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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2009-0786; FRL-9663-6]

#### Approval and Promulgation of Implementation Plans; Tennessee; Regional Haze State Implementation Plan

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

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing a limited approval and a limited disapproval of a revision to the Tennessee State Implementation Plan (SIP) submitted by the State of Tennessee, through the Tennessee Department Environment and Conservation (TDEC), on April 4, 2008. EPA is taking final action on the entire SIP revision except for the Best Available Retrofit Technology (BART) determination for Eastman Chemical Company (Eastman). EPA is not taking any action on the Eastman BART determination at this time. Tennessee's April 4, 2008, SIP revision addresses regional haze for the first implementation period. Specifically, this SIP revision addresses the requirements of the Clean Air Act (CAA or Act) and EPA's rules that require states to prevent any future and remedy any existing anthropogenic impairment of visibility in mandatory Class I areas (national parks and wilderness areas) caused by emissions of air pollutants from numerous sources located over a wide geographic area (also referred to as the "regional haze program"). States are required to assure reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas. EPA is finalizing a limited approval of Tennessee's April 4, 2008, SIP revision, except for the Eastman BART determination, to implement the regional haze requirements for Tennessee on the basis that this SIP revision, as a whole, strengthens the Tennessee SIP. Also in this action, EPA is finalizing a limited disapproval of this same SIP revision because of the deficiencies in the State's regional haze SIP revision arising from the remand by the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) to EPA of the Clean Air Interstate Rule (CAIR).

**DATES:** *Effective Date:* This rule will be effective May 24, 2012.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2009-0786. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information 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 through [www.regulations.gov](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 for further information. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Michele Notarianni, 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. Michele Notarianni can be reached at telephone number (404) 562-9031 and by electronic mail at [notarianni.michele@epa.gov](mailto:notarianni.michele@epa.gov).

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##### I. What is the background for this final action?

Regional haze is visibility impairment that is produced by a multitude of sources and activities which are located across a broad geographic area and emit fine particles (*e.g.*, sulfates, nitrates, organic carbon, elemental carbon, and soil dust), and their precursors (*e.g.*, sulfur dioxide (SO<sub>2</sub>), nitrogen oxides (NO<sub>x</sub>), and in some cases, ammonia and volatile organic compounds). Fine particle precursors react in the atmosphere to form fine particulate matter (PM<sub>2.5</sub>) which impairs visibility by scattering and absorbing light.

Visibility impairment reduces the clarity, color, and visible distance that one can see. PM<sub>2.5</sub> can also cause serious health effects and mortality in humans and contributes to environmental effects such as acid deposition and eutrophication.

In section 169A of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the "prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I areas which impairment results from manmade air pollution." On December 2, 1980, EPA promulgated regulations to address visibility impairment in Class I areas that is "reasonably attributable" to a single source or small group of sources, i.e., "reasonably attributable visibility impairment." See 45 FR 80084. These regulations represented the first phase in addressing visibility impairment. EPA deferred action on regional haze that emanates from a variety of sources until monitoring, modeling, and scientific knowledge about the relationships between pollutants and visibility impairment were improved.

Congress added section 169B to the CAA in 1990 to address regional haze issues. EPA promulgated a rule to address regional haze on July 1, 1999 (64 FR 35713), the Regional Haze Rule (RHR). The RHR revised the existing visibility regulations to integrate into the regulation provisions addressing regional haze impairment and established a comprehensive visibility protection program for Class I areas. The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in EPA's visibility protection regulations at 40 CFR 51.300-309. The requirement to submit a regional haze SIP applies to all 50 states, the District of Columbia, and the Virgin Islands. 40 CFR 51.308(b) requires states to submit the first implementation plan addressing regional haze visibility impairment no later than December 17, 2007.

On April 4, 2008, TDEC submitted a revision to Tennessee's SIP to address regional haze in the State's and other states' Class I areas. On June 9, 2011, EPA published an action proposing a limited approval and a limited disapproval of Tennessee's April 4, 2008, SIP revision (including the BART determination for Eastman) to address the first implementation period for regional haze. See 76 FR 33662. EPA proposed a limited approval of Tennessee's April 4, 2008, SIP revision

to implement the regional haze requirements for Tennessee on the basis that this revision, as a whole, strengthens the Tennessee SIP. Also in that action, EPA proposed a limited disapproval of this same SIP revision because of the deficiencies in the State's regional haze SIP revision arising from the remand of CAIR to EPA by the D.C. Circuit.

On July 26, 2011, EPA reopened the comment period for EPA's proposed actions related to Tennessee's April 4, 2008, SIP revision. See 76 FR 44534. See section II of this rulemaking for a summary of the comments received on the proposed actions and EPA's responses to these comments. Also, detailed background information and EPA's rationale for the proposed actions is provided in EPA's June 9, 2011, proposed rulemaking. See 76 FR 33662.

Following the remand of CAIR, EPA recently issued a new rule in 2011 to address the interstate transport of NO<sub>x</sub> and SO<sub>2</sub> in the eastern United States. See 76 FR 48208 (August 8, 2011) ("the Transport Rule," also known as the Cross-State Air Pollution Rule (CSAPR)). On December 30, 2011, EPA proposed to find that the trading programs in the Transport Rule would achieve greater reasonable progress towards the national goal than would BART in the states in which the Transport Rule applies. See 76 FR 82219. Based on this proposed finding, EPA also proposed to revise the RHR to allow states to substitute participation in the trading programs under the Transport Rule for source-specific BART. EPA has not yet taken final action on that rule.

Also on December 30, 2011, the D.C. Circuit issued an order addressing the status of the Transport Rule and CAIR in response to motions filed by numerous parties seeking a stay of the Transport Rule. In that order, the DC Circuit stayed the Transport Rule pending the court's resolutions of the petitions for review of that rule in *EME Homer Generation, L.P. v. EPA* (No. 11-1302 and consolidated cases). The court also indicated that EPA is expected to continue to administer CAIR in the interim until the court rules on the petitions for review of the Transport Rule.

## II. What is EPA's response to comments received on this action?

EPA received six sets of comments on the June 9, 2011, rulemaking proposing a limited approval and limited disapproval of Tennessee's April 4, 2008, regional haze SIP revision. Specifically, the comments were received from the American Coalition

for Clean Coal Electricity, Eastman, TDEC, the National Park Service, and the Tennessee Valley Authority. Full sets of the comments provided by all of the aforementioned entities (hereinafter referred to as "the Commenter") are provided in the docket for today's final action. A summary of the comments and EPA's responses are provided below.

*Comment 1:* The Commenter urges EPA to move expeditiously to assess, through modeling, whether the emissions reductions that will be achieved under the Transport Rule will be sufficient to satisfy BART requirements for electric generating units (EGUs) under the regional haze program.

*Response 1:* This comment does not directly address the proposed action in the June 9, 2011, proposed rulemaking. Rather, the comment urges EPA to act more expeditiously in evaluating the impacts of the Transport Rule on regional haze. EPA appreciates the Commenter's interest in the proposed rule and notes that the Agency has performed modeling analyses to determine the visibility improvement expected from the implementation of the Transport Rule and compared the results to the improvements expected from BART. On December 30, 2011 (76 FR 82219), EPA proposed its determination that the Transport Rule achieves greater reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas (including Tennessee's two areas) than source-specific BART (*i.e.*, that the Transport Rule is "better than BART"). Based on this proposed action, EPA believes that the Transport Rule will satisfy BART requirements for SO<sub>2</sub> and NO<sub>x</sub> for EGUs in Tennessee. The final action in that rulemaking will determine whether the Transport Rule may satisfy BART requirements for Tennessee's EGUs.

*Comment 2:* The Commenter requests that EPA delay final action on the June 9, 2011, proposed rulemaking related to Tennessee's regional SIP revision so that the BART requirements are harmonized with other pending federal air quality regulatory actions that affect Eastman's Tennessee facility (*e.g.*, 1-hour SO<sub>2</sub> National Ambient Air Quality Standard (NAAQS), the maximum achievable control technology (MACT) rule for industrial boilers (Industrial Boiler MACT), and the Transport Rule). The Commenter asserts that this delay will provide Eastman with an opportunity to meet all of the requirements of these programs at one time and will allow the Company to comply with all pending requirements in an efficient and cost-effective manner.

*Response 2:* Under section 110(k)(2) of the CAA, EPA is required to act within specified timeframes to approve or disapprove SIP revisions. Tennessee submitted its regional haze SIP revision for EPA review on April 4, 2008, and because EPA did not approve or disapprove the SIP within 12 months as required by section 110(k)(2), the National Parks Conservation Association and other interested parties (Plaintiffs) sued EPA to take action. As a result of that lawsuit, EPA is now operating under a consent decree to finalize approval or disapproval of Tennessee's regional haze SIP. The proposed consent decree originally required EPA to finalize an approval or disapproval action on Tennessee's entire regional haze SIP by March 15, 2012. After publication of EPA's proposed limited approval and limited disapproval action on Tennessee's SIP, the State and Eastman entered into discussions with the Plaintiffs regarding the BART determination for Eastman. The Eastman facility is considering a conversion to natural gas in one or two of its powerhouses in lieu of continuing to use coal and retrofitting its facility pursuant to the facility's BART determination to reduce its SO<sub>2</sub> emissions. Based on these discussions and a March 14, 2012, agreement between Tennessee and Eastman regarding possible control options to satisfy BART, the Plaintiffs agreed to extend the date in the consent decree for EPA to take final action on the BART determination for Eastman. Accordingly, EPA is taking no action on this BART determination at this time since EPA expects Tennessee to submit a revised BART determination for Eastman in the near future. EPA will take action on Eastman BART in a separate rulemaking. A copy of the March 14, 2012, agreement between Eastman and Tennessee is included in the docket for this action.

*Comment 3:* The Commenter indicates that it is fundamentally inequitable to set the BART compliance deadline earlier for non-EGUs (in reference to the Eastman facility) than for EGUs and to require non-EGUs to make necessary investments earlier than EGUs. Further, the Commenter asserts that this step is not required to ensure reasonable progress in visibility improvement in Class I areas.

*Response 3:* It is not clear what compliance dates the Commenter is referring to. Pursuant to 40 CFR 51.308(e), Tennessee submitted a regional haze SIP containing BART determinations for each BART-eligible source that may reasonably be anticipated to cause or contribute to any

impairment of visibility in any Class I area and schedules for compliance with BART for each of these sources. Tennessee's April 4, 2008, regional haze SIP also contains a requirement, based on the provisions of 40 CFR 51.308(e)(1)(iv), that each source subject to BART be required to install and operate BART as expeditiously as practicable, but in no event later than five years after approval of the SIP revision. Therefore, the latest BART compliance date under the Tennessee regional haze SIP for the State's subject-to-BART sources (excluding Eastman for the reasons discussed below and in Response 2) is in 2017, five years after final action on this rulemaking. Under the aforementioned March 14, 2012, agreement between Tennessee and Eastman, the BART compliance date for Eastman is the same compliance date that Eastman would have received had EPA taken final action on the Eastman BART determination on March 15, 2012, if Eastman does not convert its BART subject unit to natural gas. Additionally, under the RHR, states may opt to implement an alternative measure to source-specific BART that must achieve greater reasonable progress than would be achieved by implementation of BART. 40 CFR 51.308(e)(2). For any BART alternative measure, all emissions reductions must take place during the period of the first long-term strategy (LTS). 40 CFR 51.308(e)(2)(iii).

In addition, the Utility Boiler MACT and the Industrial Boiler MACT require compliance with their respective standards by 2015 as does the Transport Rule, a rule that applies only to EGUs. It is therefore possible that an EGU relying on the Transport Rule to satisfy BART will be required to implement BART (via the Transport Rule) before a non-EGU. The SO<sub>2</sub> and ozone NAAQS processes have not progressed sufficiently to establish any independent requirements for industrial or utility boilers.

*Comment 4:* The Commenter questions EPA's authority to issue a limited approval of Tennessee's SIP revision. Further, the Commenter states that EPA should reach full resolution of the issue of what constitutes BART and reasonable progress for EGUs before approving any portion of Tennessee's regional haze SIP.

*Response 4:* EPA has the authority to issue a limited approval and believes that it is appropriate and necessary to promulgate a limited approval and limited disapproval of Tennessee's regional haze SIP at this time. This action results in an approval of the entire regional haze submission and all of its elements, preserving the visibility

benefits offered by the SIP while providing EPA with the opportunity to demonstrate that the Transport Rule is better than BART. As noted above, EPA has already published a proposed rule reflecting this demonstration. EPA cannot fully approve regional haze SIP revisions that rely on CAIR for emissions reduction measures for the reasons discussed in section IV of the June 9, 2011, proposed rulemaking (see 76 FR 33662) and therefore proposed to grant limited approval and limited disapproval of the Tennessee regional haze SIP. It is not necessary to reach full resolution on whether the Transport Rule is better than BART for EPA to issue a limited approval. Granting full approval at a later date would only delay realization of the SIP's visibility benefits whereas the SIP is strengthened now by acting through the limited approval.

*Comment 5:* The Commenter asserts that the 1-hour SO<sub>2</sub> NAAQS is very restrictive and may result in fuel switching from coal to natural gas. In addition, the Commenter mentions that sources upgrading their facilities may be faced with possible greenhouse gas best available control technology determinations that would drive repowering from coal to natural gas. Further, the Commenter mentions that sources must also consider what controls may be required by the Transport Rule and the Industrial Boiler MACT. The Commenter concludes with a request that EPA time the final approval of the Tennessee Regional Haze SIP to allow BART sources to have a reasonable amount of time to plan for the implementation of the four above-listed regulatory programs, and mentions that the burden of meshing all of the planning and construction of equipment to meet these programs is too much to ask of industries that are trying to stay competitive and to keep citizens employed.

*Response 5:* See response to Comment 2.

*Comment 6:* The Commenter states that EPA should have considered updated information in evaluating the BART determination for Alcoa Tennessee's (Alcoa's) primary aluminum smelter. In the Commenter's opinion, based on this information, Alcoa should have: (1) Conducted a full five-step analysis of sodium-based scrubbing for potline SO<sub>2</sub> emissions; (2) used EPA's *Air Pollution Control Cost Manual* (EPA's "Cost Manual") to estimate costs, or better document and justify costs that deviate from EPA's Cost Manual approach; (3) justified the need for a redundant scrubbing module (absorber), or revised the facility's

estimates to eliminate it; (4) provided modeling results consistent with established modeling procedures for all Class I areas within 300 kilometers for the base case as well as the 95 percent potline SO<sub>2</sub> removal case; and (5) explained how the facility objectively evaluated the resulting visibility benefits to all Class I areas within 300 kilometers of the facility. The Commenter states that Alcoa also appears to have overestimated costs for limestone slurry forced oxidation scrubbing. The Commenter asserts that wet scrubbing of potline emissions is BART at Alcoa.

*Response 6:* In December 2007, the Commenter submitted comments to Tennessee on the State's regional haze SIP, based on the information available to both EPA and the State at that time, and raised no substantive issues regarding Tennessee's BART determination for Alcoa. EPA does not believe that the Commenter's expressed concerns regarding Alcoa's BART analysis (in response to the June 9, 2011, proposed rulemaking) justify reconsideration of Tennessee's BART determination.

Tennessee considered the degree of improvement in visibility reasonably anticipated to result from the implementation of the evaluated control technologies and determined that, for the two Class I areas that modeled an impact from Alcoa of greater than 0.5 deciview, the highest 98th percentile visibility improvement from wet scrubbing potline emissions at Alcoa's BART-eligible source was 0.72 deciview at Great Smoky Mountains National Park, the Class I area receiving the greatest impact from Alcoa's SO<sub>2</sub> emissions. The visibility improvement at the Joyce Kilmer-Slickrock Wilderness Area, Tennessee's other Class I area, was 0.27 deciview. While the Commenter questioned the modeled visibility improvements, the Commenter presented no alternative assessment. Hence, the best available estimate of visibility improvement from the Commenter's suggested BART determination remains as it is presented in the SIP. EPA also notes that both of Tennessee's Class I areas are projected to meet or exceed the uniform rate of progress with the State's BART determination for Alcoa.

The degree of visibility improvement reasonably anticipated from each evaluated BART control technology is one of the five statutory factors that a state must consider in making a BART determination, and the weight and significance to be assigned to each factor by a state will vary depending on the particular circumstances in each

determination. See 70 FR 39170. In the SIP, the State weighed the projected improvements in visibility against the cost effectiveness calculation as well as the projected capital and annual control costs. Tennessee also considered the energy and non-air quality environmental impacts of compliance associated with wet scrubbers in evaluating possible BART controls. The State determined that the capital costs and control costs for the wet scrubbers were approximately \$200,000,000 and \$39,000,000, respectively, and that the scrubbers would require 180 million gallons per year of makeup water, generate 17,600 tons per year of solid waste requiring off-site disposal, and increase PM<sub>2.5</sub> emissions by 438 tons per year. Considering all of these factors, Tennessee determined that wet scrubbers were not appropriate as BART. The cost effectiveness would remain substantially higher than the values that Tennessee considered reasonable for any other BART source even with the Commenter's suggested changes to the cost of compliance factor in the BART determination.

When considering all of the BART factors, including the limited visibility improvement projected in Tennessee's Class I areas, EPA believes that the State's BART determination is reasonable using either the cost effectiveness values calculated by Tennessee or the values presented by the Commenter. EPA reviewed Tennessee's BART analysis for Alcoa and concludes it was conducted in a manner that is consistent with the approach set forth in EPA's BART Guidelines and reflects a reasonable application of EPA's guidance to this particular source.

*Comment 7:* The Commenter recommends that EPA grant full, not limited, approval of the Tennessee SIP for regional haze, and mentions that such full approval should not be delayed pending EPA's analysis to confirm that the Transport Rule would provide sufficient reductions to satisfy BART requirements. Rather, in the Commenter's opinion, EPA must grant full approval but reserve the option of having the SIP reopened in the unlikely event that its analysis indicates that emissions reductions beyond the Transport Rule are necessary in Tennessee to meet the national visibility goals.

*Response 7:* See response to Comment 4.

*Comment 8:* The Commenter asserts that EPA should give full, not limited, approval to Tennessee's regional haze SIP because CAIR and 40 CFR 51.308(e)(4) remain in effect. Further,

the Commenter states that EPA could not have a basis to propose or promulgate disapproval or limited disapproval of a regional haze SIP due to its reliance on CAIR and on 40 CFR 51.308(e)(4) unless EPA had first determined, based on a thorough and defensible analysis, that: (a) The emissions reductions and associated visibility-improvement benefits that are likely to result from the final Transport Rule will not be at least comparable to those achieved under CAIR; and (b) for that reason, the Transport Rule (i) will not satisfy the CAA's BART alternative requirements for NO<sub>x</sub> and SO<sub>2</sub> emissions from affected EGUs and (ii) cannot be used, in at least the same measure as CAIR was used, to help meet reasonable progress requirements for regional haze. The Commenter opines that because the Agency has not made and cannot make such a determination at this time, there is no basis for EPA to do anything other than to give full approval to Tennessee's SIP. The Commenter concludes by stating that EPA should recognize that full approval of the SIP is required because, in the Commenter's opinion, "the SIP is fully compliant with relevant EPA regulations—which are as binding on EPA as they are on the state and sources—as those regulations existed at the time of the SIP's development and submission and as they exist today."

*Response 8:* See response to Comment 4.

### III. What is the effect of this final action?

Under CAA sections 301(a) and 110(k)(6) and EPA's long-standing guidance, a limited approval results in approval of the entire SIP revision, even of those parts that are deficient and prevent EPA from granting a full approval of the SIP revision. *Processing of State Implementation Plan (SIP) Revisions*, EPA Memorandum from John Calcagni, Director, Air Quality Management Division, OAQPS, to Air Division Directors, EPA Regional Offices I–X, September 7, 1992, (1992 Calcagni Memorandum) located at: <http://www.epa.gov/ttn/caaa/t1/memoranda/siproc.pdf>. Today, EPA is finalizing a limited approval of Tennessee's April 4, 2008, regional haze SIP revision, except for the Eastman BART determination. This limited approval results in approval of Tennessee's entire regional haze submission and all its elements except for the Eastman BART determination. EPA is taking this approach because Tennessee's SIP will be stronger and more protective of the environment with the implementation of those measures by the State and

having federal approval and enforceability than it would without those measures being included in the SIP.

In this action, EPA is also finalizing a limited disapproval of Tennessee's April 4, 2008, regional haze SIP revision insofar as this SIP revision relies on CAIR to address the impact of emissions from the State's own EGUs. As explained in the 1992 Calcagni Memorandum, "[t]hrough a limited approval, EPA [will] concurrently, or within a reasonable period of time thereafter, disapprove the rule \* \* \* for not meeting all of the applicable requirements of the Act. \* \* \* [T]he limited disapproval is a rulemaking action, and it is subject to notice and comment." Final limited disapproval of a SIP submittal does not affect the federal enforceability of the measures in the subject SIP revision nor prevent state implementation of these measures. The legal effect of the final limited disapproval for Tennessee's April 4, 2008, SIP revision is to provide EPA the authority to issue a federal implementation plan at any time, and to obligate the Agency to take such action no more than two years after the effective date of EPA's final action. As explained in the 1992 Calcagni Memorandum, "[t]hrough a limited approval, EPA [will] concurrently, or within a reasonable period of time thereafter, disapprove the rule \* \* \* for not meeting all of the applicable requirements of the Act. \* \* \* [T]he limited disapproval is a rulemaking action, and it is subject to notice and comment."

### IV. Final Action

EPA is finalizing a limited approval and a limited disapproval of a revision to the Tennessee SIP submitted by the State of Tennessee on April 4, 2008, as meeting some of the applicable regional haze requirements as set forth in sections 169A and 169B of the CAA and in 40 CFR 51.300–308. As discussed above, EPA is not taking final action on the BART determination for Eastman at this time.

### V. Statutory and Executive Order Reviews

#### A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

### B. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., OMB must approve all “collections of information” by EPA. The Act defines “collection of information” as a requirement for answers to \* \* \* identical reporting or recordkeeping requirements imposed on ten or more persons \* \* \*. 44 U.S.C. 3502(3)(A). The Paperwork Reduction Act does not apply to this action.

### C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the federal-state relationship under the CAA, preparation of flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

### D. Unfunded Mandates Reform Act (UMRA)

Under sections 202 of the UMRA of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that today's action does not include a federal mandate that may result in estimated costs of \$100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

### E. Executive Order 13132, Federalism

*Federalism* (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.” Under Executive Order 13132, EPA may not issue a regulation that has Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has Federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

### F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments. Thus, Executive Order 13175 does not apply to this rule.

### G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

*Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be “economically significant” as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

### H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

### I. National Technology Transfer and Advancement Act (NTTAA)

Section 12 of the NTTAA of 1995 requires federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use “voluntary consensus standards” (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to this action. Today's

action does not require the public to perform activities conducive to the use of VCS.

*J. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

*K. Petitions for Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *June 25, 2012*. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

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

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping

requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: April 11, 2012.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

40 CFR part 52 is amended as follows:

**PART 52—[AMENDED]**

■ 1. The authority citation for part 52 continues to read as follows:

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

**Subpart RR—Tennessee**

■ 2. Section 52.2220, the table in paragraph (e) is amended by adding an entry for Regional Haze Plan at the end of the table to read as follows:

**§ 52.2220 Identification of plan.**

\* \* \* \* \*  
(e) \* \* \*

**EPA-APPROVED TENNESSEE NON-REGULATORY PROVISIONS**

| Name of nonregulatory SIP provision  | Applicable geographic or nonattainment area | State effective date     | EPA approval date                                | Explanation   |
|--|---|--------------------------|--|---|
| *<br>Regional Haze Plan (excluding Eastman Chemical Company BART determination). | *<br>Statewide .....                        | *<br>April 4, 2008 ..... | *<br>4/24/2012 [Insert citation of publication]. | *<br>BART emissions limits are listed in Section 7.5.3. |

■ 3. Section 52.2234 is added to read as follows:

**§ 52.2234 Visibility protection.**

(a) The requirements of section 169A of the Clean Air Act are not met because the plan does not include approvable measures for meeting the requirements of 40 CFR 51.308 for protection of visibility in mandatory Class I federal areas.

(b) No action has been taken on the BART determination for Eastman Chemical Company.

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**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R04-OAR-2012-0136-201162; FRL-9662-8]

**Approval and Promulgation of Implementation Plans: Georgia; Approval of Substitution for Transportation Control Measures**

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

**ACTION:** Final rule; notice of administrative change.

**SUMMARY:** EPA is making an administrative change to update the Code of Federal Regulations (CFR) to reflect a change made to the Georgia State Implementation Plan (SIP) on November 5, 2009, as a result of EPA's concurrence on a substitute transportation control measure (TCM) for the Atlanta portion of the Georgia SIP. On February 5, 2010, the State of Georgia, through the Environmental Protection Division (EPD), submitted a revision to the Georgia SIP requesting that EPA update its SIP to reflect a

substitution of a TCM. The substitution was made pursuant to the TCM substitution provisions contained in Clean Air Act (CAA). EPA concurred on this substitution on November 5, 2009. In this administrative action, EPA is updating the non-regulatory provisions of the Georgia SIP to reflect the substitution. In summary, the substitution that EPA concurred on was a conversion of high occupancy vehicle (HOV) lanes to high occupancy toll lanes (HOT). EPA has determined that this action falls under the "good cause" exemption in the Administrative Procedures Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation which allows an agency to make an action effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA).

**DATES:** This action is effective April 24, 2012.

**ADDRESSES:** SIP materials which are incorporated by reference into 40 Code of Federal Regulations (CFR) part 52 are available for inspection at the following location: Environmental Protection