



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2023-0458; FRL-11759-02-R4]

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

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving 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. Specifically, EPA is finalizing the approval of a SIP revision which modifies the State's required monitoring standards by adding exemptions to opacity monitoring requirements. EPA is approving this revision pursuant to the Clean Air Act (CAA or Act).

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2023-0458. All documents in the docket are listed on the regulations.gov website. Although listed in the index, some information may not be 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 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, 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 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Faith Goddard, Multi-Air Pollutant Coordination Section, Air Planning and Implementation Branch, Air and Radiation Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 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. Background**

On September 28, 2022,<sup>1</sup> TDEC submitted a SIP revision revising monitoring standards in Chapter 1200-3-10, *Required Sampling, Recording, and Reporting*, of the Tennessee SIP by adding 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*. The SIP revision to the State's monitoring requirements: (1) removes a cross-reference at Rule 1200-3-10-.02(1)(b)1.(i) to Tennessee Rule 1200-3-16-.02 for the definition of fossil fuel-fired steam generators; (2) adds a new definition of "fossil fuel-fired steam generator" to Rule 1200-3-10-.02(1)(b)1.(i); and (3) adds new subparagraphs III and IV to paragraph (1)(b)1.(i)(I) to provide a third alternative for fossil fuel-fired steam generators to be exempted from the continuous opacity monitoring system requirement and to adopt and incorporate the relevant standards of 40 CFR part 63, subpart UUUUU by reference.

Through a notice of proposed rulemaking (NPRM), published on March 1, 2024 (89 FR 15098), EPA proposed to approve Tennessee's September 28, 2022, SIP revision. In that

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

NPRM, EPA proposed to determine that the SIP revision to allow certain sources to use alternative monitoring procedures, based on an approach to opacity monitoring in EPA's New Source Performance Standards for steam generating units, at 40 CFR part 60, subparts D and Da, and National Emission Standards for Hazardous Air Pollutants for steam generating units, at 40 CFR part 63, subpart UUUUU, is consistent with Section 3.9 of Appendix P of 40 CFR part 51 and satisfies CAA section 110(l). Additional details on the revision, as well as EPA's rationale for approval, are explained in the March 1, 2024, NPRM. Comments on the March 1, 2024, NPRM were due on or before April 1, 2024. EPA received one set of comments, which is discussed in the next section of this rulemaking notice.

## **II. Response to Comment**

EPA received one set of comments on the March 1, 2024, NPRM. This set of comments, submitted by a member of the general public, consists of several statements associated with website hyperlinks. It is unclear how these comments are relevant to the proposal, how the hyperlinked materials support the comments, and how, or whether, the commenter would like EPA to change the proposal. Furthermore, as noted in the March 1, 2024, NPRM, EPA generally will not consider comment contents located outside of the primary submission (i.e., on the web, cloud, or other file-sharing system) such as the hyperlinked materials. For these reasons, the comments require no further response and we are finalizing the action as proposed.

## **III. Incorporation by Reference**

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, and as discussed in Sections I of this preamble, EPA is finalizing the incorporation by reference of TDEC Regulation 1200-3-10-.02, *Monitoring of Source Emissions, Recording, and Reporting of the Same are Required*, state-effective August 31, 2022,<sup>2</sup> which adds exemptions to opacity monitoring requirements to the

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<sup>2</sup> The August 31, 2022, State effective 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

State’s SIP-approved monitoring standards. 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). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA’s approval, and will be incorporated by reference in the next update to the SIP compilation.<sup>3</sup>

#### **IV. Final Action**

EPA is finalizing approval of Tennessee’s September 28, 2022, SIP revision to air quality rules in the Tennessee SIP. Specifically, EPA is approving a revision to TDEC Regulation 1200-3-10-.02, *Monitoring of Source Emissions, Recording, and Reporting of the Same are Required*, into the Tennessee SIP. This revision adds exemptions to opacity monitoring requirements to the State’s SIP-approved monitoring standards to allow for alternative monitoring procedures for certain sources, consistent with the CAA.

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

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the 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 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

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before EPA for approval into the SIP. EPA is therefore not incorporating these changes to the SIP, and these three provisions remain in the SIP with a February 5, 2013, State effective date.

<sup>3</sup> *See* 62 FR 27968 (May 22, 1997).

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 action. Due to the nature of the action being taken here, this 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 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.

This action is subject to the Congressional Review Act, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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, Particulate matter, Reporting and recordkeeping requirements.

Dated: April 30, 2024.

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

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as follows:

**PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

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), amend Table 1 under “CHAPTER 1200-3-10 REQUIRED SAMPLING, RECORDING, AND REPORTING” by revising the entry for “Section 1200-3-10-.02,” “Monitoring of Source Emissions, Recording, and Reporting of the Same are Required.”

The revision reads as follows:

**§ 52.2220 Identification of plan.**

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(c) \* \* \*

Table 1 - EPA Approved Tennessee Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanation
**	**	*	*	*
CHAPTER 1200-3-10 REQUIRED SAMPLING, RECORDING, AND REPORTING				
**	**	*	*	*
Section 1200-3-10-.02	Monitoring of Source Emissions, Recording, and Reporting of the Same are Required	8/31/2022	[Insert date of publication in Federal Register], [Insert first page of Federal Register citation]	Except for 1200-3-10-.02(2)(b)2., with a state effective date of February 5, 2013. 1200-3-10-.02(1)(b)1.(i)(II) and 1200-3-10-.02(1)(b)1.(i)(III) remain in the SIP with a state effective date of February 5, 2013.
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