

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[EPA-R04-OAR-2015-0403; FRL-9949-61-Region 4]

Air Plan Approval; TN: Revisions to Logs and Reports for Startups, Shutdowns and Malfunctions**AGENCY:** Environmental Protection Agency.**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 Tennessee Department of Environment and Conservation (TDEC), on September 25, 2013. The SIP submittal includes a change to the TDEC regulation “Logs and Reports.” EPA is proposing to approve this SIP revision because it is consistent with the Clean Air Act (CAA or Act) and federal regulations governing SIPs.

DATES: Comments must be received on or before August 26, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2015-0403 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>.

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SUPPLEMENTARY INFORMATION:**I. EPA’s Action***A. What action is EPA proposing today?*

On September 25, 2013, TDEC submitted a change to the Tennessee rules to EPA for approval and incorporation into the Tennessee SIP. Specifically, the submittal includes a change to remove the existing text of subparagraph (2) from Tennessee Air Pollution Control Regulation (TAPCR) Rule 1200-3-20-.04, “Logs and Reports,” and replace it with the word “Reserved.” Existing subparagraph (2) provides that all sources located in or having a significant impact on a nonattainment area submit a quarterly report to the Technical Secretary of Tennessee’s Air Pollution Control Board that (1) identifies periods of startups, shutdowns, and/or malfunctions (SSM events) that result in an exceedance of an emission limitation, (2) estimates the excess emissions released during such SSM events, and (3) provides total source emissions where such emissions are not otherwise required to be reported under Tennessee Air Pollution Control Regulations (TAPCR) Chapters 1200-3-10-.02 or 1200-3-16. EPA is proposing to approve Tennessee’s September 25, 2013, SIP revision because the proposed revision is consistent with the requirements of the CAA and federal regulations governing SIPs.

B. EPA’s Analysis of the September 25, 2013, Submittal

Section 110(a)(2)(A) of the Act requires SIP provisions such as emission limitations to be enforceable, and sections 110(a)(2)(F)(i) and (F)(ii) require plans to contain certain types of provisions related to emissions monitoring and reporting, as prescribed by the Administrator. Accordingly, 40 CFR part 51, subpart K, “Source Surveillance,” requires a SIP to provide for monitoring the status of compliance with the regulations in it, including “legally enforceable procedures” for recordkeeping and reporting. *See* 40 CFR 51.211. Such recordkeeping and reporting must include “[i]nformation on the nature and amount of emissions from the stationary sources” and “[o]ther information as may be necessary to enable the state to determine whether the sources are in compliance with the applicable portions of the control strategy.” *Id.* Furthermore, 40 CFR part 51, appendix V, Criteria for

Determining the Completeness of Plan Submissions, states in section 2.2 that complete SIPs must contain: “(g) Evidence that the plan contains emission limitations, work practice standards and recordkeeping/reporting requirements, where necessary, to ensure emission levels;” and “(h) Compliance/enforcement strategies, including how compliance will be determined in practice.”

In support of its proposed SIP revision, TDEC explains in its September 25, 2013, submittal that it considers the existing quarterly reporting requirement to be outdated in light of more recently enacted federal regulations requiring less frequent reporting. TDEC specifically points to EPA’s 1999 rulemaking that reduced the required reporting frequency under the General Provisions for 40 CFR parts 60, 61, and 63 from quarterly to semi-annually. *See* “Recordkeeping and Reporting Burden Reduction,” 64 FR 7458 (February 12, 1999). In addition, TDEC notes that major sources are now subject to title V operating permit program reporting requirements, which TDEC contends makes TDEC’s quarterly reporting requirement unnecessary for title V sources. In particular, TDEC explains that the title V program requires sources to submit a report identifying all deviations from permit requirements every six months, and to submit an annual compliance certification. TDEC explains that the current quarterly reporting requirement in Tennessee’s SIP prevents Tennessee sources from availing themselves of the less burdensome reporting requirements under more recently enacted federal regulations. Furthermore, TDEC contends that eliminating the quarterly reporting requirement will have no impact on the emissions of any air pollutant.

1. Impact of the Proposed SIP Revision on Reporting Obligations for Major Sources

Even if EPA approves Tennessee’s request to remove the reporting requirements at TAPCR Rule 1200-3-20-.04(2) from Tennessee’s SIP, major sources will continue to be subject to the title V reporting requirements, as well as other emissions reporting requirements in Tennessee’s SIP. Regarding title V reporting requirements, Tennessee has an EPA-approved title V operating permits program and TDEC is the permitting authority. *See* “Clean Air Act Final Approval of Operating Permit Programs; Tennessee and Memphis-Shelby County,” 66 FR 56996 (November 14, 2001). As TDEC notes, title V requires

sources to submit reports of any required monitoring at least every six months. *See* 40 CFR 70.6(a)(3)(iii)(A). All instances of deviations from permit requirements, including excess emissions during SSM events, must be clearly identified in such reports. *Id.* TDEC adopted this requirement into its federally approved title V operating permits program at TAPCR Rule 1200-3-9-.02(11)(e)1(iii)(III). In addition, emissions during SSM events that exceed applicable emission limits must be taken into account in the annual compliance certification required by the title V program. *See* 40 CFR 70.6(c)(5) and TAPCR 1200-3-9-.02(11)(e)3(v).

The title V operating permits program also requires “[p]rompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventative measures taken.” *See* 40 CFR 70.6(a)(3)(iii)(B). The permitting authority is to define “prompt” in relation to the degree and type of deviation likely to occur and the applicable requirements. *Id.* Since individual permitting authorities are responsible for having programs to attain and/or maintain air quality within their geographical boundaries, they are obligated under the title V operating permits program to determine, among other things, what constitutes a prompt notification of a deviation from permit requirements. TDEC incorporates this prompt reporting requirement into its major source operating program at TAPCR 1200-3-9-.02(11)(e)1(iii)(III)II, which defines “prompt reporting” by reference to TAPCR Rule 1200-3-20-.03 (generally requiring reporting “within 24 hours”).

In addition to the title V reporting requirements, Tennessee’s SIP authorizes the Tennessee Air Pollution Control Board’s Technical Secretary to require enhanced reporting as needed to verify that a “major stationary source” is operating in compliance with applicable requirements. *See* TAPCR Chapter 1200-3-10-.04(2) (“The Technical Secretary is authorized to require by permit condition any periodic or enhanced monitoring, recording and reporting that he deems necessary for the verification of the source’s compliance with the applicable requirements as defined in 1200-3-9-.02(11).”). Likewise, Tennessee’s SIP at TAPCR Rule 1200-3-10-.02, “Monitoring of Source Emissions, Recording, Reporting of the Same are Required,” at paragraph (1)(a) states: “The Technical Secretary may require the owner or operator of any air

contaminant source discharging air contaminants . . . to . . . make periodic emission reports as required in paragraph (2).” Paragraph (2)(a) clarifies that “[r]ecords and reports as the Technical Secretary shall prescribe,” must be collected and submitted. Finally, TAPCR Rule 1200-3-20-.08, “Special Reports Required,” states that the Technical Secretary “may require any air contaminant source to submit a report within thirty (30) days after the end of each calendar quarter” containing dates and details of any SSM events and resultant emissions in excess of applicable limitations. Thus, the SIP contains provisions that allow TDEC to collect more frequent quarterly reports similar to those in TAPCR 1200-3-20-.04(2) when deemed necessary to determine a source’s compliance with applicable requirements. It is also important to note that TAPCR 1200-3-20-.04(1) remains in effect, requiring sources to collect and maintain records regarding SSM events and resultant excess emissions.

With respect to TDEC’s request to remove the requirement in TAPCR Rule 1200-3-20-.04(2) that sources located in or impacting nonattainment areas report total emissions (if such reports are not otherwise required), EPA notes that other federal reporting requirements would ensure that similar emissions information is reported on a regular basis. Specifically, EPA’s Air Emissions Reporting Requirements (AERR), set forth at Subpart A to 40 CFR part 51, specify that the state must submit triennial reports of annual (12-month) emissions for all sources and every-year reports of annual emissions of criteria air pollutants and their precursors for all major sources as well as annual emissions reporting from certain larger sources, as outlined in Appendix A to Subpart A. While the reporting requirement that TDEC proposes to remove from its SIP applies only to sources located in or impacting nonattainment areas, the AERR applies to all major sources located in all areas, regardless of attainment status. Specifically, under the AERR, if a source is considered a major source under 40 CFR part 70 for one criteria air pollutant or precursor pollutant, then the state must report all emissions of criteria air pollutants and precursors for that source. TDEC implements the AERR by collecting reports of annual emissions from sources in June of each year, depending on whether the triennial or annual report applies, and then compiling and submitting the information to EPA’s emissions inventory system. On its Web site, TDEC

outlines the thresholds, timeframes, and structure of these emissions reports, citing the AERR and a statute at Tennessee Code Annotated Section 68-201-105(b)(2), which gives the Division of Air Pollution Control the authority to “[r]equire that any person furnish the department information required by it in discharge of its duties under this part, if the department has reason to believe such person is, or may be about to, causing or contributing to air pollution.” *See* <https://tn.gov/environment/article/apc-emissions-inventory-reporting-requirements>. TDEC also informs sources at this web address that failure to submit the reports by the applicable deadline may result in enforcement pursuant to this statute. *See also* SIP Rule TAPCR 1200-3-10-.02(1)(a) (authorizing the Technical Secretary to require submittal of periodic emissions reports).

2. Impact of the Proposed SIP Revision on Reporting Obligations for Minor Sources

There are two types of minor sources of air pollution: “true minors” and “synthetic minors.” “Synthetic minors” are sources that restrain their “potential to emit” to a level that is below the major source applicability threshold through the use of emissions control, restriction on hours of operation, or other means. *See* SIP Rule TAPCR 1200-3-9-.02(11)(a) (authorizing a source to opt out of major source requirements by taking an enforceable limit on its potential to emit). *See also* SIP Rule TAPCR 1200-3-9-.01(b)(5) (defining “potential to emit”). “True minors” are sources for which potential emissions are below the major source thresholds, even assuming no emission controls and unlimited hours of operation. *See* SIP Rule TAPCR 1200-3-9-.01(b)(5). If EPA finalizes approval of the proposed SIP revision, the effects will be different for these different types of minor sources.

Synthetic minor sources, in accordance with TAPCR 1200-3-9-.02(11)(a), are subject to an enforceable limit restricting potential to emit and must implement “detailed monitoring, reporting and recordkeeping requirements that prove the source is abiding by its more restrictive emission and/or production limits.” EPA approved Tennessee’s request to incorporate TAPCR 1200-3-9-.02(11)(a) into the Tennessee SIP on February 13, 1997. 62 FR 6724. Accordingly, Tennessee’s synthetic minor emission limits are federally enforceable. *Id.* In

practice¹, TDEC's synthetic minor permits require (1) prompt reporting of any non-compliance with permit conditions designed to restrict "potential to emit" below the major source level (the "synthetic minor limit"), (2) submission of an annual compliance certification supported by records documenting the facility's compliance with its synthetic minor limit, and (3) reporting of excess emissions due to malfunctions in accordance with TAPCR Chapter 1200-3-20-.03. Thus, synthetic minor sources would remain subject to reporting requirements even if EPA approves TDEC's request to remove the reporting requirements in TAPCR Rule 1200-3-20-.04 from Tennessee's SIP.

Due to their relatively small amount of emissions, true minor sources are subject to significantly fewer emissions-related reporting obligations than major or synthetic minor sources. There is no general federal requirement for true minor sources to directly report their emissions to the state or to EPA. However, the CAA and federal regulations do require source-specific emissions reporting for true minor sources under certain circumstances. Specifically, for areas designated as marginal-or-above nonattainment for the ozone NAAQS, any source emitting 25 tons per year or more of nitrogen oxides (NO_x) or volatile organic compounds (VOCs) (both precursors to ozone formation) must report total emissions annually in accordance with the emissions statement requirement of CAA section 182(a)(3)(B). EPA approved Tennessee's regulation at TAPCR 1200-3-18-.02(8) into the SIP to satisfy the emissions statement reporting requirement for the 2008 ozone NAAQS on March 5, 2015. *See* 80 FR 11887.

Emissions from true minor sources also are captured to some extent by the AERR. Specifically, under the AERR, Tennessee must compile minor source emissions data and periodically submit that data to EPA for inclusion in the EPA's National Emissions Inventory. The rule requires triennial reports of VOC emissions in "serious," "severe," and "extreme" ozone nonattainment areas for sources that emit greater than or equal to 50 tons per year, 25 tons per year and 10 tons per year, respectively. *See* Appendix A to 40 CFR 51, Subpart A. The AERR also provides for reporting

of emissions of particulate matter with a diameter of 10 micrometers or less (PM₁₀) that are greater than or equal to 70 tons per year in any area designated as "serious" nonattainment for PM₁₀. *Id.* In addition, the AERR provides for reporting of lead emissions greater than or equal to 0.5 tons per year, regardless of an area's attainment status with respect to the lead NAAQS. *Id.* Other than under these specific circumstances, the AERR instructs states to treat minor sources as "nonpoint sources" in the triennial emissions inventories (*see* 40 CFR 51.20), meaning that the emissions inventories "collectively represent individual sources that have not been inventoried as specific point or mobile sources," 40 CFR 51.50. The AERR goes on to explain: "These individual sources treated collectively as nonpoint sources are typically too small, numerous, or difficult to inventory using the methods for the other classes of sources." *Id.* Accordingly, these nonpoint sources are generally estimated and aggregated within source classification codes on a county-level resolution rather than individual source emissions, in accordance with 40 CFR 51.20(d).

Subsequent to the September 25, 2013, submittal, TDEC submitted a memorandum that addressed true minor sources. In that memorandum, Tennessee highlighted the Technical Secretary's authority under 1200-3-10-.02(1)(a) to collect reports from "any air contaminant source." TDEC notes that if there were a reason to think a true minor source was impacting air quality standards, the Division of Air Pollution Control could collect these reports of emissions. This memorandum is included in the Docket for today's proposed action.

3. EPA's Evaluation the Effect of the Requested SIP Revision on TDEC's Ability To Determine Whether Sources are Operating in Compliance With the SIP

In light of the combination of federal reporting requirements, reporting requirements under Tennessee's SIP, and Tennessee's authority to request additional information on source emissions when necessary, EPA proposes to find that Tennessee's September 25, 2013, SIP revision would not impair Tennessee's ability to determine the nature and amount of emissions from both major and minor sources and whether such sources are operating in compliance with Tennessee's SIP. Accordingly, EPA's proposed approval of Tennessee's September 25, 2013, SIP revision is consistent with the minimum SIP

requirements pertaining to enforceability and emissions reporting, including the "Source Surveillance" requirements specified at 40 CFR 51.211.

C. Section 110(l) and Section 193 Relaxation Considerations

As discussed above, before the removal of this paragraph, sources were required to report excess emissions during SSM events, as well as total emissions, each calendar quarter. If this provision is removed from the SIP, the requisite reporting from major sources and synthetic minor sources generally will be less frequent, and emissions from true minor sources generally will be accounted for only in aggregate for periodic AERR reporting from the state (unless TDEC exercises its authority to request submittal of additional emissions information). The effect of less frequent, or less overall required reporting constitutes a potential SIP relaxation. Section 110(l) of the Act provides that "the Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this Act." Accordingly, if provisions are removed from the federally approved SIP, states must provide a noninterference demonstration pursuant to section 110(l) of the Act.

Additionally, section 193 of the Act, the general savings clause, states: "No control requirement in effect, or required to be adopted by an order, settlement agreement, or plan in effect before the date of the enactment of the [CAA] Amendments of 1990 in any area which is a nonattainment area for any air pollutant may be modified . . . unless the modification insures equivalent or greater emission reductions of such air pollutant." Tennessee's September 25, 2013, SIP revision would revise a regulation that was approved into Tennessee's SIP in 1980 and that impacts requirements applicable to sources located in or having a significant impact on air quality in a nonattainment area. *See* 45 FR 8004 (February 6, 1980). Therefore, section 193 must be addressed to insure that no controls in a nonattainment area are removed or modified from the SIP without equivalent or greater emission reductions.

Tennessee originally provided a brief section 110(l) and section 193 analysis in the response to public comments section of the final September 25, 2013, submittal to account for the relaxation of emissions reporting requirements.

¹ Tennessee's "synthetic minor" permits are classified as "conditional major" permits, and can be found along with compliance reports and notices of violation in the public database at the following Web site: https://tdec.tn.gov/tdec_online/Home.aspx. TAPCR 1200-3-9-.02(11)(a) also requires that these types of permits are made available for public comment and hearing.

Subsequently, on July 16, 2015, Tennessee provided EPA with a clarifying memorandum that expanded the State's explanation for the rule change and why the revision would not impact air quality. This memorandum is available in the Docket for today's proposed action. In the final September 25, 2013, submittal and in the July 16, 2015, memorandum, Tennessee declares that the proposed SIP revision will have no effect on any applicable requirement concerning attainment, and reasonable further progress toward attainment and maintenance of the NAAQS, thereby addressing section 110(l) of the Act. Tennessee further contends that the proposed SIP revision is consistent with section 193 of the Act because it does not address any emissions reduction or emissions control requirement and will have no effect on the emissions of any air pollutant.

EPA preliminarily concludes that removal of the quarterly reporting requirement at TAPCR Rule 1200-3-20-.04 from Tennessee's SIP will not result in an increase in emissions of any air pollutant and therefore will not impact attainment, reasonable further progress toward attainment, or maintenance of the NAAQS. While the proposed SIP revision reduces emissions reporting obligations, SIP emission limits remain unchanged. Furthermore, as discussed above, the array of reporting requirements that will remain in effect, including title V reporting requirements, SIP reporting requirements, emissions reporting required by the State pursuant to the AERR, and additional reporting as the State deems necessary, will provide Tennessee with sufficient information to ensure that sources operate in compliance with applicable emission limits. Therefore, EPA is proposing to find that Tennessee's September 25, 2013, SIP revision is consistent with the requirements of both sections 110(l) and 193 of the Act.

D. SSM SIP Call Considerations

In this action, EPA is not proposing to approve or disapprove revisions to any existing emission limitations that apply during SSM events. EPA notes that on June 12, 2015, the Agency published a formal finding that a number of states have SIPs with SSM provisions that are contrary to the CAA and existing EPA guidance. See 80 FR 33840.

Accordingly, EPA issued a formal "SIP call" requiring the affected states to make a SIP submission to correct the deficient SSM regulations. *Id.* In that final action, EPA determined that TAPCR Chapter 1200-3-20 has provisions that are contrary to the CAA, specifically paragraph (1) of Rule 1200-

3-20-.07, "Report Required upon the Issuance of Notice of Violation." As today's proposed action only deals with the deletion of a separate reporting requirement which is reasonably covered by other requirements, and does not impact the provision of the Tennessee Rule implicated in the SSM SIP call, this proposed action does not contradict the finding of inadequacy regarding Tennessee's Rule 1200-3-20-.07(1).

II. Incorporation by Reference

In this rule, 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 the TDEC Rule 1200-3-20-.04, entitled "Logs and Reports," effective June 19, 2013, which removed a quarterly reporting requirement for total emissions and for excess emissions during SSM. EPA has made, and will continue to make, these documents generally available electronically through www.regulations.gov and/or in hard copy at the Region 4 office (see the **ADDRESSES** section of this preamble for more information).

III. Proposed Action

EPA is proposing to approve the September 25, 2013, Tennessee SIP revision consisting of removing and reserving paragraph (2) of Rule 1200-3-20-.04, "Logs and Reports" because it is consistent with the CAA and federal regulations governing SIPs.

IV. 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. Accordingly, this proposed 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 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 13563 (76 FR 3821, January 21, 2011);
- 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 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 application 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).

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 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, Incorporation by reference, Reporting and recordkeeping requirements.

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

Dated: July 15, 2016.

Heather McTeer Toney,

Regional Administrator, Region 4.

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