



## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R04-OAR-2023-0458; FRL-11759-01-R4]**

### **Air Plan Approval; Tennessee; Revisions to the Continuous Opacity Monitoring System Requirements**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Tennessee through the Department of Environment and Conservation (TDEC), Division of Air Pollution Control, via a letter dated September 28, 2022. The SIP revision seeks to modify the State's required monitoring standards by adding exemptions to opacity monitoring requirements. EPA is proposing this action 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-2023-0458 at [regulations.gov](https://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 <https://www.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Faith Goddard, Multi-Air Pollutant Coordination Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, GA 30303-8960. The telephone number is (404) 562-8757. Ms. Goddard can also be reached via electronic mail at [Goddard.Faith@epa.gov](mailto:Goddard.Faith@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Overview**

EPA is proposing to approve a SIP revision submitted by Tennessee via a letter dated September 28, 2022,<sup>1</sup> seeking to revise chapter 1200-3-10, *Required Sampling, Recording, and Reporting*, of the Tennessee SIP. These changes seek to modify the State's required monitoring standards. Specifically, the submission includes changes to add exemptions to opacity monitoring requirements at paragraph (1)(b)1. of Tennessee Rule 1200-3-10-.02, *Monitoring of Source Emissions, Recording, and Reporting of the Same are Required*. EPA is proposing to approve Tennessee's September 28, 2022, SIP revision because the State has demonstrated that the changes to the Rule will not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171) or any other applicable requirement of the Act.<sup>2</sup>

### **II. Background**

In accordance with 40 CFR 51.214, each SIP must contain legally enforceable procedures to provide information as specified in appendix P of 40 CFR part 51. Appendix P, *Minimum Emission Monitoring Requirements* requires, with certain exceptions, each fossil fuel-fired steam generator of greater than 250 million British thermal units per hour (MMBtu/hr) heat input and

---

<sup>1</sup> EPA received the September 28, 2022, submittal on October 3, 2022. For clarity, throughout this notice EPA will refer to the October 3, 2022, submission by its cover letter date of September 28, 2022.

<sup>2</sup> See CAA section 110(l).

an annual average capacity factor of greater than 30 percent, as reported to the Federal Power Commission for calendar year 1974, or as otherwise demonstrated to the State by the owner or operator, to install, calibrate, maintain, and operate a continuous monitoring system for the measurement of opacity (COMS). Section 3.9 of appendix P, however, allows States to utilize different, but equivalent, procedures and requirements for continuous monitoring systems, provided the SIP includes a description of such alternative procedures for approval by EPA.

Tennessee Rule 1200-3-10-.02(1)(b) establishes requirements for testing, monitoring, and record keeping for certain categories of air pollution sources. Subparagraph (i) of paragraph (1)(b)1. applies to existing fossil fuel-fired steam generators with an annual average capacity factor of greater than 30 percent, as reported to the Federal Power Commission for calendar year 1974, or as otherwise demonstrated to the Technical Secretary by the owner or operator.<sup>3</sup> The existing rule requires owners or operators of these fossil fuel-fired steam generators with a heat input of 250 MMBtu/hr or greater to install, calibrate, maintain, and operate a COMS, except when only gaseous fuel is burned. Additionally, sources may be exempted from this requirement when oil or a mixture of gas and oil are the only fuels burned and the source can comply with applicable particulate matter (PM) and opacity regulations without the use of PM control equipment and has not been found to be in violation of any applicable visible emission standard requirement. These provisions are consistent with section 2.1.1 of 40 CFR part 51, appendix P.

Tennessee's September 28, 2022, SIP revision revises requirements of Rule 1200-3-10-.02(1)(b)1. to provide a third alternative for fossil fuel-fired steam generators to be exempted from the COMS requirement. The SIP revision is based on an approach to opacity monitoring in EPA's New Source Performance Standards (NSPS) for steam generating units, at 40 CFR part 60, subparts D and Da, and National Emission Standards for Hazardous Air Pollutants (NESHAP) for steam generating units, at 40 CFR part 63, subpart UUUUU. In amendments to

---

<sup>3</sup> The monitoring requirements of Rule 1200-3-10-.02(1)(b) do not apply to new sources that are subject to new source performance standards under chapter 1200-3-16. *See* 1200-3-10-.02(1)(b)2.

the NSPS for steam generating units, EPA eliminated the opacity standard for certain facilities voluntarily using PM continuous emission monitoring systems (CEMS), provided that those facilities comply with a federally enforceable PM limit of 0.030 lb/MMBtu or less.<sup>4</sup> In addition, subparts D and Da of 40 CFR part 60 eliminate the COMS requirement for affected facilities using continuous parametric monitoring systems (CPMS) for PM according to the requirements specified in subpart UUUUU of 40 CFR part 63, which establishes requirements for using PM CEMS and PM CPMS to demonstrate compliance with applicable PM emission limits.<sup>5</sup>

### **III. Analysis of Tennessee’s September 28, 2022, SIP Revision**

The changes to Rule 1200-3-10-.02(1)(b) include the removal of a reference to Tennessee Rule 1200-3-16-.02 for the definition of fossil fuel-fired steam generators, because this Rule is not in the SIP and does not include a definition for fossil fuel-fired steam generators.<sup>6</sup> Tennessee has added a statement at the end of subparagraph (i) of part (1)(b)1. to define a “fossil fuel-fired steam generator” as “a furnace or boiler used in the process of burning fossil fuel for the purpose of producing steam by heat transfer.” EPA notes that this definition of fossil fuel-fired steam generator matches verbatim the NSPS definition of *Fossil-fuel-fired steam generating unit* at 40 CFR part 60, subpart D.<sup>7</sup> Therefore, EPA is proposing to find that this definition for *fossil-fuel-fired steam generating unit* is appropriate.

As noted above, Regulation 1200-3-10-.02(1)(b)1., as revised, includes a third alternative for the subject fossil fuel-fired steam generators to be exempted from the COMS requirement. New subparagraph III of paragraph (1)(b)1.(i)(I) provides that sources are exempt from the COMS requirement if the owner or operator installs, certifies, operates, and maintains a PM CEMS or CPMS for PM according to the requirements of 40 CFR part 63, subpart UUUUU, and such PM CEMS or CPMS is subject to and complies with the relevant filterable PM standards,<sup>8</sup>

---

<sup>4</sup> See 74 FR 5072, 5073–5074 (January 28, 2009), and 40 CFR 60.42(c) and 60.42Da(a) and (b)(1).

<sup>5</sup> See 40 CFR 60.45(b)(8); 40 CFR 60.49Da(a)(4)(ii).

<sup>6</sup> The SIP revision states that Regulation 1200-3-16 is in the process of being repealed at the state level. The repeal was announced in a notice to the public by TDEC on May 2, 2023.

<sup>7</sup> See 40 CFR 60.41 “Fossil-fuel-fired steam generating unit.”

<sup>8</sup> See 40 CFR 63.9991(a)(1) and table 1 or table 2 of subpart UUUUU.

monitoring requirements,<sup>9</sup> and work practice standards<sup>10</sup> of subpart UUUUU. Lastly, subparagraph IV is added to paragraph (1)(b)1.(i)(I) to adopt and incorporate the relevant standards of subpart UUUUU by reference. These revisions are consistent with EPA's conclusions, as discussed in Section II of this preamble, that steam generating units complying with a federally enforceable PM limit of 0.030 lb/MMBtu or less<sup>11</sup> will operate with little or no visible emissions and that the use of a CEMS or CPMS for PM, at this level of the PM emissions, is sufficient to demonstrate compliance with applicable SIP opacity standards.<sup>12</sup> EPA also notes that any applicable opacity standards in the SIP remain applicable and may be enforced with visible emissions methods under SIP-approved Rule 1200-3-5-.03.<sup>13</sup>

According to Tennessee's September 28, 2022, SIP submittal, several existing facilities in Tennessee are required to comply with Rule 1200-3-10-.02(1)(b)1., but only three coal-fired fossil fuel plants, operated by the Tennessee Valley Authority (TVA), are subject to 40 CFR part 63, subpart UUUUU and therefore impacted by this Rule revision. Specifically, the changes to the regulation impact boiler numbers 1 through 9 at the Kingston facility, boiler numbers 1 through 4 at the Gallatin facility, and boiler numbers 1 and 2 at the Cumberland facility.<sup>14</sup> These facilities would be able to opt for the new alternative exemption from the COMS requirement based on compliance with continuous PM monitoring requirements.

Section 110(l) of the CAA requires that a revision to the SIP not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171) or any other applicable requirement of the Act. As discussed above, using the new alternative approach, COMS to measure opacity would not be necessary for the subject fossil

---

<sup>9</sup> See 40 CFR 63.10010(h) or (i).

<sup>10</sup> See 40 CFR 63.10007(a)(1) and table 3 of subpart UUUUU.

<sup>11</sup> Under subpart UUUUU, only existing integrated gasification combined cycle (IGCC) units are subject to a higher PM limit than 0.030 lb/MMBtu (0.040 lb/MMBtu), and Tennessee has no existing IGCC units. See Table 1 and table 2 of subpart UUUUU.

<sup>12</sup> See also footnotes 4 and 5.

<sup>13</sup> The Tennessee requirements for visible emissions exist at 1200-3-5-.03 in the Tennessee SIP.

<sup>14</sup> The SIP revision identifies boiler number 1 at the TVA Bull Run facility, but that facility was shut down at the end of 2023.

fuel-fired boilers since compliance with the PM mass emission limit and the continuous monitoring of compliance with that limit will render opacity negligible. Therefore, EPA is proposing to find that the proposed change to allow certain sources to use alternative monitoring procedures satisfies CAA section 110(l).

#### **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, and as discussed in Sections I through III of this preamble, EPA is proposing to incorporate by reference TDEC Regulation 1200-3-10-.02, “*Monitoring of Source Emissions, Recording, and Reporting of the Same are Required*,”<sup>15</sup> State effective August 31, 2022, which revises exemptions to monitoring requirements. EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 4 office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

#### **V. Proposed Action**

For the reasons explained above, EPA is proposing to approve Tennessee’s September 28, 2022, SIP revision seeking to amend air quality rules in the Tennessee SIP. Specifically, EPA is proposing to approve a revision to 1200-3-10-.02, “*Monitoring of Source Emissions, Recording, and Reporting of the Same are Required*,” in the Tennessee SIP to allow for alternative monitoring procedures for certain sources because the revision is consistent with the CAA.

#### **IV. Statutory and Executive Order Reviews**

---

<sup>15</sup> EPA is not proposing to incorporate the August 31, 2022, state effective version of 1200-3-10-.02(1)(b)1.(i)(II); 1200-3-10-.02(1)(b)1.(i)(III); and 1200-3-10-.02(2)(b)2. into the SIP. The August 31, 2022, version of the Rule removes 1200-3-10-.02(1)(b)1.(i)(II) and 1200-3-10-.02(1)(b)1.(i)(III) due to an administrative error and contains language changes to 1200-3-10-.02(2)(b)2. that are not before EPA for approval into the SIP. If EPA takes final action to approve the September 28, 2022, SIP revision, the Agency will update the SIP table at 40 CFR 52.2220(c) to reflect these exceptions.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA 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. Accordingly, this proposed action merely proposes to approve State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

In addition, the SIP is not approved to apply on any Indian reservation land or in any

other area where EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

TDEC did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this proposed action. Due to the nature of the action being proposed here, this proposed action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this proposed action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving EJ for people of color, low-income populations, and Indigenous peoples.

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

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

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

Dated: February 26, 2024.

**Jeanne Gettle,**  
*Acting Regional Administrator,*  
*Region 4.*

[FR Doc. 2024-04362 Filed: 2/29/2024 8:45 am; Publication Date: 3/1/2024]