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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 97

[EPA–R04–OAR–2009–0765; FRL–8984–6]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Implementation Plans; Tennessee; Clean Air Interstate Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve revisions to the Tennessee State Implementation Plan (SIP) submitted by the State of Tennessee through the Tennessee Department of Environment and Conservation (TDEC) 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 dioxides (SO₂), nitrogen oxides (NO_x) annual, and NO_x ozone season emissions for the State of Tennessee, promulgated on April 28, 2006, and subsequently revised December 13, 2006.

DATES: *Effective Date:* This final rule is effective November 25, 2009.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2009–0765. All documents in the docket are listed on the <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 <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: Twunjala Bradley, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Ms. Bradley can be reached by telephone at (404) 562–9352 and by electronic mail at bradley.twunjala@epa.gov.

SUPPLEMENTARY INFORMATION:

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I. EPA's Action

EPA is taking final action to approve a revision to Tennessee's SIP, submitted by Tennessee on July 13, 2009, as clarified herein, that is modifying the application of certain provisions of the CAIR FIP concerning NO_x ozone season emissions. (As discussed in the notice of proposed rulemaking for this submission, 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 energy generating units (EGUs) to participate in the EPA administered CAIR cap-and-trade programs addressing SO₂, NO_x annual, and NO_x ozone season emissions. This SIP revision provides a methodology for allocating NO_x allowances for the NO_x ozone season trading program for NO_x SIP Call trading sources that are not EGUs as defined by CAIR, but are subject to the CAIR NO_x ozone season trading program. The CAIR FIPs provide that this methodology will be used to allocate NO_x 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 approving technical corrections to the CAIR NO_x Ozone Season Trading Program opt-in provisions, as noted in the August 20, 2007, approval. Since EPA will no longer administer the NO_x Budget Trading Program, Tennessee has chosen to terminate its Budget Trading program rules (TAPCR Rule 1200–03–27–.06). EPA is, therefore, approving provisions which terminate the State's NO_x Budget Trading Program because those requirements are now addressed by the CAIR NO_x 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. Background

On February 11, 2009, Tennessee adopted a revision to its CAIR NO_x 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 a letter to EPA dated September 24, 2009, clarifying portions of the submittal.

The CAIR FIPs established budgets for Tennessee as 50,973 (2009–2014) and 42,478 (2015–thereafter) tons for NO_x annual emissions, 22,842 (2009–2014) and 19,035 (2015–thereafter) tons for NO_x ozone season emissions and 137,216 (2010–2014) and 96,051 (2015–thereafter) tons for SO₂ emissions. In Tennessee's SIP revision, submitted on July 13, 2009, Tennessee has chosen to include all NO_x SIP Call trading sources that are not EGUs under CAIR in the CAIR NO_x ozone season trading program. As a result of this SIP revision, the CAIR NO_x ozone season budget will be increased annually by 5,666 tons to account for such NO_x SIP Call trading sources. The total Tennessee CAIR NO_x ozone season budgets are therefore, 28,508 (2009–2014) and 24,701 (2015–thereafter) tons. EPA is approving Tennessee State trading budgets under TAPCR 1200–3–27–.11(2)(c).

EPA published a notice of proposed rulemaking to approve Tennessee's revisions to the CAIR SIP on October 14, 2009, (74 FR 52717). EPA did not receive any comments during the public comment period for the proposed rulemaking.

EPA notes that, in *North Carolina v. EPA*, 531 F.3d 836 (DC Cir. Jul.11, 2008) at 916–21, the Court determined, among other things, that the state SO₂ and NO_x

budget established in CAIR were arbitrary and capricious¹. However, the action approved today is consistent with the Court's decision to leave CAIR in place to "temporarily preserve the environmental values covered by CAIR" pending EPA's development and promulgation of a replacement rule that remedies CAIR's flaws. *North Carolina v. EPA*, 550 F.3d 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 SO₂ and NO_x budgets for the CAIR trading programs) in order to "temporarily preserve" the environmental benefits achievable under the CAIR trading programs.

III. Final Action

EPA is taking final action to approve Tennessee's SIP revision that includes an abbreviated CAIR SIP submitted on July 13, 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 SO₂, NO_x annual, and NO_x ozone season emissions. Under this SIP revision and consistent with the flexibility given to the States in the FIPs, EPA is approving Tennessee's CAIR NO_x ozone season provisions expanding the current applicability provisions in the CAIR NO_x ozone season trading program to include units that are not otherwise subject to the trading program but are subject to Tennessee's NO_x Budget Trading Program; revisions to the allocation methodology provisions (interpreted as discussed above) in the CAIR NO_x ozone season trading program to cover these units; and corrections to the CAIR NO_x ozone season trading program opt-in provisions (as discussed above).

As provided for in the CAIR FIP, 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_x ozone season emissions.

¹ The Court also determined that the CAIR trading programs were unlawful (*id.* at 906–8) and that the treatment of title IV allowances in CAIR was unlawful (*id.* at 921–23). For the same reasons that EPA is approving the provisions of Tennessee's SIP revision that use the SO₂ and NO_x budgets set in CAIR, EPA is also approving, as discussed below, Tennessee's SIP revision to the extent the SIP revision adopts the CAIR trading programs, including the provisions addressing applicability, allowance allocations, and use of title IV allowances.

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_x Budget Trading Program as discussed in Section 1.

IV. What Is the Effective Date

An expedited effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rule actions may become effective less than 30 days after publication if the rule "grants or recognizes an exemption or relieves a restriction" and section 5 U.S.C. 553(d)(3), which allows an effective date less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule." EPA finds that there is good cause for this approval to become effective upon publication.

CAIR SIP approvals relieve States and CAIR sources within States from being subject to provisions in the CAIR FIPs that otherwise would apply to them, allowing States to implement CAIR based on their SIP-approved State rule. The relief from these obligations is sufficient reason to allow an expedited effective date of the rule under 5 U.S.C. 553(d)(1). In addition, Tennessee's relief from these obligations provides good cause to make this rule effective immediately upon publication, pursuant to 5 U.S.C. 553(d)(3). The purpose of the 30-day waiting period prescribed in 5 U.S.C. 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Where, as here, the final rule relieves obligations rather than imposes obligations, affected parties, such as the State of Tennessee and CAIR sources within the State, do not need time to adjust and prepare before the rule takes effect.

V. Statutory and Executive Order Reviews

Under the Clean Air Act (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 action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under

Executive Order 12866 (58 FR 51735, October 4, 1993);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

- Does not have Federalism implications as specified in Executive Order 1312 (64 FR 43255, August 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 applications 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.

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 action 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).

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 January 25, 2010. 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) of the CAA.)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Electric utilities,

Intergovernmental relations, Incorporation by reference, Carbon monoxide, Nitrogen dioxide, 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: November 16, 2009.
J. Scott Gordon,
Acting Regional Administrator, Region 4.

■ 40 CFR parts 52 and 97 are 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. In § 52.2220(c), Table 1 is amended under Chapter 1200–3–27, by revising the entry for “Section 1200–3–27.11” to read as follows:

§ 52.2220 Identification of plan.

* * * * *
 (c) * * *

TABLE 1—EPA-APPROVED TENNESSEE REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
* * * * *	Chapter 1200–3–27 Nitrogen Oxides			
Section 1200–3–27.11	CAIR NO _x Ozone Season Trading Program	10/4/09	11/25/09 [Insert citation of publication].	
* * * * *				

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PART 97—[AMENDED]

■ 3. The authority citation for part 97 continues to read as follows:

Authority: 42 U.S.C. 7401, 7403, 7410, 7426, 7601, and 7651, *et seq.*

■ 4. Appendix A to Subpart AAAA is amended by adding the entry “Tennessee” in alphabetical order to read as follows:

Appendix A to Subpart AAAA of Part 97—States With Approved State Implementation Plan Revisions Concerning Applicability

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Tennessee
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 86 and 600

[EPA–HQ–OAR–2005–0169; FRL–8982–1]

RIN 2060–A036

Fuel Economy Regulations for Automobiles: Technical Amendments and Corrections

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action amending and correcting portions of the Environmental Protection Agency’s existing fuel economy and emission regulations. This action makes some minor corrections and amendments to EPA’s December 27th 2006 final rule for fuel economy labeling requirements for cars and light trucks, including a slight revision to the minivan definition. This action also makes changes to EPA regulations to administer the Department of Transportation’s (DOT’s) 2008–2011 model year passenger automobile and

light truck corporate average fuel economy (CAFE) standards. Changes include adding reporting requirements for manufacturers to report to EPA their applicable reformed CAFE fuel economy standards (also called “required fuel economy levels”) and reporting the basis for determining such “required fuel economy levels.”

This direct final rule also adds provisions to clarify that special test procedures, calculation methods and label formats may be used for advanced technology vehicles for fuel economy labeling and CAFE purposes. Advanced technology vehicles include, but are not limited to electric vehicles, fuel cell vehicles, plug-in hybrid vehicles and vehicles equipped with hydrogen-fueled internal combustion engines. In addition, today’s action makes some minor changes to clarify the meaning of, and correct errata in EPA regulations. The above amendments and corrections will allow for the more effective administration of existing regulations.

DATES: This rule is effective on January 25, 2010 without further notice, unless EPA receives adverse comment by December 28, 2009. If EPA receives