Service during working hours at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On February 9, 2023, at 88 FR 8516, HUD published a notice of proposed rulemaking entitled ''Affirmatively Furthering Fair Housing'', proposing to implement the obligation to affirmatively further the purposes and policies of the Fair Housing Act with respect to certain recipients of HUD funds (the proposed rule). The Fair Housing Act not only prohibits discrimination, but also directs HUD to ensure that the agency and its program participants will proactively take meaningful actions to overcome patterns of segregation, promote fair housing choice, eliminate disparities in housing-related opportunities, and foster inclusive communities that are free from discrimination.

The proposed rule builds on the steps previously taken in HUD's 2015 Affirmatively Furthering Fair Housing (AFFH) final rule (''2015 AFFH Rule'') [1] to implement the AFFH obligation and ensure that Federal funding is used in a systematic way to further the policies and goals of the Fair Housing Act. HUD proposed to retain much of the 2015 AFFH Rule's core planning process, with certain improvements such as a more robust community engagement requirement, a streamlined required analysis, greater transparency, and an increased emphasis on goal setting and measuring progress. It also includes mechanisms to hold program participants accountable for achieving positive fair housing outcomes and complying with their obligation to affirmatively further fair housing, modeled after those processes under other Federal civil rights statutes that apply to recipients of Federal financial assistance.

While the proposed rule had a 60-day comment period, HUD has received feedback from multiple commenters requesting additional time to review and provide comments on this rule. Therefore, HUD is extending the deadline for comments for an additional 14 days.

Aaron Santa Anna,

Associate General Counsel for Legislation and Regulations.

[FR Doc. 2023–07369 Filed 4–4–23; 4:15 pm]

BILLING CODE 4210–67–P

[1] 80 FR 42271.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R4–OAR–2022–0783; FRL–10523–01–R4]

Air Plan Partial Disapproval and Partial Approval; Tennessee; Revisions to Startup, Shutdown, and Malfunction Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to partially approve and partially disapprove a State Implementation Plan (SIP) revision submitted by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), on November 19, 2016, as supplemented on January 20, 2023, in response to a finding of substantial inadequacy and SIP call published on June 12, 2015, regarding provisions in the Tennessee SIP related to excess emissions during startup, shutdown, and malfunction (SSM) events. Tennessee's January 20, 2023, supplemental SIP revision includes some additional changes related to the 2015 SIP call, plus other changes unrelated to the SIP call, in the affected chapter of Tennessee's regulations. EPA is proposing to approve portions of the November 19, 2016, SIP revision, as supplemented by the January 20, 2023, SIP revision, that the Agency has preliminarily determined correct certain deficiencies identified in the June 12, 2015, SIP SSM call. In addition, EPA is proposing to disapprove portions of the SIP revision that the Agency has preliminarily determined fail to correct other deficiencies identified in the 2015 SIP call.

DATES: Comments must be received on or before May 8, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R4–OAR–2022–0783 at *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 electronically submit any information you consider to be Confidential Business Information (CBI) or other information, the disclosure of which 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: Estelle Bae, Air Permits 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. Ms. Bae can be reached by telephone at (404) 562–9143 or via electronic mail at *bae.estelle@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background

A. EPA's 2015 SSM SIP Action

On February 22, 2013, EPA issued a **Federal Register** notice of proposed rulemaking (NPRM) outlining EPA's policy at the time with respect to SIP provisions related to periods of SSM. EPA analyzed specific SSM SIP provisions and explained how each one either did or did not comply with the Clean Air Act (CAA or Act) with regard

to excess emission events.[1] For each SIP provision that EPA determined to be inconsistent with the CAA, EPA proposed to find that the existing SIP provision was substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call under CAA section 110(k)(5). On September 17, 2014, EPA issued a document supplementing and revising what the Agency had previously proposed in the 2013 NPRM in light of a United States Court of Appeals for the District of Columbia Circuit decision in which the Court found that the CAA precludes authority of EPA to create affirmative defense provisions applicable to private civil suits. EPA outlined its updated policy that affirmative defense SIP provisions are not consistent with CAA requirements. EPA proposed in the supplemental proposal document to apply its revised interpretation of the CAA to specific affirmative defense SIP provisions and proposed SIP calls for those provisions where appropriate. *See* 79 FR 55920 (September 17, 2014).

On June 12, 2015, pursuant to CAA section 110(k)(5), EPA finalized ''State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction,'' hereinafter referred to as the ''2015 SSM SIP Action.'' *See* 80 FR 33839 (June 12, 2015). The 2015 SSM SIP Action clarified, restated, and updated EPA's interpretation that SSM exemption and affirmative defense SIP provisions are inconsistent with CAA requirements. The 2015 SSM SIP Action found that certain SIP provisions in 36 states, including Tennessee, were substantially inadequate to meet CAA requirements and issued a SIP call to those states to submit SIP revisions to address the inadequacies. EPA established an 18-month deadline by which the affected states had to submit such SIP revisions. States were required to submit corrective revisions to their SIPs in response to the SIP calls by November 22, 2016.

EPA issued a memorandum in October 2020 (2020 Memorandum), which stated that certain provisions governing SSM periods in SIPs could be viewed as consistent with CAA requirements.[2] Importantly, the 2020 Memorandum stated that it ''did not alter in any way the determinations made in the 2015 SSM SIP Action that identified specific state SIP provisions that were substantially inadequate to meet the requirements of the Act.'' Accordingly, the 2020 Memorandum had no direct impact on the SIP call issued to Tennessee in 2015. The 2020 Memorandum did, however, indicate EPA's intent at the time to review SIP calls that were issued in the 2015 SSM SIP Action to determine whether EPA should maintain, modify, or withdraw particular SIP calls through future agency actions.

On September 30, 2021, EPA's Deputy Administrator withdrew the 2020 Memorandum and announced EPA's return to the policy set forth in the 2015 SSM SIP Action (2021 Memorandum).[3] As articulated in the 2021 Memorandum, SIP provisions that contain exemptions or affirmative defense provisions are not consistent with CAA requirements and, therefore, generally are not approvable if contained in a SIP submission. This policy approach is intended to ensure that all communities and populations, including overburdened communities, receive the full health and environmental protections provided by the CAA.[4] The 2021 Memorandum also retracted the prior statement from the 2020 Memorandum regarding EPA's plans to review and potentially modify or withdraw particular SIP calls. That statement no longer reflects EPA's intent. EPA intends to implement the principles laid out in the 2015 SSM SIP Action as the Agency takes action on SIP submissions, including Tennessee's November 19, 2016, SIP submittal, as supplemented on January 20, 2023, provided in response to the 2015 SIP call.

B. Tennessee's SIP Provisions Related to Excess Emissions

With regard to the Tennessee SIP, in the 2015 SSM SIP Action, EPA determined that three provisions, Tenn. Comp. R. & Regs. (hereinafter, Rule) 1200–3–5–.02(1), 1200–03–20–.07(1), and 1200–03–20–.07(3), were substantially inadequate to satisfy CAA requirements and issued a SIP call for these provisions. *See* 80 FR 33839, 33965 (June 12, 2015). Rule 1200–3–5–.02, ''Exceptions,'' paragraph (1), provides that ''due allowance may be made for visible emissions in excess of that permitted in this chapter which are necessary or unavoidable due to routine startup and shutdown conditions.'' Rule 1200–03–20–.07, ''Report Required Upon the Issuance of Notice of Violation,'' paragraph (1), provides the Technical Director with the discretion, upon review of a source's excess emissions report, to determine if an event is a violation and whether to pursue enforcement action. Paragraph (3) of Rule 1200–03–20–.07 provides reporting requirements in the event of excess emissions and specifies that failure to submit the required report precludes the admissibility of the report data as an excuse for causing excess emissions during malfunctions, startups, and shutdowns. The rationale underlying EPA's determination that these provisions are substantially inadequate to meet CAA requirements and, therefore, require revisions to remedy the provisions is detailed in the 2015 SSM SIP Action and the accompanying proposals.

On November 19, 2016, Tennessee submitted a SIP revision in response to the SIP call issued in the 2015 SSM SIP Action and requested approval of changes to provisions in Chapter 1200–3–5 (''Visible Emissions Regulations'') and Chapter 1200–3–20 (''Limits On Emissions Due To Malfunctions, Startups, And Shutdowns''). With regard to the Chapter 1200–3–20 provisions, the State requested approval of revisions to Rules 1200–3–20–.06(2), 1200–3–20–.06(4), and 1200–3–20–.06(6) (as numbered in the current state code of regulations) to address deficiencies that EPA identified in the 2015 SSM Action in SIP-approved Rules 1200–03–20–.07(1) and 1200–03–20–.07(3).

On January 20, 2023, Tennessee supplemented its 2016 SIP submission to request removal of Rule 1200–3–20–.06, ''Scheduled Maintenance,'' resulting in the renumbering of Rules 1200–3–20–.07 through .10 to 1200–3–20–.06 through .09 (*i.e.,* .07 is renumbered to .06, and so on), and other changes to Chapter 1200–3–20.[5]

[1] State Implementation Plans: Response to Petition for Rulemaking; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction, 78 FR 12460 (February 22, 2013).

[2] October 9, 2020, memorandum ''Inclusion of Provisions Governing Periods of Startup, Shutdown, and Malfunctions in State Implementation Plans,'' from Andrew R. Wheeler, Administrator.

[3] September 30, 2021, memorandum ''Withdrawal of the October 9, 2020, Memorandum Addressing Startup, Shutdown, and Malfunctions in State Implementation Plans and Implementation of the Prior Policy,'' from Janet McCabe, Deputy Administrator.

[4] *See* 80 FR at 33985.

[5] Tennessee requested that Rule 1200–3–20–.03 and 1200–3–20–.06(5) not be incorporated into the Tennessee SIP. See the document titled ''Transmittal_Letter_SSM SIP Call Chapter 20 Supplemental.doc'' in the docket for this proposed action.

II. Analysis of SIP Submissions

A. Tennessee Chapter 1200–3–5, ''Visible Emission Regulations''

In the 2015 SSM SIP Action, EPA determined that Rule 1200–3–5–.02(1) is substantially inadequate to meet the fundamental requirements of the CAA, as it operates as an impermissible discretionary exemption because it allows a state official to excuse excess visible emissions after giving ''due allowance'' to the fact that they were emitted during startup or shutdown events.[6]

In the November 19, 2016, submission, Tennessee's only revision to Rule 1200–3–5–.02(1) is the addition of a sentence that states, ''However, no visible emission in excess of that permitted in this chapter shall be allowed which can be proved to cause or contribute to any violations of the Ambient Air Quality Standards contained in Chapter 1200–03–03 and the National Ambient Air Quality Standards.'' In its November 19, 2016, SIP revision, TDEC asserts that ''[e]nforcement of the NAAQS fulfills the responsibility of the State of Tennessee to protect and maintain air quality standards.'' Although one possible basis for a SIP call is a finding that a SIP is substantially inadequate to attain or maintain a NAAQS, CAA section 110(k)(5) also authorizes a SIP call when a SIP is substantially inadequate to comply with any other CAA requirement(s), such as the requirement that emission limitations must apply continuously. Rule 1200–3–5–.02(1) was SIP-called because EPA found in the 2015 SSM Action that it was inconsistent with that requirement—specifically, with sections 110(a)(2)(A), 110(a)(2)(C), and 302(k).[7] Thus, since the lone revision to Rule 1200–3–5–.02(1) is the new language prohibiting excess visible emissions which can be proved to cause or contribute to any violations of ambient air quality standards, the specific deficiencies EPA identified in the 2015 SSM SIP Action with respect to Rule 1200–3–5–02(1) have not been corrected.

The revised version of Rule 1200–3–5–.02(1) still operates as an impermissible discretionary exemption from compliance with applicable emission limits in the SIP because it continues to allow a state official to give ''due allowance'' for excess emissions that occur during startup and shutdown events. Though the term ''due allowance'' is not defined in Tennessee's rules, the reference in the next sentence to circumstances under which no excess visible emission ''shall be allowed'' suggests that giving ''due allowance'' to startup and shutdown conditions means that Tennessee is authorized to allow excess emissions during such events.

Pursuant to EPA's SSM policy, emission limitations must apply at all times. Rule 1200–3–5–.02(1) effectively creates an exemption from the SIP-approved opacity requirements of Chapter 1200–3–5 for periods of startup and shutdown at the discretion of the Technical Secretary. As explained in the 2015 SSM SIP Action and corresponding proposal, this provision is impermissible not just because it creates unbounded discretion for a state official to decide whether the excess emissions in a given event constitute a violation of otherwise applicable SIP emission limitations but also because it purports to authorize the state official to create exemptions from applicable emission limitations when such exemptions are not permissible in the first instance. *See* 78 FR 12460, 12513 (February 22, 2013). EPA approval of such broad and unbounded discretion to alter the existing legal requirements of the SIP would be tantamount to allowing a revision of the SIP without meeting the applicable procedural and substantive requirements for such a SIP revision. *See* 80 FR 33839, 33928 (June 12, 2015). This type of director's discretion provision undermines the purpose of emission limitations and the reductions they are intended to achieve, thereby rendering them less enforceable by the EPA or through a citizen suit. For these reasons, EPA is proposing to disapprove the changes to Rule 1200–3–5–.02(1) transmitted in Tennessee's November 19, 2016, SIP revision, as they are not consistent with CAA requirements, specifically CAA sections 110(a)(2)(A), 110(a)(2)(C), and 302(k), and therefore do not adequately address the specific deficiencies EPA identified in the 2015 SSM SIP Action with respect to the Tennessee SIP.

B. Tennessee Chapter 1200–3–20, ''Limits on Emissions Due to Malfunctions, Startups, and Shutdowns''

1. Rule 1200–3–20–.01, ''Purpose''

The January 20, 2023, supplemental SIP revision makes minor changes to Rule 1200–3–20–.01 that are not responsive to the 2015 SIP call. Specifically, Tennessee seeks to remove the portion of this rule that lists examples of sources that are considered to be an ''air contaminant source.'' The definition of ''air contaminant source'' is also included in the Tennessee SIP under Rule 1200–03–.02, ''Definitions,'' and examples of sources that are within the scope of this definition are listed within the definition. This revision would remove the redundancy of this term in the Tennessee SIP and does not relax the applicability of the rules in Chapter 1200–3–20. Accordingly, EPA is proposing to approve the requested change to this Rule.

2. Rule 1200–3–20–02, ''Reasonable Measures Required''

The January 20, 2023, supplemental SIP revision contains substantive changes that are not responsive to the 2015 SIP call but that strengthen the Tennessee SIP by expanding the applicability of Rule 1200–3–20–02 by removing a portion of text that limits the Rule to ''sources identified in Tennessee Rule 1200–3–19, or by a permit condition or an order issued by the Board or by the Technical Secretary as being in or significantly affecting a nonattainment area.'' The effect of removing this language is that this Rule would now apply to all air contaminant sources in the State instead of sources that are in or significantly affecting a nonattainment area. Therefore, EPA is proposing to approve this change to the SIP.

3. Rule 1200–3–20–.06, ''Scheduled Maintenance''

In its January 20, 2023, SIP revision, Tennessee is requesting removal of Rule 1200–3–20–.06, ''Scheduled Maintenance,'' although it was not SIP-called in the 2015 SSM SIP Action. Rule 1200–3–20–.06 specifies reporting requirements for any shutdown of air pollution control equipment for necessary scheduled maintenance that will result in excess emissions. Specifically, this rule requires notification to the Technical Secretary within 24 hours of planned maintenance of air pollution control equipment unless the maintenance is routine, in which case the notifications may be made on an annual basis.

[6] *See* 80 FR 33839, 33965 (June 12, 2015); 78 FR 12460, 12512–13 (February 22, 2013) (explaining that ''this provision is impermissible because it creates unbounded discretion that purports to make a state official the unilateral arbiter of whether the excess emissions in a given event constitute a violation of otherwise applicable SIP emission limitations'' and because ''the provision purports to authorize the state official to create exemptions from applicable SIP emission limitations when such exemptions are impermissible in the first instance'').

[7] *See* 80 FR 33839, 33965 (June 12, 2015); 78 FR 12460, 12512–13 (February 22, 2013).

Section 110(l) of the CAA provides that EPA shall not approve a revision to a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA. Section 193 of the CAA provides that no control requirement in effect, or required to be adopted by an order, settlement agreement, or plan in effect before the CAA amendments of 1990 in a nonattainment area may be modified unless the modification ensures greater or equivalent emission reductions of such air pollutant. EPA proposes to approve the removal of this rule in its entirety because the removal is not expected to cause any increase in emissions. This revision does not remove a prohibition on excess emissions or any specific requirements to minimize those emissions and thus is not a relaxation of a control requirement. Furthermore, as Tennessee notes in its submittal, the routine shutdown of air pollution control equipment described in Rule 1200–3–20–.06 is inappropriate.

EPA also notes that a requirement for sources to identify and report any anticipated excess emissions event resulting from control equipment undergoing scheduled maintenance is not a required element of SIPs. The Tennessee SIP contains other reporting requirements that include the reporting of actual excess emissions events to the State once such events have occurred.[8] Thus, the removal of Rule 1200–3–20–.06 would not prevent TDEC from receiving reports of actual excess emissions. EPA preliminarily finds that removing Rule 1200–3–20–.06 would not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA and would not constitute modification of a control requirement in effect, or required to be adopted by an order, settlement agreement, or plan in effect before the CAA amendments of 1990 in a nonattainment area. Accordingly, EPA is proposing to approve Tennessee's request to remove Rule 1200–3–20–.06, ''Scheduled Maintenance,'' from the Tennessee SIP.

4. New Rule 1200–3–20–.06, ''Report Required Upon The Issuance of Notice of Violation''

Due to the deletion of Rule 1200–3–20–.06, ''Scheduled Maintenance,'' as discussed above, Tennessee has renumbered existing Rule 1200–3–20–.07, ''Report Required Upon The Issuance of Notice of Violation,'' as Rule 1200–3–20–.06 and is requesting approval of a new version of Rule 1200–3–20–.06 in the Tennessee SIP. The State's SIP revisions submitted on November 19, 2016, and January 20, 2023, make various changes to several paragraphs within this rule, some of which are responsive to the 2015 SIP call. Although the January 20, 2023, SIP revision was transmitted to EPA after the November 19, 2016, SIP revision, it includes regulatory changes that became state-effective prior to the changes made in response to the 2015 SSM SIP Action. Because Tennessee's November 19, 2016, submission relies in part on revisions submitted to EPA in the January 20, 2023, submission,[9] EPA addresses the State's January 20, 2023, SIP revision first.

i. January 20, 2023, Supplemental SIP Revision

Tennessee's January 20, 2023, SIP submission renumbers Rule 1200–3–20–.07, ''Report Required Upon the Issuance of a Notice of Violation,'' to 1200–3–20–.06, consistent with the removal of current SIP-approved Rule 1200–3–20–.06, ''Scheduled Maintenance.'' Tennessee also revises the rule by splitting the requirements of paragraph .07(1) into two paragraphs, now renumbered as .06(1) and .06(2). The text from current SIP-approved paragraph .07(1) that has been moved to new paragraphs .06(1) and (2) includes minor updates to the wording for clarity, consistency with other Tennessee Rules and with the terms defined in Chapter 1200–3–2, ''Definitions,'' and updates internal references to the rules.[10] However, EPA is proposing to disapprove new Rule 1200–3–20–.06(1), as submitted in the January 20, 2023, supplemental SIP revision, because this provision contains a cross-reference to Rule 1200–3–5–.02(1), which EPA is proposing to disapprove, as explained in Section II.A, above. Specifically, Rule 1200–3–20–.06(1) requires automatic issuance of a notice of violation (NOV) for excess emissions except for ''visible emissions levels included as a startup and/or shutdown permit condition under'' 1200–3–5–.02(1). Because EPA SIP-called and is herein proposing to disapprove Rule 1200–3–5–.02(1), the cross-reference to Rule 1200–3–5–.02(1), in itself, warrants disapproval of Rule 1200–3–20–.06(1).

Furthermore, although Rule 1200–3–20–.06(1)'s exception from automatic NOV issuance could be interpreted as a provision of state-only enforcement discretion, it could also be interpreted to constrain, or at least create uncertainty with respect to, EPA and citizen enforcement. Even if interpreted to apply strictly to state enforcement of emission limit exceedances, such provisions of state-only enforcement discretion, because they do not apply to EPA or citizens, are not appropriate for inclusion in the SIP. Thus, whether interpreted as a provision of state-only enforcement discretion or as a constriction of EPA or citizen enforcement, EPA proposes to disapprove new Rule 1200–3–20–.06(1).[11]

EPA is proposing to approve Tennessee's January 20, 2023, revisions to new Rule 1200–3–20–.06(2), (3), and (4). The revisions to new Rule 1200–3–20.06(2) consist of minor updates to the wording for clarification purposes. New Rule 1200–3–20–.06(3) (former Rule 1200–3–20–.07(2), now renumbered to .06(3)) describes the contents of the report required to be submitted to the State when a notice of violation is issued. The only changes made to this paragraph are minor wording and punctuation changes. Next, the revisions to new Rule 1200–3–20–.06(4) (former Rule 1200–3–20–.07(3), now renumbered to .06(4)), include only minor wording changes via the January 20, 2023, supplemental SIP revision. These revisions are not substantive in nature and do not change any underlying requirements.

The January 20, 2023, supplemental SIP submission includes the addition of Rule 1200–3–20–.06(5), which lists various types of sources and ''de minimis'' emission levels, below which no notice of violation(s) of certain

[8] For example, Rule 1200–3–10–.02 requires a source to report any actual excess emissions if the source has a continuous emissions monitoring system.

[9] Tennessee had previously submitted the revisions contained in the January 20, 2023, submission on October 10, 1994, however, EPA never acted on that submission and Tennesse withdrew it from EPA review on July 20, 2016.

[10] The state effective version of Rule 1200–3–20–.06(1) includes the phrase ''or determined to be de minimis under Rule 1200–3–20–.06.'' Tennessee requested that this revision not be incorporated into the Tennessee SIP. Therefore, EPA is proposing to act on only the remainder of Rule 1200–3–20–.06(1) in this NPRM.

[11] EPA considers new Rule 1200–3–20–.06(1) to be separable from the remainder of Rule 1200–3–20–.06 and believes that its disapproval of new paragraph (1) will not result in the portions of Rule 1200–3–20–.06 that EPA proposes to approve being more stringent than Tennessee anticipated or intended. *See Bethlehem Steel Corp.* v. *Gorsuch,* 742 F.2d 1028, 1036–37 (7th Cir. 1984). Although disapproval of (1) would eliminate an exception from automatic NOV issuance, it also would eliminate the requirement for automatic NOV issuance, resulting in no increase in stringency with respect to Tennessee's authority and discretion to issue NOVs.

pollutant limits will be automatically issued and SSM exemptions may apply. However, Tennessee is not requesting that paragraph (5) be incorporated into the SIP.[12]

ii. November 19, 2016, SIP Revision

Regarding former Rule 1200–3–20–.07 paragraph (1) and paragraph (3), EPA determined in the 2015 SSM SIP Action that these paragraphs were substantially inadequate to meet CAA requirements. In response to the 2015 SSM SIP Action, Tennessee's November 19, 2016, SIP revision requests EPA approval of changes to Rules 1200–3–20–.06(2) and .06(4), as renumbered from .07(1) and .07(3), respectively. First, Tennessee's submittal removes the language in former 1200–3–20–.07(1), renumbered in the January 20, 2023, supplemental SIP revision as 1200–3–20–.06(2), which states that the report detailing the circumstances of the excess emissions will be used ''to assist the Technical Secretary in deciding whether to excuse or proceed upon the violation.'' By removing this phrase, the provision will no longer appear to provide a discretionary exemption from SIP emission limits. In addition, Tennessee includes other minor changes to the language in paragraph .06(2) to clarify the requirements and to replace the term ''Technical Secretary'' with ''Technical Secretary or the Technical Secretary's representative.''

Next, regarding former paragraph .07(3), renumbered in the January 20, 2023, supplemental SIP revision as 1200–3–20–.06(4), Tennessee requests removal of the excusal language in this paragraph which states that failure to submit the report required by paragraph .06(3) within the 20-day period following a notice of violation precludes the admissibility of the information ''as an excuse for malfunctions, startups, and shutdowns in causing the excessive emissions'' and replacement with ''for determination of potential enforcement action.'' EPA notes that the term ''potential enforcement action'' in this provision refers specifically to what is considered in Tennessee's determination of a state enforcement action.

The revisions to paragraphs .06(2) and .06(4), as renumbered from .07(1) and .07(3), remove the ambiguous language that EPA SIP-called as functionally an impermissible discretionary exemption. Therefore, TDEC has addressed the specific deficiencies that EPA identified in the 2015 SSM SIP Action with respect to Chapter 1200–3–20.

In the November 19, 2016, SIP revision to paragraph .06(6), Tennessee adds, ''No emission during periods of malfunction, startup, or shutdown that is in excess of the standards in Division 1200–03 or any permit issued thereto shall be allowed which can be proved to cause or contribute to any violations of the Ambient Air Quality Standards contained in Chapter 1200–03–03 or the National Ambient Air Quality Standards.'' As revised, this paragraph simply notes that excess emissions during periods of SSM which are known to cause or contribute to violations of ambient air quality standards are not allowed. EPA notes that, while this provision does not convey an inaccurate concept, the SIP must specify emission limitations (which must be continuous) to provide for attainment and maintenance of the NAAQS and not merely general prohibitions against emissions that would violate the NAAQS. Any excess emissions that would violate an applicable SIP emission limit are not allowed, regardless of whether they can be proved to cause or contribute to violations of any ambient air quality standards, and regardless of whether they occur during periods of SSM. With Tennessee's November 19, 2016, changes to Chapter 1200–3–20, there are no specific exemptions from applicable SIP emission limits in this Chapter.[13]

For the reasons described in this Section II.B.4, EPA is proposing to partially approve and partially disapprove Tennessee's January 20, 2023, and November 19, 2016, SIP revisions to Rule 1200–3–20–.07, as renumbered to 1200–3–20–.06, which were submitted for incorporation into the SIP. Specifically, EPA is proposing to approve Tennessee's SIP revision with respect to Rule 1200–3–20–.06(2), (3), (4), and (6), and EPA is proposing to disapprove the revision with respect to Rule 1200–3–20–.06(1) and (5).

5. New Rule 1200–3–20–.07, ''Special Reports Required''; New Rule 1200–3–20–.08, ''Rights Reserved''; and New Rule 1200–3–20–.09, ''Additional Sources Covered''

Approving Tennessee's request to remove 1200–3–20–.06, ''Scheduled Maintenance,'' from the Tennessee SIP would necessitate the renumbering of Rules 1200–3–20–.08, 1200–3–20–.09, and 1200–3–20–.10 in the Tennessee SIP to Rules 1200–3–20–.07, 1200–3–20–.08, and 1200–3–20–.09, respectively. Additionally, Rule 1200–3–20–.09, as renumbered from 1200–3–20–.10, includes other minor edits to assign a number to the provision included as paragraph .09(1) and to include a parenthetical around existing text in this provision. EPA is proposing to approve these revisions.

III. Proposed Actions

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). Based on the analysis in Section II of this NPRM, EPA is proposing to partially approve and partially disapprove revisions to Chapters 1200–3–5 and 1200–3–20 of the Tennessee SIP, as submitted on November 19, 2016, and supplemented on January 20, 2023. Specifically, EPA is proposing to disapprove the changes to Rule 1200–3–5–.02, ''Exceptions,'' and Rule 1200–3–20–.06, ''Report Required Upon the Issuance of Notice of Violation,'' paragraph (1), renumbered from 1200–3–20–.07; and proposing to approve the changes to Rule 1200–3–20–.01, ''Purpose''; Rule 1200–3–20–.02, ''Reasonable Measured Required''; Rule 1200–3–20–.06, ''Report Required Upon the Issuance of Notice of Violation,'' renumbered from 1200–3–20–.07, except for 1200–3–20–.06(1) and 1200–3–20–.06(5); Rule 1200–3–20–.07, ''Special Reports Required,'' renumbered from 1200–3–20–.08; Rule 1200–3–20–.08, ''Rights Reserved,'' renumbered from 1200–3–20–.09; and Rule 1200–3–20–.09, ''Additional Source Covered,'' renumbered from 1200–3–20–.10. EPA is also proposing to approve the removal of Rule 1200–3–20–.06, ''Scheduled Maintenance.''

EPA is further proposing to find that these SIP revisions only partially correct the deficiencies that were identified in the June 12, 2015, SIP SSM SIP Action. If the Agency finalizes this partial disapproval, CAA section 110(c) would require EPA to promulgate a federal implementation plan (FIP) within 24 months after the effective date of the partial disapproval, unless EPA first approves a SIP revision that corrects the deficiencies identified in the 2015 SSM SIP Action or the deficiencies identified in Section II of this NPRM within such time. In addition, final partial disapproval would trigger mandatory sanctions under CAA section 179 and 40 CFR 52.31 unless the State submits, and EPA approves, a SIP revision that corrects the identified deficiencies

[12] See the document titled ''Transmittal_Letter_SSM SIP Call Chapter 20 Supplemental.doc'' in the docket for this proposed action. Therefore, EPA is not proposing to act on the new Rule 1200–3–20–.06(5) in this NPRM.

[13] As identified in Section II.A of this NPRM, EPA is proposing to disapprove the revision to Chapter 1200–3–5, which still includes an exemption from applicable SIP visible emissions requirements during periods of startup and shutdown.

within 18 months of the effective date of the final partial disapproval action.[14]

EPA is not reopening the 2015 SSM SIP Action nor soliciting comment on the rationale for issuing the 2015 SIP call to Tennessee. EPA is taking comment on whether the proposed revisions to the Tennessee SIP are consistent with CAA requirements and whether these changes remedy the substantial inadequacies in the specific Tennessee SIP provisions identified in the 2015 SSM SIP Action. EPA is also soliciting public comments on the proposed partial disapproval, as explained herein.

IV. Incorporation by Reference

In this document, EPA is proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, and as discussed in Sections I through III of this preamble, EPA is proposing to incorporate by reference into the Tennessee SIP Rules 1200–3–20–.01, ''Purpose,'' State effective on September 26, 2016; 1200–3–20–.02, ''Reasonable Measured Required,'' State effective on November 11, 1997; [15] 1200–3–20–.06, ''Report Required Upon The Issuance of a Notice of Violation,'' State effective on November 16, 2016, except for 1200–3–20–.06(1) and 1200–3–20–.06(5); [16] [17] 1200–3–20–.07, ''Special Reports Required,'' State effective on September 26, 1994; [18] 1200–3–20–.08, ''Rights Reserved,'' State effective on September 26, 1994; [19] and 1200–3–20–.09, ''Additional Sources Covered,'' State effective on September 26, 1994.[20] Also in this document, EPA is proposing to remove Rule 1200–3–20–.06, ''Scheduled Maintenance,'' [21] which is incorporated by reference in accordance with the requirements of 1 CFR part 51. EPA has made, and will continue to make, these materials generally available through *https://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. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

The proposed action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget for review.

B. Paperwork Reduction Act (PRA)

The proposed action does not impose an information collection burden under the PRA because it does not contain any information collection activities.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*). This action merely proposes to partially approve and partially disapprove a SIP submission from Tennessee as meeting and not meeting the requirements of the CAA, respectively.

D. Unfunded Mandates Reform Act (UMRA)

The proposed action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This proposed action imposes no enforceable duty on any State, local, or tribal governments or the private sector.

E. Executive Order 13132: Federalism

The proposed action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

The proposed action does not have tribal implications as specified in Executive Order 13175. The proposed action does not apply on any Indian reservation land, any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, or non-reservation areas of Indian country. Thus, Executive Order 13175 does not apply in this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definitions of ''covered regulatory action'' in section 2–202 of the Executive Order.

Therefore, this proposed action is not subject to Executive Order 13045 because it merely proposes to partially approve and partially disapprove a state action implementing a federal standard.

Furthermore, EPA's Policy on Children's Health does not apply to this action. Information about the applicability of the Policy is available under ''Children's Environmental Health'' in the Supplementary information section of this preamble.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution and Use

The proposed action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This proposed rulemaking does not involve technical standards.

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[14] The offset sanction in CAA section 179(b)(2) would be triggered 18 months after the effective date of a final disapproval, and the highway funding sanction in CAA section 179(b)(1) would be triggered 24 months after the effective date of a final disapproval. Although the sanctions clock would begin to run from the effective date of a final disapproval, mandatory sanctions under CAA section 179 generally apply only in designated nonattainment areas. This includes areas designated as nonattainment after the effective date of a final disapproval. As discussed in the 2015 SSM SIP Action, EPA will evaluate the geographic scope of potential sanctions at the time it makes a determination that the air agency has failed to make a complete SIP submission in response to the 2015 SIP call, or at the time it disapproves such a SIP submission. The appropriate geographic scope for sanctions may vary depending upon the SIP provisions at issue. *See* 80 FR 33839, 33930.

[15] The effective date of the change to Rule 1200–3–20–.02, ''Reasonable Measures Required,'' is September 26, 1994. However, for purposes of the state effective date included at 40 CFR 52.570(c), that change to Tennessee's rule is captured and superseded by changes which were state effective on November 11, 1997, and which EPA previously approved on April 7, 2017. *See* 82 FR 16927.

[16] As explained in Section II.B of this NPRM, with the removal of 1200–3–20–.06, 1200–3–20–.07 is being renumbered to 1200–3–20–.06.

[17] EPA is not proposing to incorporate into the Tennessee SIP the following elements of Rule 1200–03–20–.06: 1200–03–20–.06(1) and 1200–03–20–.06(5). If EPA finalizes this proposed action, the Agency will update the SIP table at 40 CFR 52.2220(c) to reflect these exceptions.

[18] As explained in Section II.B of this NPRM, with the removal of 1200–3–20–.06, 1200–3–20–.08 is being renumbered to 1200–3–20–.07.

[19] As explained in Section II.B of this NPRM, with the removal of 1200–3–20–.06, 1200–3–20–.09 is being renumbered to 1200–3–20–.08.

[20] As explained in Section II.B of this NPRM, with the removal of 1200–3–20–.06, 1200–3–20–.10 is being renumbered to 1200–3–20–.09.

[21] As explained in Section II.B of this NPRM, while 1200–3–20–.06, ''Scheduled Maintenance,'' is proposed for removal from the SIP, other rules codified as 1200–3–20–.07 through .10 are proposed to be renumbered as 1200–3–20–.06 through .09.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 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.''

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, the EPA's role is to review state choices and approve those choices if they meet the minimum criteria of the Act. Accordingly, this proposed action partially approves and partially disapproves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law.

The air agency 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: March 30, 2023.

Daniel Blackman,

Regional Administrator, Region 4.

[FR Doc. 2023–07107 Filed 4–5–23; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 8360

[BLM_CO_FRN_MO4500169724]

Notice of Proposed Supplementary Rule for Canyons of the Ancients National Monument in Dolores and Montezuma Counties, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed supplementary rule.

SUMMARY: The Bureau of Land Management (BLM) is proposing a supplementary rule to regulate conduct on public lands within Canyons of the Ancients National Monument (CANM or Monument). This proposed supplementary rule is needed to implement planning decisions in the 2010 CANM Resource Management Plan (RMP). The proposed supplementary rule would provide for the protection of persons, property, and public-land resources administered by the BLM's Tres Rios Field Office and CANM, located in Dolores and Montezuma Counties, Colorado.

DATES: Comments on the proposed supplementary rule must be received or postmarked by June 5, 2023. Comments submitted after the close of the comment period or delivered to an address other than the one listed in this notice may not be considered or included in the administrative record for the development of the final supplementary rule.

ADDRESSES: Please send comments to the Bureau of Land Management, Canyons of the Ancients National Monument, 27501 Highway 184, Dolores, CO 81323; by fax to (970) 385–3228, or email comments to *tfouss@blm.gov.* Please include ''Proposed Supplementary Rule'' in the subject line.

FOR FURTHER INFORMATION CONTACT: Tyler Fouss, Field Staff Ranger, Bureau of Land Management, Tres Rios Field Office, 29211 Hwy. 184, Dolores, CO 81323; telephone (970) 882–1131; email: *tfouss@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Written comments on the proposed supplementary rule should be specific, confined to issues pertinent to the proposed supplementary rule, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the rule that the comment is addressing.

Comments, including names, addresses, and other contact information of respondents, will be available for public review at the BLM CANM address listed (see **ADDRESSES** Section) during regular business hours.

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment—including personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

The BLM proposes to establish this supplementary rule under the authority of 43 CFR 8365.1–6, which authorizes BLM State Directors to establish supplementary rules for the protection of persons, property, and public lands and resources.

CANM is part of the BLM's National Conservation Lands and consists of approximately 178,000 acres of BLM-administered public lands located in Dolores and Montezuma Counties in the Four Corners region of southwestern