



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2015-0403; FRL-9953-05-Region 4]

Air Plan Approval;

TN: Revisions to Logs and Reports for Startups, Shutdowns and Malfunctions

AGENCY: Environmental Protection Agency.

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 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 approving this SIP revision because it is consistent with the Clean Air Act (CAA or Act) and federal regulations governing SIPs.

DATES: This rule will be effective [insert 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-2015-0403. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be

publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Brad Akers, Air Regulatory Management Section, Air Planning and Implementation Branch, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Mr. Akers can be reached by telephone at (404) 562-9089 or via electronic mail at akers.brad@epa.gov.

SUPPLEMENTARY INFORMATION:

I. This Action

EPA is approving a revision to the Tennessee SIP submitted by TDEC on September 25, 2013. 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." Subparagraph (2) provided 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 approving Tennessee's September 25, 2013, SIP revision because the proposed revision is consistent with the requirements of the CAA and federal regulations governing SIPs. EPA received no comments on the July 27, 2016 (81 FR 49201), proposed rulemaking.

II. Background

A. Summary of the September 25, 2013, SIP Revision

The CAA and rules governing SIPs in 40 CFR part 51 require recordkeeping and reporting to ensure that sources are in compliance with enforceable emission limits. Paragraph (2) of TAPCR Rule 1200-3-20-.04 initially helped to satisfy these requirements by providing for quarterly reports of excess emissions during SSM events, as well as total quarterly emissions. Removing this paragraph eliminates a set of requirements covering all source types, including major sources; 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 ("synthetic minor source"); and those sources for which potential emissions are below the major source thresholds, even assuming no emission controls and unlimited hours of operation ("true minor sources"). Tennessee's September 25, 2013, SIP submittal demonstrates that CAA requirements for recordkeeping and reporting will continue to be met, as applicable, considering other federal and state regulations.

Major sources in Tennessee are subject to title V of the CAA at 40 CFR part 70. This requires: (1) sources to submit reports of any required monitoring at least every six months at 40

CFR 70.6(a)(3)(iii)(A), including all instances of deviations from permit requirements; (2) an annual compliance certification at 40 CFR 70.6(c)(5); and (3) prompt reporting of deviations from permit requirements at 40 CFR 70.6(a)(3)(iii)(B). TDEC has adopted these requirements into its federally-approved title V operating permits program at TAPCR Rule 1200-3-9-.02(11)(e)1(iii)(III)I, 1200-3-9-.02(11)(e)3(v), and 1200-3-9-.02(11)(e)1(iii)(III)II, respectively.

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). 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 reports similar to those in TAPCR 1200-3-20-.04(2) when deemed necessary to determine a source's compliance with applicable requirements. TAPCR 1200-3-20-.04(1), requiring sources to collect and maintain records regarding SSM events and resultant excess emissions, also remains in effect.

Regarding total emissions, the State is also required to report to EPA 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. *See* subpart A to 40 CFR part 51, the “Air Emissions Reporting Requirements,” or “AERR.” Further details are provided in the July 27, 2016, proposed rule.

Synthetic minor sources, in accordance with SIP-approved 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.” 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, Tennessee can determine compliance with the applicable permit conditions for synthetic minor sources.

Reserving paragraph TAPCR 1200-3-20-.04(2) eliminates the requirement that true minor sources report excess emissions and total emissions to the State. There is no general federal requirement for true minor sources to directly report their emissions to the state or to EPA. The State explains in its submittal that true minor sources were never intended to be required to make these types of reports, but that the regulated community has expanded to include many smaller sources since the Rule’s adoption in the TAPCR in 1979. Total emissions

from true minor sources are still considered, either in aggregate or via specific reporting. True minor sources with emissions of oxides of nitrogen or volatile organic compounds above 25 tons per year (tpy) report total emissions annually to the State in ozone nonattainment areas, pursuant to TAPCR 1200-3-18-.02(8). Additionally, the AERR requires the state to report emissions from sources at lower thresholds for select criteria air pollutants or precursors in certain nonattainment areas, which may include true minor sources. The AERR also provides for reporting of lead emissions greater than or equal to 0.5 tpy, regardless of an area's attainment status with respect to the lead NAAQS. Otherwise, emissions from true minor sources are reported to EPA in aggregate in accordance with the AERR. Finally, Tennessee noted the Technical Secretary's authority under 1200-3-10-.02(1)(a) to collect reports from "any air contaminant source." TDEC explains 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.

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, provide that Tennessee's September 25, 2013, SIP revision does 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 final approval of Tennessee's September 25, 2013, SIP revision is consistent with the minimum SIP requirements pertaining to enforceability and emissions reporting. For more information, see the July 27, 2016, proposed rule (81 FR 49201). EPA received no comments on the proposed rulemaking.

B. SSM SIP Call Considerations

In this action, EPA is not approving or disapproving revisions to any existing emission limitations that apply during SSM events. EPA notes that on June 12, 2015 (80 FR 33840), 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. 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.” This final 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 TAPCR 1200-3-20-.07(1).

III. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of TAPCR 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. 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 by the Director of the Federal Register in the next update to the

SIP compilation.¹ EPA has made, and will continue to make, these materials generally available through www.regulations.gov and/or at the EPA Region 4 Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information)

IV. Final Action

EPA is taking final action to approve the September 25, 2013, Tennessee SIP revision. This final approval includes the section 110(l) demonstration that modifying the SIP to remove TAPCR 1200-3-20-.04(2) will not interfere with attainment or maintenance of any NAAQS or with any other applicable requirement of the CAA, and the demonstration that the 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.

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 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 action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

¹ 62 FR 27968 (May 22, 1997).

- 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 (Public Law 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.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[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, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: September 15, 2016.

Kenneth R. Lapierre,

Acting Regional Administrator,

Region 4.

40 CFR part 52 is amended 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, table 1 in paragraph (c) is amended by revising the entry for “Section 1200-3-20-.04” to read 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 1200-3-20 Limits on Emissions Due to Malfunctions, Start-ups, and Shutdowns				
* *	* *	*	*	*
Section 1200-3-20-.04	Logs and reports	6/19/2013	[Insert date of publication in Federal Register], [Insert Federal Register citation]	
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[FR Doc. 2016-23302 Filed: 9/28/2016 8:45 am; Publication Date: 9/29/2016]