sub>x</sub>, precursors of PM<sub>2.5</sub> (SO<sub>2</sub> and NO<sub>x</sub>) and ozone (NO<sub>x</sub>). Under CAIR, EPA developed separate cap-and-trade programs for annual NO<sub>x</sub>, ozone season NO<sub>x</sub>, and annual SO<sub>2</sub> emissions. On

April 28, 2006 (71 FR 25328), EPA also promulgated federal implementation plans (FIPs) requiring the EGUs greater than 25 MW in each affected state, but not large non-EGUs, to participate in the CAIR trading programs. An affected state could comply with the requirements of CAIR either by remaining under the FIP, which applied only to EGUs, or by submitting a CAIR SIP revision that achieved the required emission reductions from EGUs and/or other types of sources. States had the further option to remain subject to the CAIR FIP generally, but also adopt “abbreviated” CAIR SIP provisions that made certain modifications to the trading programs by allocating allowances among covered units, allowing units to opt-in to the trading programs, or expanding applicability of the CAIR ozone season NO<sub>x</sub> trading program to the non-EGUs that formerly participated in the NO<sub>x</sub> Budget Trading Program under the NO<sub>x</sub> SIP Call.

On August 20, 2007, EPA approved into the Tennessee SIP an abbreviated CAIR SIP revision with allowance allocation and opt-in provisions.<sup>4</sup> On November 25, 2009, EPA approved into the Tennessee SIP a further abbreviated CAIR SIP revision expanding applicability of the CAIR ozone season NO<sub>x</sub> trading program to NO<sub>x</sub> SIP Call non-EGUs.<sup>5</sup>

EPA discontinued administration of the NO<sub>x</sub> Budget Trading Program in 2009 upon the start of the CAIR trading programs. The NO<sub>x</sub> SIP Call requirements continued to apply, however, and EGUs that formerly participated in the NO<sub>x</sub> Budget Trading Program in almost all states continued to meet their NO<sub>x</sub> SIP Call requirements under the generally more stringent requirements of the CAIR ozone season trading program. States needed to assess their NO<sub>x</sub> SIP Call requirements and take other regulatory action as necessary to ensure that their obligations for the large non-EGUs continued to be met either through submission of a CAIR SIP or other NO<sub>x</sub> regulation. EPA has implementing regulations for the NO<sub>x</sub> SIP Call at 40 CFR 51.121.

On December 23, 2008, CAIR was remanded to EPA by the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in *North Carolina v. EPA*, 531 F.3d 896 (2008), *modified on rehearing*, 550 F.3d 1176. This ruling allowed CAIR to remain in effect until a new interstate transport rule consistent with the Court’s opinion was developed. While EPA worked on developing a new rule to address the

interstate transport of air pollution, the CAIR program continued to be implemented with the NO<sub>x</sub> annual and ozone season programs beginning in 2009 and the SO<sub>2</sub> annual program beginning in 2010.

EPA issued the Cross-State Air Pollution Rule (CSAPR) in July 2011 to replace CAIR<sup>6</sup> and address the requirements of the good neighbor provision for the 1997 Annual PM<sub>2.5</sub> NAAQS, the 2006 24-hour PM<sub>2.5</sub> NAAQS, and the 1997 8-hour Ozone NAAQS. As amended (including by the 2016 CSAPR Update, which addressed good neighbor requirements for the 2008 8-hour Ozone NAAQS), CSAPR currently requires 27 Eastern states—including Tennessee—to limit their statewide emissions of SO<sub>2</sub> and/or NO<sub>x</sub> in order to mitigate transported air pollution impacting other states’ ability to attain or maintain the previously-listed NAAQS. As a mechanism for achieving compliance with the emissions limitations, CSAPR establishes five federal emissions trading programs: A program for annual NO<sub>x</sub> emissions, two geographically separate programs for annual SO<sub>2</sub> emissions, and two geographically separate programs for ozone-season NO<sub>x</sub> emissions. Currently, through FIP provisions established in CSAPR and subsequent SIP revisions from various states, each affected state’s units are required to participate in up to three of the five CSAPR trading programs.

The CSAPR trading programs for annual NO<sub>x</sub>, annual SO<sub>2</sub>, and ozone season NO<sub>x</sub> are applicable to the large EGUs (*i.e.*, EGUs that are greater than 25 megawatts) in each covered state, and a state may also expand trading program applicability to include certain smaller EGUs. Under CSAPR as originally promulgated, states could not expand the applicability under CSAPR’s ozone season NO<sub>x</sub> trading program to include non-EGUs that formerly participated in the NO<sub>x</sub> Budget Trading Program. Starting in 2017, with implementation of the CSAPR Update, states once again have this option, as they did under CAIR.

With respect to Tennessee, large EGUs in Tennessee are currently subject to three of the CSAPR trading programs, including one addressing ozone season NO<sub>x</sub> emissions. Tennessee has not chosen to expand CSAPR applicability to small EGUs or non-EGUs.

<sup>6</sup> Implementation of CAIR was formally sunset upon the implementation of CSAPR, which—because of extended litigation—was delayed until 2015. See 79 FR 71663 (December 3, 2014) and 81 FR 13275 (March 14, 2016).

<sup>1</sup> See 63 FR 57356 (October 27, 1998). As originally promulgated, the NO<sub>x</sub> SIP Call also addressed good neighbor obligations under the 1997 8-hour ozone NAAQS, but EPA subsequently stayed the rule’s provisions with respect to that standard. 40 CFR 51.121(q).

<sup>2</sup> The NO<sub>x</sub> SIP Call also identified potential emissions reductions from other non-EGUs, including cement kilns and stationary internal combustion (IC) engines.

<sup>3</sup> See 69 FR 3015 (January 22, 2004).

<sup>4</sup> See 72 FR 46388 (August 20, 2007).

<sup>5</sup> See 74 FR 61535 (November 25, 2009).

## II. Tennessee's SIP Submissions and EPA's Analysis

### A. Tennessee's Submittal To Address NO<sub>x</sub> SIP Call Requirements and EPA's Analysis

Via a letter to EPA dated February 27, 2017,<sup>7</sup> Tennessee provided a SIP revision to incorporate a new provision—Tennessee Comprehensive Rules and Regulation (TCRR) 1200–03–27–.12, “NO<sub>x</sub> SIP Call Requirements for Stationary Boilers and Combustion Turbines” (TN 2017 NO<sub>x</sub> SIP Call Rule)—into the SIP. The TN 2017 NO<sub>x</sub> SIP Call Rule establishes a state control program for sources that are subject to the NO<sub>x</sub> SIP Call, but not covered under CSAPR. The TN 2017 NO<sub>x</sub> SIP Call Rule contains several subsections that

together comprise a non-EGU control program under which Tennessee will allocate a specified budget of allowances to affected sources.

Subsections 1200–03–27–.12(1) and 1200–03–27–.12(3) contain the basic definitions and applicability defining the program. 1200–03–27–.12(1) contains the definitions applicable to the section, including a definition of affected units under the TN 2017 NO<sub>x</sub> SIP Call Rule as units with maximum design heat input greater than 250 MMBtu/hr that combust fossil fuel in specified amounts, except units that are covered under CSAPR or serve generators producing power for sale. 1200–03–27–.12(1) also contains a list of specific “existing affected units,”<sup>8</sup> while it defines a “new affected unit” as

any affected unit that is not an existing affected unit. 1200–03–27–.12(3) establishes the applicability of the rule to each affected unit and each affected facility.

Subsections 1200–03–27–.12(5) and 1200–03–27–.12(6) provide the state budget as well as the State's methodology for allocating allowances to affected units. 1200–03–27–.12(5) sets the state emissions budget for allowance allocations to affected units at 5,666 tons per control period. 1200–03–27–.12(6)(a) provides that Tennessee will allocate NO<sub>x</sub> allowances in amounts specified in the SIP to existing units. The amounts allocated to existing units are contained in Tennessee Air Pollution Control Board Order 16–0163, as identified in Table 1, below.<sup>9</sup>

TABLE 1—TENNESSEE LIST OF EXISTING AFFECTED UNITS AND ALLOCATION AMOUNTS

Facility name	Units	Allocation amount
Packaging Corporation of America .....	Unit 17 .....	85
Tate & Lyle, Loudon .....	Units 34 and 35 .....	264
Resolute FP, US, Inc .....	Units 11 and 12 .....	456
Eastman Chemical Company .....	Units 83–23 and 83–24; Units 253–25, Units 253–26, Units 253–27, Units 253–28, and Units 253–29; Units 325–30 and 325–31.	3,047
The Valero Refining Company—Tennessee, LLC .....	Unit P049 .....	23
Tennessee Valley Authority, Cumberland Fossil Plant (startup boilers).	Startup Boilers A1 and A2 .....	31
New Unit Set-Aside <sup>10</sup> .....	.....	1,760
Total Allowances Allocated .....	.....	5,666

1200–03–27–.12(6)(b)–(c) provide the methodology for allocation of allowances to new affected units, which are based on NO<sub>x</sub> emission rates for new sources and converted to tons based on heat input.

1200–03–27–.12(7) and 1200–03–27–.12(11) contain provisions relating to NO<sub>x</sub> emission requirements and monitoring and reporting. 1200–03–27–.12(7)(a) limits the total tons of NO<sub>x</sub> emissions from a facility to the total number of allowances allocated to that facility. 1200–03–27–.12(11) requires units to comply with the emissions monitoring, recordkeeping, and reporting requirements of 40 CFR part 75. 1200–03–27–.12(7)(b) specifies additional reporting and recordkeeping requirements related to each facility, which require the facility to report its

emissions and to generally maintain records for at least five years.<sup>11</sup> 1200–03–27–.12(7)(c) provides the penalties if a unit's emissions exceed allocated allowances, and 1200–03–27–.12(7)(d) provides information related to liability under the Rule.

Other sections in the rule include the following topics: Abbreviations (1200–03–27–.12(2)); exemptions for permanently retired units (1200–03–27–.12(4)); computation of time under the rule (1200–03–27–.12(8)); and additional information about the TDEC Technical Secretary's actions under the rule (1200–03–27–.12(9) and 1200–03–27–.12(10)).

In order to address the requirements of the NO<sub>x</sub> SIP Call for sources that are not covered under a CSAPR trading program for ozone season NO<sub>x</sub>

emissions, as described above, SIP revisions must provide for enforceable emissions limitations and require part 75 monitoring.<sup>12</sup> The TN 2017 NO<sub>x</sub> SIP Call Rule provides for enforceable emissions limitations by establishing a state budget representing the maximum amount of NO<sub>x</sub> emission allowances that may be issued for each control period, allocating the allowances to affected units, and requiring units to limit their emissions to the number of allowances they hold. The amount of the budget matches the portion of the State's total emissions budget assigned to non-EGUs under the NO<sub>x</sub> Budget Trading Program.<sup>13</sup> As discussed above, the TN 2017 NO<sub>x</sub> SIP Call Rule also requires affected units to comply with part 75 monitoring (1200–03–27–.12(11)).

<sup>7</sup> EPA notes that it received the submittal on February 28, 2017.

<sup>8</sup> See Table 1 for the list of existing affected units.

<sup>9</sup> Tennessee included Board Order 16–0163 in its February 2017 SIP revision as Attachment 3.

<sup>10</sup> The New Unit Set Aside is not an “existing affected unit,” however, it is included to show Tennessee's allocation of its entire budget. The New

Unit Set Aside is defined as the state budget from 1200–03–27–.12(5), minus the amount of allocations to existing units in 1200–03–27–.12(6)(a). See 1200–03–27–.12(6)(c)(1).

<sup>11</sup> EPA notes that the February 27, 2018 SIP submission contains paragraph 1200–3–27–.12(7)(b)4. 1200–3–27–.12(7)(b)4 contained a requirement for sources to report to the Tennessee

Division of Air Pollution Control, in addition to EPA. However, as reporting to EPA continues to be required for sources, Tennessee withdrew 1200–3–27–.12(7)(b)4 from the February 27, 2018 submission in the July 24, 2018 Letter. As a result, EPA is not acting on the withdrawn paragraph.

<sup>12</sup> See 40 CFR 51.121(f)(2)(ii) and 51.121(i)(4).

<sup>13</sup> See 71 FR 25072 (April 28, 2006).

While the TN 2017 NO<sub>x</sub> SIP Call Rule generally addresses the NO<sub>x</sub> SIP Call requirements for non-EGUs, EPA identified several potential ambiguities. Accordingly, Tennessee submitted two supplemental letters that impact EPA's proposed action.

First, EPA notes that 1200–03–27–.12(6)(d) provides the TDEC Technical Secretary with a mechanism for adjusting the existing units' allocation amounts specified in the State's regulations but does not explicitly state that Tennessee will provide these changes for approval into the SIP. On July 24, 2018, Tennessee submitted a letter clarifying that, consistent with 1200–03–27–.12(6)(a), it interprets the provision to require that any adjusted allowance allocation amounts for existing affected units under 1200–03–27.12(6)(d) be submitted to EPA for approval as a SIP revision to be incorporated into the SIP prior to allocation. *See* July 24, 2018 Letter. EPA's proposed action on Tennessee's SIP is therefore based on the clarification of the State's interpretation of this provision as explained in the State's July 24, 2018 letter.

Second, Tennessee's February 27, 2017 submission provides for a state control program that is generally applicable to units with a maximum design heat input greater than 250 MMBtu/hr, that either combust more than 50 percent fossil fuel or are projected to combust more than 50 percent fossil fuel, and that are not subject to CSAPR. While these applicability criteria would cover all existing Tennessee units that have been identified as having obligations under the NO<sub>x</sub> SIP Call and that are not subject to CSAPR, as well as most types of potential new units that should be covered, the February 27, 2017 SIP submission also exempts any unit that serves a generator that produces power for sale. Because certain potential new units serving generators that produce power for sale could qualify for a cogeneration exemption under CSAPR but still have obligations under the NO<sub>x</sub> SIP Call, the February 27, 2017 submission does not cover all types of potential new units that must be covered to fully address NO<sub>x</sub> SIP Call obligations. On May 11, 2018, Tennessee submitted a commitment letter requesting conditional approval of the 2017 NO<sub>x</sub> SIP Call Rule; and committing to provide a SIP revision to EPA by April 30, 2019, that addresses this deficiency by revising the definition of "affected unit" to remove the unqualified exclusion for any unit that serves a generator that produces power for sale. *See* May 11, 2018 Letter. In a

letter dated October 11, 2018, Tennessee revised the commitment date from April 30, 2019, to December 31, 2019. *See* October 11, 2018 Letter.

Based on the State's commitment to submit a SIP revision addressing the identified deficiency, EPA is proposing to conditionally approve the February 27, 2017 submission, as clarified by the State's July 24, 2018 Letter. If Tennessee meets its commitment to submit a SIP revision addressing the deficiency by December 31, 2019, the TN 2017 NO<sub>x</sub> SIP Call Rule will remain a part of the SIP until EPA takes final action approving or disapproving the new SIP revision. However, if the State fails to submit this revision on or before December 31, 2019, the conditional approval will become a disapproval and EPA will issue a notice to that effect. If the conditional approval becomes a disapproval, the disapproval triggers the FIP requirement under CAA section 110(c).

Last, Tennessee has voluntarily committed to revising potentially ambiguous provisions of its regulations at 1200–03–27–.12(6)(c)2.(ii), to clarify that the State will allocate allowances for all 3,672 hours of the ozone season, and at 1200–03–27.12(11)(a), to clarify that the State intends for the Responsible Official to be a designated representative as the term is defined in 40 CFR 72 subpart B.<sup>14</sup> Because EPA interprets these provisions, as currently written, in a manner consistent with the State's interpretations and intended clarifications, EPA's proposed approval is not conditioned upon these particular commitments.

#### *B. Tennessee's SIP Submission as It Relates to CAIR and EPA's Analysis*

Tennessee's February 27, 2017 submission also seeks to remove the SIP-approved portions of the state trading program rules adopted to comply with annual CAIR programs from Tennessee's SIP at 1200–03–14–.04—"CAIR SO<sub>2</sub> Annual Trading Program" and 1200–03–27–.10—"CAIR NO<sub>x</sub> Annual Trading Program" because the CAIR annual programs have been replaced by the CSAPR annual programs.<sup>15</sup> In addition, Tennessee's

February 27, 2017, submission seeks to remove the SIP-approved portions of the State's trading program rules adopted to comply with ozone season CAIR programs from Tennessee's SIP at 1200–03–27–.11—"CAIR NO<sub>x</sub> Ozone Season Trading Program," because the CAIR program has been replaced by CSAPR for EGUs, and, if approved, Tennessee's state control program would address the outstanding NO<sub>x</sub> SIP Call requirements for non-EGUs.<sup>16</sup>

In this notice, EPA proposes to approve the removal of these CAIR-related provisions from Tennessee's SIP. As explained above, the D.C. Circuit remanded CAIR to EPA in 2008; however, the court left CAIR in place while EPA worked to develop a new interstate transport rule. CSAPR was promulgated to respond to the Court's concerns and to replace CAIR. The implementation of CSAPR was delayed for several years beyond its originally expected implementation timeframe of 2012, and therefore, the sunset of CAIR was also deferred. CAIR was implemented through the 2014 compliance periods and was replaced by CSAPR on January 1, 2015. EPA promulgated regulations to sunset the CAIR trading programs and is no longer administering them.<sup>17</sup> EPA therefore proposes to approve the removal of Tennessee's SIP provisions related to CAIR.

#### *C. Tennessee's Submission To Remove Prior NO<sub>x</sub> SIP Call Provisions and EPA's Analysis*

In a letter dated April 3, 2018,<sup>18</sup> Tennessee provided a SIP revision to remove Tennessee Rule 1200–03–27–.06—"NO<sub>x</sub> Budget Trading Program for State Implementation Plans" (TN 2003 NO<sub>x</sub> Rule). The TN 2003 NO<sub>x</sub> Rule was approved into the Tennessee SIP to address the requirements of the NO<sub>x</sub> SIP Call.<sup>19</sup> This rule was sunset when Tennessee's rule Section 1200–3–27.11—"CAIR NO<sub>x</sub> Ozone Season Trading Program" was approved into its SIP in 2009<sup>20</sup> through a provision in the adopted CAIR rules at 1200–03–27–

allocation and opt-in provisions. *See* 72 FR 46388 (August 20, 2007).

<sup>16</sup> *See* 40 CFR 52.38(b). The SIP-approved portions of the State's CAIR ozone season trading program rule include the allowance allocation and opt-in provisions and the provisions extending applicability to non-EGUs. *See* 72 FR 46388 (August 20, 2007), 74 FR 61535 (November 25, 2009).

<sup>17</sup> 40 CFR 51.123(ff) and 52.35(f) (SIP and FIP requirements related to NO<sub>x</sub>); 40 CFR 51.124(s) and 52.36(e) (SIP and FIP requirements related to SO<sub>2</sub>).

<sup>18</sup> EPA notes that the submittal was received on April 6, 2018.

<sup>19</sup> *See* 69 FR 3016 (January 22, 2004) (with a state-effective date of July 27, 2003).

<sup>20</sup> *See* 74 FR 61535 (November 25, 2009).

<sup>14</sup> In its May 11, 2018 letter, Tennessee also committed to add the simple cycle combustion turbines at Tennessee Valley Authority's Allen Fossil Plant to the definition of "existing affected unit" in 1200–03–27–.12(1). However, in its July 24, 2018 letter, Tennessee amended its May 11, 2018 letter and withdrew this commitment. Because these particular units are below the 25 MW NO<sub>x</sub> SIP Call applicability threshold for EGUs, inclusion of the units is not required under the NO<sub>x</sub> SIP Call.

<sup>15</sup> *See* 40 CFR 52.38(a) and 52.39. The SIP-approved portions of the State's CAIR annual trading program rules include the allowance

.11(1)(b),<sup>21</sup> and although the earlier rule has not been implemented since that time, it has not been removed from the approved SIP. Tennessee provided the April 6, 2018 submission to remove the TN 2003 NO<sub>x</sub> Rule in order to avoid any uncertainty that could otherwise arise when the state CAIR rule provision sunseting implementation of the TN 2003 NO<sub>x</sub> Rule is removed from the SIP.

EPA is proposing to approve the revision to remove the TN 2003 NO<sub>x</sub> Rule from the Tennessee SIP because it is consistent with the CAA and will provide clarity to affected sources and the public. Thus, EPA proposes to conclude that removal of the TN 2003 NO<sub>x</sub> Rule from the Tennessee SIP is appropriate.

#### D. Analysis of NO<sub>x</sub> Emissions

Approval of the February 27, 2017 and April 3, 2018, Tennessee SIP submittals would not result in increased NO<sub>x</sub> emissions,<sup>22</sup> and therefore would have no impact on any requirements related to attainment, reasonable further progress, or any other NAAQS requirements under the CAA. The submittals therefore meet section 110(l) of the CAA.

#### III. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference TCRR 1200–03–27–.12—“NO<sub>x</sub> SIP Call Requirements for Stationary Boilers and Combustion Turbines,” state effective February 19, 2017, which establishes a state control program to comply with the obligations of the NO<sub>x</sub> SIP Call (with the exception of paragraph 1200–3–27–.12(7)(b)4.). EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 4 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

#### IV. Proposed Action

As described above, EPA is proposing to conditionally approve the portion of the February 27, 2017, SIP revision to

add TCRR 1200–03–27–.12—“NO<sub>x</sub> SIP Call Requirements for Stationary Boilers and Combustion Turbines” (except paragraph 1200–03–27–.12(7)(b)4.) to the Tennessee SIP, which establishes a state control program to comply with the obligations of the NO<sub>x</sub> SIP Call, as clarified in the July 24, 2018 Letter. If finalized, approval of this portion of the February 27, 2017, SIP revision will be conditioned on Tennessee submitting by December 31, 2019, a complete SIP revision amending the rule’s applicability provisions to cover certain potential new units as discussed in section II.A. of this proposed action, consistent with the State’s commitment. In addition, EPA is proposing to approve the portion of the February 27, 2017 SIP submission to remove the SIP-approved portions of the State’s CAIR trading program rules from the Tennessee SIP at TCRR 1200–03–14–.04—“CAIR SO<sub>2</sub> Annual Trading Program,” 1200–03–27–.10—“CAIR NO<sub>x</sub> Annual Trading Program,” and 1200–03–27–.11—“CAIR NO<sub>x</sub> Ozone Season Trading Program.” Further, EPA is proposing to approve the April 3, 2018, SIP revision to remove a previous NO<sub>x</sub> SIP Call trading program at TCRR 1200–03–27–.06—“NO<sub>x</sub> Budget Trading Program for State Implementation Plans.” EPA requests comment on the proposed actions.

#### V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. See 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. These actions merely propose to approve state law as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law. For that reason, these proposed actions:

- Are not significant regulatory actions subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Are not Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory actions because SIP approvals are exempted under Executive Order 12866;
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having significant economic impact on a substantial number of small entities

under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Do 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);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are 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
- Do 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).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: December 6, 2018.

**Mary S. Walker,**

*Acting Regional Administrator, Region 4.*

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<sup>21</sup> 1200–03–27–.11(1)(b) states: “The provisions of 1200–03–27–.06 shall not apply to the control period beginning in 2009 and any control period thereafter.”

<sup>22</sup> See 1200–03–27–.12(5) (maintaining the NO<sub>x</sub> SIP Call budget for non-EGUs of 5,666 tons NO<sub>x</sub> per ozone season); see also the February 28, 2017, SIP submittal at Attachment 4 (containing a technical support document that showing that actual emissions are not exceeding the non-EGU NO<sub>x</sub> SIP Call budget for Tennessee).