

(3) Persons or vessels requiring deviations from this rule must request permission from the Captain of the Port New Orleans through the on-scene Coast Guard or other agency asset, via VHF Ch. 67 or the Coast Guard Vessel Traffic Center at (504) 365-2230.

(4) All persons and vessels granted permission to enter a security zone must comply with the instructions of the Captain of the Port New Orleans and designated personnel. Designated personnel include commissioned, warrant and petty officers of the U.S. Coast Guard, and local, state, and federal law enforcement officers on clearly identified law enforcement agency vessels.

(d) *Informational broadcasts.* The Captain of the Port or a designated representative will inform the public through marine safety information bulletins or broadcast notices to mariners of this regulation.

Dated: December 27, 2011.

J. J. Arenstam,

Captain, U.S. Coast Guard, Acting Captain of the Port New Orleans.

[FR Doc. 2012-2674 Filed 2-6-12; 8:45 am]

BILLING CODE 9110-04-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2010-0483-201201; FRL-9627-5]

Approval and Promulgation of Implementation Plans; State of Tennessee: Prevention of Significant Deterioration and Nonattainment New Source Review Rules: Nitrogen Oxides as a Precursor to Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve changes to the Tennessee State Implementation Plan (SIP), submitted by the Tennessee Department of Environment and Conservation (TDEC), through the Division of Air Pollution Control, to EPA on May 28, 2009. The SIP revision modifies Tennessee's New Source Review (NSR) Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) programs. The SIP revision addresses three related issues. First, the SIP revision updates Tennessee's SIP-approved regulations to incorporate NSR permitting requirements promulgated in the 1997 8-Hour Ozone national ambient air quality standards

(NAAQS) Implementation Rule NSR Update Phase II (hereafter referred to as the "Ozone Implementation NSR Update" or "Phase II Rule"). Second, Tennessee's May 28, 2009, SIP revision updates to Tennessee's PSD and NNSR permitting regulations regarding the addition of clean coal technology (CCT) provisions. Third, the SIP revision provides clarifying changes and corrections to portions of the Tennessee NSR rule. All changes in the SIP revision comply with federal NSR permitting regulations found at 40 CFR 51.165 and 51.166. EPA is approving Tennessee's May 28, 2009, SIP revision because it is in accordance with the Clean Air Act (CAA or Act).

DATES: *Effective Date:* This rule will be effective March 8, 2012.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2010-0483. 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 Regulatory Development Section, Air Planning 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 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the Tennessee SIP, contact Ms. Twunjala Bradley, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303-8960. Telephone number: (404) 562-9352; email address: bradley.twunjala@epa.gov. For information regarding NSR, contact Ms. Yolanda Adams, Air Permits Section, at the same address above. Telephone number: (404) 562-9214; email address: adams.yolanda@epa.gov. For information regarding 8-hour ozone

NAAQS, contact Ms. Jane Spann, Regulatory Development Section, at the same address above. Telephone number: (404) 562-9029; email address: spann.jane@epa.gov.

SUPPLEMENTARY INFORMATION:

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I. Background

EPA is taking final action to approve changes to the Tennessee SIP such that it is consistent with federal requirements for NSR permitting.¹ On May 28, 2009, Tennessee submitted a SIP revision to EPA for approval which revised Tennessee's Air Quality Regulations, Chapter 1200-3-9—*Construction and Operating Permits, Rule Number .01—Construction Permit, .02—Operating Permits, and .03—General Provisions* to adopt federal PSD and NNSR requirements.² First, the SIP revision addressed requirements promulgated in the Phase II Rule including the following provisions: (1) Recognizing nitrogen oxides (NO_x) emissions as ozone precursors; (2) adopting NNSR provisions for major stationary source thresholds for sources in certain classes of nonattainment areas for 8-hour ozone, carbon monoxide and particulate matter with a nominal aerodynamic diameter less than or equal to 10 microns (PM₁₀); (3) addressing changes to offset ratios for marginal, moderate, serious, severe, and extreme ozone nonattainment areas; and (4) modifying provisions addressing offset requirements for facilities that shut down or curtail operation. Second, the SIP revision includes updates to the Tennessee PSD and NNSR permitting regulations regarding the adoption of CCT definitions at 1200-3-9. Lastly, the SIP revision includes clarifying changes and corrections to the State's rules at 1200-3-9-.01 through -.03.

EPA notes that Tennessee's May 28, 2009, submittal also includes the removal of provisions for clean units (CU) and pollution control projects (PCP) from the State's PSD and NNSR regulations that were submitted by the State to be consistent with then-applicable federal regulations. EPA did

¹ Tennessee's May 28, 2009, SIP revision also contained changes to Tennessee's SIP-approved NSR permitting regulations regarding "baseline actual emissions." At this time, EPA is not taking action on this portion of Tennessee's submission.

² Tennessee's May 28, 2009, SIP submittal also made changes to the State's title V regulations at 1200-3-9-.02(11). EPA is not taking action on Tennessee's revisions to the State's title V regulations at this time.

not take action to approve these CU and PCP revisions into Tennessee's federally-approved SIP, and the federal requirement for these provisions was ultimately vacated by the United States Court of Appeals for the District of Columbia Circuit (DC Circuit Court)³ Consequently, because these revisions were never incorporated into the State's SIP and the federal requirements have since been vacated, there is no federal action necessary with respect to the removal of the CU and PCP provisions from State law.

On December 5, 2011, EPA published a proposed rulemaking to approve the aforementioned changes to Tennessee's NSR programs. See 76 FR 75845. No comments, adverse or otherwise, were received on EPA's December 5, 2011, proposed rulemaking. EPA is now taking final action to approve the changes to Tennessee's NSR programs as provided in EPA's December 5, 2011, proposed rulemaking. A summary of the background for today's final actions is provided below.

a. Phase II Rule

With regard to the 1997 8-hour ozone NAAQS,⁴ EPA's Phase II Rule, finalized on November 29, 2005, addressed control and planning requirements as they applied to areas designated nonattainment for the 1997 8-hour ozone NAAQS such as reasonably available control technology, reasonably available control measures, reasonable further progress, modeling and attainment demonstrations, NSR, and the impact to reformulated gas for the 1997 8-hour ozone NAAQS transition. See 70 FR 71612. The NSR permitting requirements established in the rule included the following provisions: recognizing NO_x as an ozone precursor for PSD purposes; changes to the NNSR rules establishing major stationary

thresholds (marginal, moderate, serious, severe, and extreme nonattainment (NAA) classifications) and significant emission rates for the 8-hour ozone, PM₁₀ and carbon monoxide NAAQS; revising the criteria for crediting emission reductions credits from operation shutdowns and curtailments as offsets, and changes to offset ratios for marginal, moderate, serious, severe, and extreme ozone NAA.

The Phase II Rule made changes to federal regulations at 40 CFR 51.165 and 51.166 (which govern the NNSR and PSD permitting programs respectively). Pursuant to these requirements, states were required to submit SIP revisions adopting the relevant federal requirements of the Phase II Rule (at 40 CFR 51.165 and 51.166) into their SIP no later than June 15, 2007. Tennessee's May 28, 2009, SIP revision adopts the relevant provisions at 40 CFR 51.165 and 51.166 into the Tennessee SIP to be consistent with federal regulations for NSR permitting requirements promulgated in the Phase II Rule with minor NNSR variations. States may meet the requirements of 40 CFR Part 51 and the Phase II Rules with alternative but equivalent regulations. As part of its analysis of Tennessee's May 28, 2009 SIP revision, EPA conducted a thorough review of the state's submittal including those provisions that differ from the federal rules (specifically NNSR provisions at 40 CFR 51.165(a)(1)(iv)(A)(2), 51.165(a)(1)(v)(E) and 51.165(a)(1)(x)(C)). EPA determined that Tennessee's equivalent provisions to the federal NNSR regulations are consistent with the program requirements for NSR, set forth at 40 CFR 51.165 and 51.166. For more detail on Tennessee's equivalent NNSR provisions related to the Phase II Rule, please refer to EPA's proposed rulemaking at 76 FR 75845 (December 5, 2011).

b. Clean Coal Technology Revisions

With regard to the CCT changes, Tennessee's May 28, 2009, SIP submittal revised the State's NSR regulations at 1200-3-9 to adopt CCT and repowering definitions promulgated by EPA in a portion of the 1992 WEPCO Rule (*Wisconsin Electric Power Co. v. Reilly*, 893 F.2d 901 (7th Cir. 1990)) on July 21, 1992 (57 FR 32314) and now codified at 40 CFR 51.165(a)(1)(xxii)-(xxiv) and 51.166(b)(33)-(36). In addition, Tennessee's SIP submittal modified the definition of "major modification" to exempt "clean coal technology demonstration projects" (consistent with 51.165(a)(1)(v)(C)(9) and

51.166(b)(2)(iii)(i)-(j)).⁵ EPA has determined that the rule changes made by Tennessee are consistent with the current federal regulations at 40 CFR 51.165 and 51.166.

c. Tennessee's Clarifying Changes and Corrections

Finally, TDEC's May 28, 2009, SIP submittal incorporated clarifying changes and typographical corrections to portions of the State's NSR regulations at 1200-3-9-.01 through -.03. Specifically, Tennessee made typographical corrections to the definition of "major stationary source" at rule 1200-3-09-.01(5)(b)1(iv)(II)⁶ by removing the "s" from the word "items" between the word "under" and before numerical ("iv"). In addition, Tennessee replaced the word "data" with "date" at paragraph (1) of rule 1200-3-9-.03. Tennessee's clarifying changes also revised paragraph (1) at rule 1200-3-9-.02 to clarify the timeframe and conditions for an air contaminant source to apply for an operating permit. Finally, as a result of the removal of all references to the "clean units" language (due to the above-described vacatur), Tennessee, where appropriate at Rule 1200-3-9-.01, replaced the terms "clean units" or "clean" with the terms "new emission units" or "new" consistent with the hybrid test applicability provision amended in the 2002 NSR Reform Rule. See 67 FR 8018 at 80260. EPA has determined that the clarifying changes and corrections made by Tennessee are consistent with section 110 of the CAA and its implementing regulations.

II. This Action

Tennessee's May 28, 2009, SIP revision updates the State's PSD and NNSR provisions at Chapter 1200-3-9 to adopt the NSR requirements promulgated in the Phase II Rule regarding: (1) Recognizing NO_x emissions as ozone precursors; (2) NNSR provisions for major stationary source thresholds for sources in certain classes of nonattainment areas for 8-hour ozone, carbon monoxide and PM₁₀; (3) addressing changes to offset ratios for marginal, moderate, serious, severe, and extreme ozone nonattainment areas;

⁵ The WEPCO rule exempted CCT demonstration projects (that constitute re-powering) from PSD requirements (major modification) as long as the projects do not cause an increase in potential to emit of a regulated NSR pollutant emitted by the unit.

⁶ EPA notes that in the proposed rule for this action, the Agency incorrectly cited Tennessee's definition of "major stationary source" as "1200-3-09-.01(5)(b)(i)1(iv)(II)" instead of "1200-3-09-.01(5)(b)1(iv)(II)" regarding the typographical correction. See 76 FR 75845, 75848.

³ On December 31, 2002, (67 FR 80186), EPA published final rule changes to 40 CFR parts 51 and 52, regarding the CAA's PSD and NNSR programs. On November 7, 2003, (68 FR 63021), EPA published a notice of final action on the reconsideration of the December 31, 2002, final rule changes. The December 31, 2002, and the November 7, 2003, final actions are collectively referred to as the "2002 NSR Reform Rules." On June 24, 2005, the DC Circuit Court vacated portions of the 2002 NSR Reform Rules pertaining to CU and PCP.

⁴ On July 18, 1997, EPA promulgated a revised 8-hour ozone NAAQS of 0.08 parts per million—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, 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. See 69 FR 23951.

and (4) addressing changes to provisions pertaining to offset requirements for facilities that shut down or curtail operation. Tennessee's SIP submittal also adopted CCT definitions established in a portion of the WEPCO Rule (including demonstration project, temporary CCT demonstration project, and re-powering found at 40 CFR 51.165(xxii)–(xxiv) and 51.166(b)(33)–(36)) and revised the definition of “major modification” by exempting CCT demonstration projects (that constitute re-powering) from PSD requirements currently at 40 CFR 51.165(a)(1)(v)(C)(9) and 51.166(b)(2)(iii)(i)–(j). Additionally, Tennessee's SIP submittal made clarifying changes and corrected typographical errors at Tennessee NSR regulations in Chapter 1200–3–9–.01 through –.03.

EPA has determined that Tennessee's May 28, 2009, SIP revision, which became state-effective on May 10, 2009, meets the NSR permitting requirements established in the Phase II Rule and is consistent with the provisions promulgated in a portion of the WEPCO Rule. Further, EPA has determined that Tennessee's May 28, 2009, SIP revision is consistent with section 110 of the CAA.

III. Final Action

Pursuant to section 110 of the CAA, EPA is taking final action to approve Tennessee's May 28, 2009, SIP revisions adopting federal regulations amended in the Phase II Rule (specifically recognizing NO_x as an ozone precursor) into the Tennessee SIP. EPA is also taking final action to approve Tennessee's changes to its PSD and NNSR permitting regulations regarding the addition of CCT requirements (established in a portion of EPA's WEPCO Rule) at 1200–3–9.01; and the clarifying changes and correction to Tennessee's NSR rule. EPA is approving these revisions into the Tennessee SIP because they are consistent with section 110 of the CAA and its implementing regulations.

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. 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 Order 12866 (58 FR 51735, October 4, 1993);
- 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).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country and EPA notes that it will not 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 April 9, 2012. 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* CAA section 307(b)(2), 42 U.S.C. 7607(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Oxides of Nitrogen, Ozone, Reporting and recordkeeping requirements.

Dated: January 27, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

- 1. The authority citation for part 52 continues to read as follows:

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

Subpart RR—Tennessee

- 2. Section 52.2220 (c) is amended under Chapter 1200–3–9 by revising the entries for “Section 1200–3–9–.01,” “Section 1200–3–9–.02,” and “Section 1200–3–9–.03” to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

TABLE 1—EPA APPROVED TENNESSEE REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
Chapter 1200–3–9 Construction and Operating Permits				
Section 1200–3–9–.01	Construction Permits ...	5/10/2009	2/7/2012 [Insert citation of publication].	EPA is approving Tennessee's May 28, 2009 SIP revisions to Chapter 1200–3–9–.01 with the exception of the "baseline actual emissions" calculation revision found at 1200–3–9–.01 (4)(b)45(i)(III), (4)(b)45(ii)(IV), (5)(b)1(xlvii)(I)(III) and (5)(b)1(xlvii)(II)(IV) of the submittal.
Section 1200–3–9–.02	Operating Permits	5/10/2009	2/7/2012 [Insert citation of publication].	
Section 1200–3–9–.03	General Provisions	5/10/2009	2/7/2012 [Insert citation of publication].	
*	*	*	*	*

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 [FR Doc. 2012–2601 Filed 2–6–12; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 110826540–2069–02]

RIN 0648–XA674

Western Pacific Fisheries; 2012 Annual Catch Limits and Accountability Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Final specifications.

SUMMARY: In this rule, NMFS specifies annual catch limits for western Pacific bottomfish, crustacean, precious coral, and coral reef ecosystem fisheries, and accountability measures to correct or mitigate any overages of catch limits. The catch limits and accountability measures support the long-term sustainability of fishery resources of the U.S. Pacific Islands.

DATES: The final specifications are effective March 8, 2012 through December 31, 2012.

ADDRESSES: Copies of the fishery ecosystem plans are available from the

Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel. (808) 522–8220, fax (808) 522–8226, or www.wpcouncil.org. Copies of the environmental assessments and findings of no significant impact for this action are available from www.regulations.gov, or Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), 1601 Kapiolani Blvd., 1110, Honolulu, HI 96814.

FOR FURTHER INFORMATION CONTACT: Jarad Makaiau, NMFS PIR Sustainable Fisheries, (808) 944–2108.

SUPPLEMENTARY INFORMATION: On January 3, 2012, NMFS published a request for public comments (77 FR 66) on proposed specifications that are finalized here. Additional background information on this action is found in the preamble to the proposed specifications, and is not repeated here.

Through this action, NMFS specifies annual catch limits (ACLs) and accountability measures (AM) for bottomfish, crustacean, precious coral, and coral reef ecosystem fishery management unit species (MUS) in the U.S. Exclusive Economic Zone (EEZ, generally 3–200 nm from shore) around American Samoa, Guam, the Commonwealth of the Northern Mariana Islands (CNMI), and Hawaii. The ACLs are specified for the 2012 fishing year, which begins on January 1 and ends on December 31, except for precious coral

fisheries, which began on July 1, 2011, and end on June 30, 2012.

NMFS is not specifying ACLs at this time for bottomfish, crustacean, precious coral, or coral reef ecosystem MUS in the Pacific Remote Island Areas, because commercial fishing is prohibited out to 50 nautical miles by Presidential Proclamation 8336 (establishing the Pacific Remote Island Marine National Monument (74 FR 1565, January 12, 2009)), and because there is no habitat to support such fisheries in the EEZ beyond the monument boundaries. The Council is separately working on a draft amendment to the relevant FEP containing fishery management measures for the Pacific Remote Islands Marine National Monument (as well as the Rose Atoll and Mariana Trench Marine National Monuments). Additionally, NMFS is not specifying ACLs for MUS that are currently subject to Federal fishing moratoria or prohibitions. These include all species of gold coral (73 FR 47098, August 13, 2008), all species of deepwater precious corals at the Westpac Bed Refugia (75 FR 2198, January 14, 2010), and the three Hawaii seamount groundfish: pelagic armorhead, alfonsin, and raftfish (75 FR 69015, November 10, 2010). The current prohibitions on fishing for these MUS serve as a functional equivalent of an ACL of zero.

2012 Annual Catch Limit Specifications

TABLE 1—AMERICAN SAMOA

Fishery	Management unit species	ACLs
Bottomfish	Bottomfish multi-species stock complex	99,200 lb (44,996 kg).
Crustacean	Deepwater Shrimp	80,000 lb (36,287 kg).
	Spiny Lobster	2,300 lb (1,043 kg).