**6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R04-OAR-2019-0294; FRL-10005-10-Region 4]**

# Air Plan Approval; Tennessee: Chattanooga NSR Reform

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve revisions to the Tennessee State Implementation Plan (SIP) submitted through two letters dated June 25, 2008, and September 12, 2018. The SIP revisions were submitted by the Tennessee Department of Environment and Conservation (TDEC) on behalf of the Chattanooga/Hamilton County Air Pollution Control Bureau and modify the Prevention of Significant Deterioration (PSD) regulations in the Chattanooga portion of the Tennessee SIP to address changes to the federal new source review (NSR) regulations in recent years for the implementation of the national ambient air quality standards (NAAQS). Additionally, the SIP revisions include updates to Chattanooga's regulations of nitrogen oxides (NOx) and other miscellaneous typographical and administrative updates. This action is being proposed pursuant to the Clean Air Act (CAA or Act).

**DATES:** Comments must be received on or before **[**INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER***]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2019-0294 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:** Andres Febres, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-8966. Mr. Febres can also be reached via electronic mail at febres-martinez.andres@epa.gov.

**SUPPLEMENTARY INFORMATION:**

## I. What action is EPA proposing?

EPA is proposing to approve changes to the Chattanooga portion of the Tennessee SIP regarding PSD permitting, as well as updates to the regulations of NOx and other miscellaneous typographical and administrative updates, submitted by TDEC on behalf of the Chattanooga/Hamilton County Air Pollution Control Bureau (Bureau) through two letters dated

June 25, 2008, and September 12, 2018.[1,2,3] EPA is proposing to approve portions of these SIP revisions that make changes to the Chattanooga City Code, Part II, Chapter 4, Article II, Section 4-41. Specifically, EPA is proposing to approve changes in Section 4-41, which include updates to Rule 2 – *Regulation of Nitrogen Oxides;* Rule 9 – *Regulation of Visible Emissions from Internal Combustion Engines*, and Rule 18 – *Prevention of Significant Deterioration of Air Quality*.[4, 5, 6, 7]

Aside from making typographical and administrative corrections to some of the rules, these SIP revisions are meant to address changes to the federal NSR regulations, as promulgated

[1] EPA notes that the Agency received the SIP revisions on July 8, 2008, and September 18, 2018, respectively.
[2] The Bureau is comprised of Hamilton County and the municipalities of Chattanooga, Collegedale, East Ridge, Lakesite, Lookout Mountain, Red Bank, Ridgeside, Signal Mountain, Soddy Daisy, and Walden. The Bureau recommends regulatory revisions, which are subsequently adopted by the eleven jurisdictions. The Bureau then implements and enforces the regulations, as necessary, in each jurisdiction.
[3] On January 16, 2020, TDEC submitted, on behalf of the Bureau, a letter dated January 15, 2020, providing supplemental information for the September 12, 2018, submittal. This letter is discussed in this proposed action and is available in the Docket.
[4] The list of SIP-approved rules for Chattanooga/Hamilton County, found at Table 4 of 40 CFR 52.2220(c), currently shows the title of Section 4-41, Rule 18 as "Prevention of Significant Air Quality Deterioration." In this notice of proposed rulemaking (NPRM), EPA is also proposing to approve a change to this title to instead show "Prevention of Significant Deterioration of Air Quality."
[5] The June 25, 2008, and September 12, 2018, SIP packages include other proposed changes to the Chattanooga portion of the Tennessee SIP. Some of these revisions were only included for information and are not being requested for approval. EPA has taken separate action or will consider taking separate action to approve the remaining portions of these revisions. EPA will address only the aforementioned rules in this NPRM.
[6] In this proposed action, EPA is also proposing to approve substantively identical changes from Chattanooga's Section 4-41, Rule 18, in the following sections of the Air Pollution Control Regulations/Ordinances for the remaining jurisdictions within the Bureau, which were locally effective as of the relevant dates below: Hamilton County – Section 41, Rule 18 (9/6/17); City of Collegedale – Section 14-341, Rule 18 (10/16/17); City of East Ridge – Section 8-41, Rule 18 (10/12/17); City of Lakesite – Section 14-41, Rule 18 (10/17/17); City of Red Bank – Section 20-41, Rule 18 (11/21/17); City of Soddy-Daisy – Section 8-41, Rule 18 (10/5/17); City of Lookout Mountain – Section 41, Rule 18 (11/14/17); City of Ridgeside Section 41, Rule 18 (1/16/18); City of Signal Mountain Section 41, Rule 18 (10/20/17); and City of Walden Section 41, Rule 18 (10/16/17). However, changes to Chattanooga's Section 4-41, Rule 2 and Rule 9, only apply to the City of Chattanooga (12/12/07), Hamilton County – Section 4-41, Rules 2 and 9 (11/7/07), and City of Collegedale – Section 14-341, Rules 2 and 9 (1/22/08); therefore, EPA is not proposing approval of any corresponding Regulations/Ordinances for the remaining municipalities.
[7] Because the air pollution control regulations/ordinances adopted by the jurisdictions within the Bureau are substantively identical, EPA refers solely to Chattanooga and the Chattanooga rules throughout the notice as representative of the other ten jurisdictions for brevity and simplicity.

by EPA in various rules and described below. Additional detail on EPA's analysis of these SIP revisions and its reasoning for proposing to approve them is presented in the sections below.

## II. Background

### *A. 2002 NSR Reform Rules*

On December 31, 2002, EPA published final rule revisions to title 40 Code of Federal Regulations (CFR) parts 51 and 52, regarding the CAA's PSD and Nonattainment New Source Review (NNSR) programs. *See* 67 FR 80186 (hereinafter referred to as the 2002 NSR Rule). The revisions included five changes to the major NSR program that would reduce burden, maximize operating flexibility, improve environmental quality, provide additional certainty, and promote administrative efficiency. Initially, these updates to the federal NSR program included the adoption of baseline actual emissions, actual-to-projected-actual emissions methodology, plant-wide applicability limits (PALs), Clean Units, and pollution control projects (PCPs). The final rule also codified a longstanding policy regarding the calculation of baseline emissions for electric utility steam generating units and the definition of "regulated NSR pollutant" that clarifies which pollutants are regulated under the Act for purposes of major NSR.

Following publication of the 2002 NSR Rule, EPA received numerous petitions requesting reconsideration of several aspects of the final rule, along with portions of EPA's 1980 NSR Rules. *See* 45 FR 52676 (August 7, 1980). On July 30, 2003, EPA granted petitions for reconsideration of six issues presented by the petitioners and opened a new comment period for the public.[8] As a result of the reconsideration, on November 7, 2003 (68 FR 63021), EPA published the NSR Reform Reconsideration Rule. In the reconsideration rule, EPA made a final

[8] For full details on the six issues reconsidered by EPA, refer to the July 30, 2003, notice. *See* 68 FR 44624.

determination not to change any of the six issues opened for reconsideration but did make two clarifications to the rule. These two clarifications included: 1) adding the definition of "replacement unit" to indicate that it is considered an existing unit in terms of major NSR applicability, and 2) specifying that the PAL baseline calculation procedures for newly constructed units do not apply to modified units. The 2002 NSR Rule and the NSR Reform Reconsideration Rule are hereinafter collectively referred to as the "2002 NSR Reform Rules."

The 2002 NSR Reform Rules were challenged in the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit), and the court issued a decision on the challenges on June 24, 2005. *See New York v. United States*, 413 F.3d 3 (D.C. Cir. 2005). In summary, the D.C. Circuit vacated portions of EPA's NSR rules pertaining to Clean Units and PCPs, remanded a portion of the rules regarding recordkeeping and the term "reasonable possibility" found in 40 CFR 52.21(r)(6), 40 CFR 51.166(r)(6), and 40 CFR 51.165(a)(6) to EPA, and either upheld or did not comment on the other provisions included as part of the 2002 NSR Reform Rules. On June 13, 2007 (72 FR 32526), EPA took final action to revise the 2002 NSR Reform Rules to exclude the portions that were vacated by the D.C. Circuit.

Meanwhile, EPA continued to move forward with its evaluation of the portion of its NSR Reform Rules that were remanded by the D.C. Circuit. On March 8, 2007 (72 FR 10445), EPA responded to the Court's remand regarding the recordkeeping provisions by proposing two alternative options to clarify what constitutes "reasonable possibility" and when the "reasonable possibility" recordkeeping requirements apply. The "reasonable possibility" standard identifies the circumstances under which a major stationary source must keep records for modifications

that do not trigger major NSR. EPA later finalized these changes on December 21, 2007 (72 FR 72607).

Separately from the petitions received that led to the 2002 NSR Reconsideration Rule, EPA received another petition for reconsideration on July 11, 2003. Specifically, the petitioner requested EPA to reconsider the inclusion of "fugitive emissions" when assessing whether a proposed physical or operational change qualified as a "major modification." On November 13, 2007, EPA granted the petition for reconsideration, and on December 19, 2008, finalized the revision of the language to clarify which types of sources were required to include "fugitive emissions" in their calculations. *See* 73 FR 77882 (hereinafter referred to as the Fugitive Emissions Rule).

Finally, on February 17, 2009, EPA received one additional petition challenging the Fugitive Emissions Rule. Due to this petition, and after several stays,[9] EPA established an interim stay on March 30, 2011 (76 FR 17548), in which most of the Fugitive Emissions Rule language was stayed indefinitely. With the March 30, 2011, stay, EPA specified which portions of 40 CFR 51.165, 40 CFR 51.166, and 40 CFR 52.21 were stayed indefinitely, which were reinstated, and which were revised, in order to revert the federal rules to regulatory language that existed prior to the Fugitive Emissions Rule.

In summary, after several court decisions and public petitions, the federal major NSR program (found in 40 CFR 51.165, 51.166, and 52.21) no longer includes the provisions related

[9] EPA originally established a three-month stay that became effective September 30, 2009 (74 FR 50115), which was later extended for an additional three months, effective December 31, 2009. *See* 74 FR 65692. In order to allow for more time for the reconsideration and for public comment on any potential revisions to the Fugitive Emissions Rule, EPA established a longer 18-month stay that became effective on March 31, 2010. *See*75 FR 16012.

to Clean Units or PCPs that were part of the 2002 NSR reform rules. Additionally, an indefinite stay has been placed on the language related to the Fugitive Emissions Rule. Chattanooga is adopting all of the surviving provisions from the 2002 NSR Reform Rules and is not adopting all those provisions that were either vacated or stayed indefinitely. More details on Chattanooga's adoption of the 2002 NSR Reform Rules and our analysis of its submittals can be found in section III below.

### *B. Fine Particulate Matter ($PM_{2.5}$) NAAQS*

#### *1. Implementation of NSR for the $PM_{2.5}$ NAAQS and Grandfathering Provisions*

On May 16, 2008 (73 FR 28321), EPA published the "Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$)" Final Rule (hereinafter referred to as the NSR $PM_{2.5}$ Rule). The 2008 NSR $PM_{2.5}$ Rule revised the NSR program requirements to establish the framework for implementing preconstruction permit review for the $PM_{2.5}$ NAAQS in both attainment and nonattainment areas. As indicated in the 2008 NSR $PM_{2.5}$ Rule, major stationary sources seeking permits must begin directly satisfying the $PM_{2.5}$ requirements, as of the effective date of the rule, rather than relying on $PM_{10}$ as a surrogate, with two exceptions. The first exception was a "grandfathering" provision in the federal PSD program at 40 CFR 52.21(i)(1)(xi). This grandfathering provision applied to sources that had applied for, but had not yet received, a final and effective PSD permit before the July 15, 2008, effective date of the May 2008 final rule. The second exception was that states with SIP-approved PSD programs could continue to implement a policy in which $PM_{10}$ served as

a surrogate for $PM_{2.5}$ for up to three years (until May 2011) or until the individual revised state PSD programs for $PM_{2.5}$ are approved by EPA, whichever came first.[10]

On February 11, 2010 (75 FR 6827), EPA proposed to repeal the grandfathering provision for $PM_{2.5}$ contained in the federal PSD program at 40 CFR 52.21(i)(1)(xi) and to end early the $PM_{10}$ Surrogate Policy applicable in states that have a SIP-approved PSD program. In support of this proposal, EPA explained that the $PM_{2.5}$ implementation issues that led to the adoption of the $PM_{10}$ Surrogate Policy in 1997 had been largely resolved to a degree sufficient for sources and permitting authorities to conduct meaningful permit-related $PM_{2.5}$ analyses. On May 18, 2011 (76 FR 28646), EPA took final action to repeal the $PM_{2.5}$ grandfathering provision at 40 CFR 52.21(i)(1)(xi). This final action ended the use of the 1997 $PM_{10}$ Surrogate Policy for PSD permits under the federal PSD program at 40 CFR 52.21. In effect, any PSD permit applicant previously covered by the grandfathering provision (for sources that completed and submitted a permit application before July 15, 2008)[11] that did not have a final and effective PSD permit before the effective date of the repeal will not be able to rely on the 1997 $PM_{10}$ Surrogate Policy to satisfy the PSD requirements for $PM_{2.5}$ unless the application includes a valid surrogacy demonstration.

The NSR $PM_{2.5}$ Rule also established the following NSR requirements for PSD to implement the $PM_{2.5}$ NAAQS: (1) required NSR permits to address directly emitted $PM_{2.5}$ and

[10] After EPA promulgated the NAAQS for $PM_{2.5}$ in 1997, the Agency issued a guidance document entitled "Interim Implementation of New Source Review Requirements for $PM_{2.5}$," which allows for the regulation of $PM_{10}$ as a surrogate for $PM_{2.5}$ until significant technical issues were resolved (the "$PM_{10}$ Surrogate Policy"). John S. Seitz, EPA, October 23, 1997.

[11] Sources that applied for a PSD permit under the federal PSD program on or after July 15, 2008, are already excluded from using the 1997 $PM_{10}$ Surrogate Policy as a means of satisfying the PSD requirements for $PM_{2.5}$. *See* 73 FR 28321.

precursor pollutants; (2) established significant emission rates for direct $PM_{2.5}$ and precursor pollutants (including sulfur dioxide ($SO_2$) and NOx); and (3) required states to account for gases that condense to form particles ("condensables") in $PM_{2.5}$ and $PM_{10}$ emission limits in PSD or NNSR permits.

*2. $PM_{2.5}$ Condensables Correction Rule*

Among the changes included in the 2008 NSR $PM_{2.5}$ Rule mentioned above, the EPA also revised the definition of "regulated NSR pollutant" for PSD to add a paragraph providing that "particulate matter (PM) emissions, $PM_{2.5}$ emissions and $PM_{10}$ emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures" and that on or after January 1, 2011, "such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM, $PM_{2.5}$ and $PM_{10}$ in permits." *See* 73 FR 28321 at 28348 (May 16, 2008). A similar paragraph added to the NNSR rule did not include "particulate matter (PM) emissions." *See* 40 CFR 51.165(a)(1)(xxxvii)(D).

On October 25, 2012 (77 FR 65107), EPA took final action to amend the definition, promulgated in the 2008 NSR $PM_{2.5}$ Rule, of "regulated NSR pollutant" contained in the PM condensable provision at 40 CFR 51.166(b)(49)(vi), 52.21(b)(50)(i) and Appendix S to 40 CFR 51 (hereinafter referred to as the $PM_{2.5}$ Condensables Correction Rule). The $PM_{2.5}$ Condensables Correction Rule removed the inadvertent requirement in the 2008 NSR $PM_{2.5}$ Rule that the measurement of condensable particulate matter be included as part of the measurement and regulation of "particulate matter emissions" under the PSD program. The term "particulate

matter emissions" includes only filterable particles that are larger than $PM_{2.5}$ and larger than $PM_{10}$.

### *C. 1997 8-Hour Ozone NAAQS Phase 2 Rule*

On November 29, 2005 (70 FR 71612), EPA published a final rule entitled "Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2; Final Rule To Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter and Ozone NAAQS; Final Rule for Reformulated Gasoline" (hereinafter referred to as the Phase 2 Rule). The Phase 2 Rule addressed control and planning requirements as they applied to areas designated nonattainment for the 1997 8-hour ozone NAAQS[12] such as reasonably available control technology, reasonably available control measures, reasonable further progress, modeling and attainment demonstrations, NSR, and the impact to reformulated gasoline for the 1997 8-hour ozone NAAQS transition. Additionally, regarding the NSR permitting requirements which are relevant to this action, the Phase 2 Rule included the following provisions: (1) recognized NOx as an ozone precursor for PSD purposes; and (2) established significant emission rates for the 8-hour ozone, $PM_{10}$ and carbon monoxide NAAQS.

The June 25, 2008, and September 12, 2018, revisions requesting adoption of Chattanooga's Rule 18 adopt all the NSR provisions of the Phase 2 Rule as they appear in the federal PSD rules, effectively recognizing NOx as a precursor to ozone as well as establishing

[12] On July 18, 1997, EPA promulgated a revised 8-hour ozone NAAQS of 0.08 parts per million (ppm) – also referred to as the 1997 8-hour ozone NAAQS. On April 30, 2004, EPA designated areas as unclassifiable/attainment, nonattainment and unclassifiable for the 1997 8-hour ozone NAAQS. In addition, on April 30, 2004 (69 FR 23951), as part of the framework to implement the 1997 8-hour ozone NAAQS, EPA promulgated an implementation rule in two phases (Phase I and II). The Phase I Rule (effective on June 15, 2004), provided the implementation requirements for designating areas under subpart 1 and subpart 2 of the CAA.

significant emission rates for $PM_{10}$. The adoption of these provisions is consistent with the federal NSR rules as well as TDEC's rules.

### *D. Equipment Replacement Provision*

Under federal regulations, certain activities are not considered to be a physical change or a change in the method of operation at a source, and thus do not trigger NSR review. One category of such activities is routine maintenance, repair and replacement (RMRR). On October 27, 2003 (68 FR 61248), EPA published a rule titled "Prevention of Significant Deterioration (PSD) and Non-Attainment New Source Review (NSR): Equipment Replacement Provision of the Routine Maintenance, Repair and Replacement Exclusion" (hereinafter referred to as the ERP Rule). The ERP Rule provided criteria for determining whether an activity falls within the RMRR exemption. The ERP Rule also provided a list of equipment replacement activities that are exempt from NSR permitting requirements, while ensuring that industries maintain safe, reliable, and efficient operations that will have little or no impact on emissions. Under the ERP Rule, a facility undergoing equipment replacement would not be required to undergo NSR review if the facility replaced any component of a process unit with an identical or functionally equivalent component. The rule included several modifications to the NSR rules to explain what would qualify as an identical or functionally equivalent component.

Shortly after the October 27, 2003, rulemaking, several parties filed petitions for review of the ERP Rule in the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit). The D.C. Circuit stayed the effective date of the rule pending resolution of the petitions. A collection of environmental groups, public interest groups, and States, subsequently filed a petition for reconsideration with EPA, requesting that the Agency reconsider certain aspects of

the ERP Rule. EPA granted the petition for reconsideration on July 1, 2004 (69 FR 40278).[13] After the reconsideration, EPA published its final response on June 10, 2005 (70 FR 33838), which stated that the Agency would not change any aspects of the ERP. On March 17, 2006, the D.C. Circuit acted on the petitions for review and vacated the ERP Rule.[14]

The June 25, 2008, submittal includes portions of the ERP Rule for adoption. Although the ERP rule is vacated, EPA is proposing to approve those portions of the June 25, 2008, submittal, consistent with EPA's December 20, 2019,[15] proposed rulemaking which would add certain portions back to the major NSR rules, as explained further in Section III of this proposed action.

## III. Analysis of State's Submittal

### *A. Section 4-41, Rule 18 – Prevention of Significant Deterioration of Air Quality*

Chattanooga currently has a SIP-approved PSD program for new and modified stationary sources who wish to construct or modify in an area designated attainment, under Section 4-41, Rule 18, *Prevention of Significant Deterioration of Air Quality*. The June 25, 2008, and September 12, 2018, SIP revisions propose changes to Rule 18 to address changes to the federal NSR regulations, as promulgated by EPA in the 2002 NSR Reform Rules, and subsequent changes in other relevant rulemakings as described in section II, above.

As part of the changes to Rule 18, Chattanooga adopts all the necessary provisions of the federal PSD rules (found in 40 CFR 51.166) to make them consistent with, and in some cases

[13] The reconsideration granted by EPA opened a new 60-day public comment period, including a new public hearing, on three issues of the ERP: (1) the basis for determining that the ERP was allowable under the CAA; (2) the basis for selecting the cost threshold (20 percent of the replacement cost of the process unit) that was used in the final rule to determine if a replacement was routine; and (3) a simplified procedure for incorporating a Federal Implementation Plan into State Plans to accommodate changes to the NSR rules.
[14] *New York v. EPA*, 443 F.3d 880 (D.C. Cir. 2006).
[15] *See* 84 FR 70092.

more stringent than, the federal rules. These changes include the adoption of several definitions in the federal PSD rules, such as the definition of "regulated NSR pollutant," as well as provisions regarding major NSR applicability procedures, actual-to-projected-actual applicability tests, PALs, and recordkeeping. Slight differences between the Chattanooga PSD rules and the federal rules are discussed below in Section III.A.1.–5.

Additionally, as part of the changes included in the June 25, 2008, and September 12, 2018, SIP revisions, Chattanooga adopts the provisions from the Ozone Phase 2 Rule, as discussed in section II.C of this rulemaking. Consistent with TDEC's rules and the federal rules, Chattanooga adopts the same language regarding the Phase 2 rule found at 40 CFR 51.166. This includes amendments found in the federal PSD rules in subparagraphs 51.166(b)(1)(ii), 51.166(b)(2)(ii), 51.166(b)(23)(i), and 51.166(b)(49)(i).

EPA believes that the proposed approval of these changes, including all amendments mentioned in the following sections, will not have a negative impact on air quality in the Chattanooga-Hamilton County area. With these proposed changes, the local regulations will now be consistent with the State's current SIP-approved PSD program, which is slightly more stringent than the federal rules. Tennessee's PSD program already underwent updates concerning the 2002 NSR reform on September 14, 2007. *See* 72 FR 52472.

It is also important to note that the Chattanooga-Hamilton County area currently does not have any designated nonattainment areas, and all previous nonattainment areas have been redesignated to attainment and have clean data.[16] Additionally, during the most recent

[16] Air quality design values for all criteria air pollutants are available at: https://www.epa.gov/air-trends/air-quality-design-values.

designations process, for the 2010 1-hour $SO_2$ and the 2015 8-hour Ozone NAAQS, the entire Hamilton County Area was designated as attainment/unclassifiable for both standards.[17]

Although in most cases Chattanooga adopts the federal rules as enacted at 51.166, certain portions were modified or not adopted. These differences from the federal PSD rules, which are all discussed in the sections below, include: (1) adopting a modified definition of "baseline actual emissions;" (2) not adopting the stayed language in the Fugitive Emissions Rule; (3) adopting a different major source baseline date for $PM_{2.5}$; (4) adopting vacated language from the ERP rule; and (5) not adopting changes from a May 1, 2007, final rule regarding facilities that produce ethanol through natural fermentation.[18]

*1. Definition of "baseline actual emissions"*

Regarding the definition of "baseline actual emissions," as promulgated in 40 CFR 51.166(b)(47), Chattanooga adopts into Section 4-41, Rule 18, a definition mostly consistent with the federal definition. However, Chattanooga excluded a portion of the definition that would allow for different 24-month periods to be chosen for each regulated NSR pollutant when calculating baseline actual emissions for either PSD applicability determinations.

Chattanooga's adoption of "baseline actual emissions" in Rule 18 excludes the last sentence of subparagraphs 51.166(b)(47)(i)(c) and 51.166(b)(47)(ii)(d) of the federal PSD rules, which states that "a different consecutive 24-month period can be used for each regulated NSR pollutant." Instead, Chattanooga adopts specific language at Section 4-41, Rule 18.2(d)(1)(c),

[17] See 83 FR 1098 for the third round of designations for the 2010 1-hour $SO_2$ NAAQS, and 82 FR 54232 for the 2015 8-hour ozone NAAQS.

[18] The May 1, 2007, final rule finalized changes to the definition of "chemical process plants" as it applies to the federal PSD, NNSR and Title V programs, including applicability thresholds for PSD and the treatment of fugitive emissions in determining applicability for major NSR and title V.

which states, "For a regulated NSR pollutant, when a project involves multiple emissions units, one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed." With this difference in the definition, Chattanooga is not allowing for different baseline periods to be chosen for a single project that involves multiple units, which removes an additional flexibility built into the federal rules and makes the local rules slightly more stringent than the federal rules. This portion of Chattanooga's definition is consistent with TDEC's SIP-approved definition of "baseline actual emissions," which also does not allow for different pollutant-specific 24-month baseline periods.

However, like TDEC, Chattanooga does retain the authority to allow for the use of multiple 24-month baseline periods only if certain conditions are met. These conditions are: (1) the new source or modification would still be subject to major NSR when using a single 24-month period; (2) one or more pollutants were emitted at lower amounts than permitted during that time; (3) the use of multiple baseline periods for any of the pollutants in item (2) above would result in the source or modification not being subject to major NSR; and (4) the use of the multiple baselines is not prohibited by any applicable provision of the federal NSR regulations. Although this portion of the definition does allow for the Director to authorize the use of multiple baseline periods, Chattanooga's definition is still more stringent than the federal definitions because the source or modification would have to meet very specific conditions, would have to bear the burden for demonstrating that these conditions are met, and must obtain the Director's approval in order to use this flexibility.

*2. Fugitive Emissions Rule*

As mentioned in Section II.A of this rulemaking, a portion of the Fugitive Emissions Rule was stayed indefinitely on March 30, 2011. For this reason, Chattanooga did not adopt into Section 4-41, Rule 18, the language found in the federal PSD rules at 40 CFR 51.166(b)(2)(v) and 51.166(b)(3)(iii)(d), which are part of the stayed Fugitive Emissions Rule provisions that can still be found in the CFR.

Given that the omitted language has been stayed indefinitely, EPA is proposing to approve the changes into the Chattanooga portion of the Tennessee SIP as consistent with federal requirements, and the Tennessee SIP.

*3. ERP Rule*

Chattanooga's June 25, 2008, SIP revision makes changes to Chattanooga's PSD permitting regulations, in part, by adding a definition of "replacement unit" at Rule 18.2(vv) and by adding Section 18.22, which describes "basic design parameters" to be considered in determining whether the replacement of equipment should be considered a new or existing emission unit. Chattanooga's definition of "replacement unit" mirrors the definition in 40 CFR section 51.166(b)(32). Therefore, EPA is proposing to approve these changes.

In addition, EPA's definition of "replacement unit" cross references the description of "basic design parameters" in 40 CFR section 51.166(y)(2). The description of "basic design parameters" was added to the EPA's PSD regulations on October 27, 2003, as part of the ERP Rule, to provide a category of equipment replacement activities that are not subject to the NSR requirements under the existing RMRR. Soon after, the ERP Rule was vacated in its entirety, as noted in Section II.D of this proposed rulemaking, by the D.C. Circuit in the 2006 *New York v. EPA* decision. 443 F.3d 880 (D.C. Cir. 2060). However, the definition of "replacement unit"

was not vacated as part of that decision even though it cross referenced the vacated description of "basic design parameters" because it was not part of the ERP, 68 FR 61247 (October 27, 2003), but rather was added during the final reconsideration of NSR Reform, 68 FR 63021 (November 7, 2003). Nevertheless, the cross reference to the use of "basic design parameters" indicates EPA's intention to interpret that term consistently between the use of "replacement unit" and the ERP.

Lastly, on December 20, 2019, EPA published a NPRM intended to correct various errors in the NSR regulations, which proposed to remove the vacated ERP provisions. However, this proposal included incorporating into the federal regulations at 40 CFR 51.165(h), 51.166(y), and 52.21(cc) the concept of "basic design parameters" because EPA believes that as used in the definition of "replacement unit," this is consistent with EPA's interpretation of that provision. *See* 84 FR 70092, 70094 (December 20, 2019). Therefore, EPA is proposing to approve Chattanooga's definition of "replacement unit" at Rule 18.2(vv), as well as the addition of Section 18.22 prescribing "basic design parameters," because these provisions are consistent with and are as stringent as EPA's interpretation of the criteria for "basic design parameters" and the definition of "replacement unit."

*4. $PM_{2.5}$ NAAQS*

The September 12, 2018, submittal adopts the $PM_{2.5}$ provisions necessary to implement PSD for the $PM_{2.5}$ NAAQS. However, one difference from the federal rules is that the "major source baseline date" for $PM_{2.5}$, the date after which actual emissions increases associated with construction at any major stationary source consume the PSD increment, is adopted at Rule

18.2(gg)(1) as October 20, 2011, rather than October 20, 2010.[19] This locally effective date was adopted in error.[20] However, on January 16, 2020, TDEC submitted, on behalf of the Bureau, a letter dated January 15, 2020, certifying that no construction activity affecting actual emissions at a major source took place within Chattanooga, Hamilton County, or the other municipalities within the Bureau, between the dates of October 20, 2010, and October 20, 2011.[21] Thus, as the letter explains, no $PM_{2.5}$ increment was consumed in that time period. Consequently, there are no functional differences for PSD in Hamilton County versus what is required in other areas by the State and/or federal rules for the purposes of implementing the $PM_{2.5}$ NAAQS.

*5. Other PSD changes not related to NSR reform*

In addition to proposing revisions to Section 4-41, Rule 18, to address changes to the federal NSR regulations, as promulgated by EPA in the 2002 NSR Reform Rules, Chattanooga also seeks to delete several exemptions from the rule. Under Rule 18.8, Chattanooga currently has several exemptions for sources that have obtained or have requested to obtain a permit prior to a certain date, which range from 1977 through 1988.

The exemptions being proposed for deletion were found in Rule 18.8, paragraphs (a)(1) through (5), (9), and (10), as well as paragraphs (f) through (j). According to the Bureau, there are currently no sources operating within Hamilton County which obtained a PSD permit before 1988, and it is no longer possible for a source to request a permit before this date. As part of the

[19] The major source baseline date is the date after which actual-emissions changes at a major stationary source affect the available PSD increment. Other changes in actual emissions occurring at any source after the major source baseline date do not affect the increment, but instead (until after the minor source baseline date is established) contribute to the baseline concentration. After the minor source baseline date, all types of emissions changes—and not just modifications at major sources—consume or expand the available increment.

[20] The SIP submission, available in the Docket for this proposed action, shows that EPA commented on the typographical error, and Chattanooga agreed that it was an error and intended to correct the error by adopting the correct October 20, 2010 date.

[21] The January 15, 2020, letter is available in the Docket for this proposed action.

June 25, 2008, and September 12, 2018, SIP revisions, Chattanooga seeks to delete the language in the paragraphs mentioned above, and instead place a "(Reserved)" notification in their place.

EPA has reviewed the changes to the exemptions in Section 4-41, Rule 18, and has determined that the changes do not decrease the stringency of the PSD rules. The deletion of these exemptions, although not functional at this time, would be a SIP-strengthening change to Chattanooga's PSD rules. Therefore, EPA believes that these changes are approvable pursuant to section 110 of the Act and is proposing to approve the aforementioned changes into the Chattanooga portion of the Tennessee SIP.

Lastly, the changes to Section 4-41, Rule 18, together with the differences mentioned above in section III.A.1. through 5., make Chattanooga's PSD regulations generally consistent with the federal requirements (and in some cases more stringent, as is the case of the definition of "baseline actual emissions"), as well as consistent with TDEC's PSD rules. With the exception of the vacated or stayed portions, as mentioned in section II, the adoption of vacated language from the ERP rule, the difference in the $PM_{2.5}$ major source baseline date from the federal provisions, and a minor change to the permit-rescission provision that was recently adopted by EPA,[22] Chattanooga is adopting all other necessary provisions of the federal PSD rules. Therefore, EPA is proposing to approve the aforementioned changes to the Chattanooga portion of the Tennessee SIP.

### *B. Section 4-41, Rule 9 – Regulation of Visible Emissions from Internal Combustion Engines*

[22] Effective December 7, 2016, EPA removed the July 20, 1987, date restriction in its permit-rescission provision at 40 CFR 52.21(w)(2) and, at 52.21(w)(3), changed the word "shall" to "may" to clarify that the permit-rescission provision does not create a mandatory duty to grant a rescission request. *See* 81 FR 78043 (Nov. 7, 2016). Chattanooga's corresponding regulation at Rule 18.20 is consistent with the previous version of 40 CFR 52.21.

Rule 9, of Section 4-41, regulates visible emissions from internal combustion engines in order to protect the visibility of an area by limiting the time an internal combustion engine may operate at certain conditions, as well as the level of opacity that may be caused by the visible emissions. The June 25, 2008, SIP revision seeks to correct a typographical error that was mistakenly approved into the rule.

Under paragraph 9.2, the rule currently states that "no person shall cause, suffer, allow or permit the visible emission of air contaminants from diesel type engines for a period of more than sixty (60) consecutive seconds in excess of twenty (20) *capacity* opacity" (emphasis added). The typographical correction included in the June 25, 2008, SIP revision seeks to change the word "capacity" to "percent" in order to clarify that the rule imposes a 20 *percent* opacity limit.

EPA has reviewed this change and has preliminarily determined that the change to Section 4-41, Rule 9 is a minor typographical correction. Therefore, EPA believes that this change is approvable pursuant to section 110 of the Act and is proposing to approve the aforementioned change into the Chattanooga portion of the Tennessee SIP.

### *C. Section 4-41, Rule 2 – Regulation of Nitrogen Oxides*

Rule 2 of Section 4-41 regulates the emissions of NOx from several sources, which include fuel burning equipment, nitric acid plants, Portland cement plants, and emergency generators. The June 25, 2008, SIP revisions seek to lower the amount of NOx that a Portland cement plant kiln may emit within a 3-hour period, restrict the time of year that these kilns may be operated, and add new reporting requirements.

Under the current SIP-approved version of Section 4-41, Rule 2, Portland cement plants are addressed in paragraph 2.6, which imposes a NOx limit of no more than 1,500 ppm when

averaged over a period of three hours. The June 25, 2008, SIP revision proposes to lower this limit by fifty percent, to allow emissions of NOx of only 750 ppm over a three-hour average.

Additionally, the proposed changes seek to restrict the time of year that Portland cement plant kilns may be operated. Currently, these do not have any restriction on when they may operate, as long as they stay within the current 1,500 ppm, 3-hour-average limit on NOx emissions. The proposed changes would restrict kilns' operation between May 1 and September 30, unless they meet certain criteria. In order to operate during the May 1 through September 30 timeframe, a kiln must have one of the following installed: (1) low-NOx burner(s); (2) mid-kiln system firing; (3) an alternative control technique, approved by the Director of the Chattanooga-Hamilton County Air Pollution Control Bureau (Director) and the EPA, that achieves the same level of control as low-NOx burners or mid-kiln system firing; or (4) reasonably available control technology (RACT) approved by the Director and the EPA.

Lastly, the revisions add a new reporting requirement for sources previously subject to this rule. Although the time has expired for sources to meet the first condition of the reporting requirements, sources that were subject to this rule at the time of the local adoption were required to submit an initial report by April 30, 2007. This initial report was intended to provide the Director with two things: (1) a statement to confirm that the kiln is subject to the rule; and (2) a report demonstrating compliance with the new requirements of the rule. After the initial report was received, the source had to provide a NOx emissions report for the period of May 31, 2007, through September 30, 2007, to show compliance was being achieved. Thereafter, the source is required to submit an annual NOx emissions report, for the May 31 through September 30 time period, due October 31 of each year. Finally, the annual report is required to include a

certification that the kiln continues to be in compliance with the rule, as stated in the initial certification.

These changes to Section 4-41, Rule 2, are consistent with TDEC's regulations regarding the control of NOx emissions from Portland cement plants. Additionally, EPA believes that these changes are SIP strengthening, and help better control the emissions from cement kilns. Therefore, EPA is proposing to approve the aforementioned changes to the Chattanooga portion of the Tennessee SIP.

## IV. 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 Chattanooga City Code, Part II, Chapter 4, Article II, Section 4-41, Rule 2 - *Regulation of Nitrogen Oxides;* and Rule 9 - *Regulation of Visible Emissions from Internal Combustion Engines*, both state effective December 12, 2007; as well as Rule 18 - *Prevention of Significant Deterioration of Air Quality*, state effective January 23, 2017.[23] EPA has made, and will continue to make, these materials generally available through 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).

## V. Proposed Action

EPA is proposing to approve the aforementioned changes to the Chattanooga portion of the Tennessee SIP. EPA is proposing to approve the changes presented in the June 25, 2008, and

[23] As noted in footnote 6 above, EPA's proposed approval of the changes to the PSD regulations (Section 4-41, Rule 18) also includes substantively identical changes to regulations/ordinances submitted for the other ten jurisdictions within the Bureau. However, changes to Chattanooga's Section 4-41, Rule 2 and Rule 9, only apply to the City of Chattanooga, Hamilton County, and the City of Collegedale,

September 12, 2018, SIP revisions that make changes to Chattanooga's City Code, Part II, Chapter 4, Article II, Section 4-41. Specifically, EPA is proposing to approve changes in Section 4-41, regarding updates to Rule 2 - *Regulation of Nitrogen Oxides;* Rule 9 - *Regulation of Visible Emissions from Internal Combustion Engines*; and Rule 18 - *Prevention of Significant Deterioration of Air Quality.*[24] These SIP revisions are meant to address several changes to the federal NSR regulations, as promulgated by EPA on December 31, 2002, and reconsidered with minor changes on November 7, 2003, which are commonly referred to as the "2002 NSR Reform Rules," as well as subsequent changes to the federal NSR regulations as described in Section II of this proposed rulemaking. Finally, these revisions are meant to make Chattanooga's PSD regulations consistent with those of the State of Tennessee. The other SIP revisions EPA is proposing to approve include updates to Chattanooga's regulations of NOx and other miscellaneous typographical and administrative updates.

## VI. 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 does not impose additional requirements beyond those imposed by state law. For that reason, these proposed actions:

- Are 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

[24] See footnote 23.

(76 FR 3821, January 21, 2011);

- Are not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action 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 a 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 (Public Law 104-4);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not a significant regulatory action 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, these rules do 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, Carbon monoxide, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: January 28, 2020.

Mary S. Walker,

Regional Administrator,

Region 4.

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