

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52****[EPA-R4-OAR-2022-0783; FRL-10523-02-R4]****Air Plan Approval; Tennessee; Revisions to Startup, Shutdown, and Malfunction Rules****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving portions of 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.

DATES: This rule is effective July 24, 2023.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R4-OAR-2022-0783. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some information may not be publicly available, *i.e.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT:

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:**I. Background**

On November 19, 2016, Tennessee submitted a SIP revision in response to the SIP call issued in the June 12, 2015, action titled "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" ("2015 SSM SIP Action"),¹ 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"). Regarding the Chapter 1200-3-20 provisions, the State requested approval of changes to Rules 1200-3-20-.06(2), 1200-3-20-.06(4), and 1200-3-20-.06(6) (which have been renumbered from 1200-3-20-.07(1) (in part) and 1200-3-20-.07(3) 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). Tennessee also requested changes to Rule 1200-3-20-.06(6), which was not part of the SIP call. 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 1200-3-20.²

On April 6, 2023, EPA proposed to act on portions of Tennessee's November 19, 2016, SIP revision, as supplemented on January 20, 2023.³ In that notice of proposed rulemaking (NPRM), EPA proposed to determine that the SIP revision partially corrects the

deficiencies with respect to Tennessee that the Agency identified in the 2015 SSM SIP Action. Consequently, EPA proposed to approve in part and disapprove in part Tennessee's November 19, 2016, SIP revision, as supplemented on January 20, 2023.⁴ The reasons for EPA's proposed action are stated in the April 6, 2023, NPRM and will not be restated here. The public comment period for EPA's proposed action ended on May 8, 2023. EPA received one favorable comment on April 20, 2023, and one set of comments in a joint letter submitted by the Sierra Club and the Environmental Integrity Project (hereinafter collectively referred to as the Commenter) on May 8, 2023, which agreed in part and disagreed in part with EPA's proposed action. Both sets of comments are available in the docket for this action.

II. Response to Comments

The Commenter provided comments both in support of and adverse to EPA's proposed action. EPA acknowledges the comments expressing support for the proposed action and will not address them further. Instead, this section of the final rulemaking notice will focus on the comments that were adverse or that warrant clarification. The responses to these comments are below.

Comment 1: For Rule 1200-3-5-.02(1) and Rule 1200-3-20-.06(1), the Commenter acknowledges and supports the rationale behind EPA's proposed disapproval of these provisions and provides further commentary on why Tennessee's proposed additional language in Rule 1200-3-5-.02(1) is problematic. The Commenter states that EPA must finalize the disapprovals and issue a finding of failure to submit.

Response 1: EPA notes that at the time the Agency issued the April 6, 2023, NPRM, there was no basis for EPA to issue a finding of failure to submit regarding Rule 1200-3-5-.02(1) and Rule 1200-3-20-.06(1). Pursuant to Clean Air Act (CAA or Act) section 110(k)(1)(B), EPA must determine no later than six months after the date by which a state is required to submit a SIP whether the state has made a submission that meets the minimum completeness criteria established pursuant to CAA section 110(k)(1)(A) and set forth at 40 CFR part 51, appendix A. EPA refers to the determination that a state has not submitted a SIP submission that meets

¹ See 80 FR 33839 (June 12, 2015).

² 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" in the docket for this action.

³ See 88 FR 20443 (April 6, 2023).

⁴ Tennessee has withdrawn the portions of its submittal that EPA proposed to disapprove in the April 6, 2023, NPRM. The withdrawal letter, dated June 13, 2023, is included in the docket for this action.

the minimum completeness criteria as a “finding of failure to submit.”

For the SIP call in the 2015 SSM Action, SIP submissions were due by November 22, 2016. With respect to the SIP-called Rules 1200–3–5–.02(1) and 1200–3–20–.06(1) and (2),⁵ Tennessee submitted a SIP revision on November 19, 2016, in response to EPA’s 2015 SSM SIP Action. Six months thereafter, on May 19, 2017, Tennessee’s SIP revision was deemed complete by operation of law pursuant to CAA section 110(k)(1)(B).

Where a state has submitted a complete SIP revision, EPA must act on it pursuant to CAA section 110(k)(2)–(4) (e.g., approve the revision, disapprove the revision, etc.). As noted by the Commenter, EPA proposed to disapprove the revisions to Rule 1200–3–5–.02(1) and Rule 1200–3–20–.06(1). If EPA had finalized the disapproval of these provisions in this action, the disapproval would have triggered an obligation under CAA section 110(c)(1) for EPA to promulgate a federal implementation plan (FIP) within 24 months after the date of disapproval. However, since the issuance of the April 6, 2023, NPRM, Tennessee has withdrawn certain provisions addressed therein, including Rules 1200–3–5–.02(1) and 1200–3–20–.06(1), from EPA’s consideration as a SIP revision. The letter withdrawing these provisions is provided in the docket for this final rulemaking. Consequently, EPA is not finalizing the proposed disapprovals for Rule 1200–3–5–.02(1) and Rule 1200–3–20–.06(1). Although the withdrawal of these provisions from EPA’s consideration is relevant to a determination regarding a finding of failure to submit for those provisions, any such finding of failure to submit would be considered in a separate action. The comment requesting the issuance of a finding of failure to submit is not germane to the portions of the SIP revision subject to this action because they were not withdrawn.

Comment 2: The Commenter is concerned that the revised language in Rule 1200–3–20–.06(4) could be interpreted to preclude the admissibility of data by parties other than the violating owner or operator, particularly EPA or the public, where such data was not provided to TDEC within the required twenty days. The Commenter also asserts that although the NPRM states that the new term “potential enforcement actions” in Rule 1200–3–20–.06(4) refers to a state-only action, a

state-only application is not unambiguous in the plain language of the rule. The Commenter goes on to state that even if the rule is interpreted to apply strictly to state enforcement of emission limit exceedances, EPA should require its removal because such provisions of state-only enforcement discretion are not appropriate for inclusion in the SIP.

Response 2: Tennessee has withdrawn Rule 1200–3–20–.06(4) from the SIP revision. Thus, EPA is not finalizing its proposed approval of Rule 1200–3–20–.06(4).

Comment 3: The Commenter is concerned that the addition of Rule 1200–3–20–.06(6) could be read to limit enforcement even though EPA’s April 6, 2023, NPRM accurately states the fact that “[a]ny 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.”⁶ The Commenter expresses particular concern that a court could conclude that this provision precludes EPA and the public from enforcing against violations that occur during SSM events if the excess emissions cannot be proved to cause or contribute to any violations of ambient air quality standards. The Commenter states, “Accordingly, EPA should either disapprove Rule 1200–3–20–.06(6) or approve it conditioned on the following clarification, so that it reads: ‘No emission during periods of malfunction, start-up, or shutdown that are in excess of the standards in Division 1200–03 or any permit issued thereto shall be allowed.’”

Response 3: EPA disagrees that Rule 1200–3–20–.06(6) could limit enforcement. In accordance with the 2015 SSM SIP Action, EPA will not approve SIP provisions that excuse excess emissions during periods of SSM, regardless of whether they can or cannot be proven to cause or contribute to any violations of ambient air quality standards. EPA interprets the statement in Rule 1200–3–20–.06(6) regarding ambient air quality standards as only emphasizing the impermissibility of causing or contributing to violations of the State’s ambient air quality standards and the National Ambient Air Quality

Standards. Therefore, EPA does not agree that Rule 1200–3–20–.06(6), although perhaps superfluous, must be disapproved or that, alternatively, EPA should approve Rule 1200–3–20–.06(6) conditioned on the Commenter’s clarification.

Comment 4: The Commenter asks that EPA act on “its SIP calls to Shelby County and Knox County, Tennessee that were part of the 2015 SSM SIP Call.” Specifically, the Commenter refers to Shelby County Code § 16–87 and mentions that it “addresses enforcement for excess emissions that occur during malfunctions, startups, and shutdowns by incorporating by reference the state’s provisions in Tenn. Comp. R. & Regs. 1200–3–20.” The Commenter goes on to opine about the provisions and its belief that these provisions are inconsistent with the SIP call and CAA. Finally, the Commenter states that “EPA must take action to address the failure of these local air pollution control agencies to respond to EPA’s SIP Call.”

Response 4: First, EPA notes that these comments are not within the scope of EPA’s April 6, 2023, proposed action. Nevertheless, EPA disagrees with the assertion that neither Knox County nor Shelby County responded to EPA’s 2015 SIP Call. Tennessee has responded to EPA’s 2015 SSM SIP Action for both local air pollution control agencies. In fact, on January 11, 2016, Knox County, through the State of Tennessee, submitted a SIP revision that corrected the deficiencies noted in EPA’s 2015 SSM SIP Action. EPA proposed approval of Tennessee’s corrective SSM SIP for Knox County on September 22, 2016.⁷ The Agency did not receive any comments during the public comment period, and EPA finalized that action on December 16, 2016.⁸ Furthermore, on March 2, 2022, Shelby County, through the State of Tennessee, submitted a SIP revision in response to the 2015 SSM SIP Call to address the deficiencies that EPA identified. EPA is currently evaluating this SIP revision and is still within its CAA section 110(k) statutory timeframe to conduct this evaluation and process this SIP revision (i.e., the deadline is September 2, 2023, in this case).

Comment 5: The Commenter states that EPA should take immediate steps to promulgate a FIP within 24 months of this final rulemaking, citing to the portion of CAA section 110(c)(1) that requires EPA to promulgate a FIP within two years after it disapproves a SIP submission in whole or in part.

⁵ Rules 1200–3–20–.06(1) and (2), collectively, were previously numbered as Rule 1200–3–20–.06(1).

⁶ Rule 1200–3–20–.06(6) states, “No emission during periods of malfunction, start-up, or shutdown that are 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.”

⁷ See 81 FR 65313.

⁸ See 81 FR 91033.

Response 5: EPA acknowledges this comment and recognizes the Agency's statutory obligation to promulgate a FIP within 24 months of a final disapproval of a SIP submission unless the State corrects the deficiency, and EPA approves the plan or plan revision, before EPA promulgates the FIP. This comment is no longer within the scope of EPA's action because the proposed disapproval related to a portion of the submittal that was subsequently withdrawn and because EPA is therefore not finalizing the proposed disapproval in this action.

III. Final Action

EPA is approving changes to Chapter 1200–3–20 of the Tennessee SIP, as submitted on November 19, 2016, and supplemented on January 20, 2023. Specifically, EPA is approving the changes to Rule 1200–3–20–.01, “Purpose”; Rule 1200–3–20–.02, “Reasonable Measures 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), 1200–3–20–.06(4), 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 approving the removal of Rule 1200–3–20–.06, “Scheduled Maintenance.”

IV. Incorporation by Reference

In this document, EPA is finalizing 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 finalizing the incorporation by reference into the Tennessee SIP Rules 1200–3–20–.01, “Purpose,” State effective on September 26, 1994; 1200–3–20–.02, “Reasonable Measures Required,” State effective on November 11, 1997;⁹ 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), 1200–3–20–.06(4), and 1200–3–20–.06(5);^{10 11} 1200–

3–20–.07, “Special Reports Required,” State effective on September 26, 1994;¹² 1200–3–20–.08, “Rights Reserved,” State effective on September 26, 1994;¹³ and 1200–3–20–.09, “Additional Sources Covered,” State effective on September 26, 1994.¹⁴ Also in this document, EPA is finalizing the removal of Rule 1200–3–20–.06, “Scheduled Maintenance,”¹⁵ which is incorporated by reference in accordance with the requirements of 1 CFR part 51. EPA has made, and will continue to make the State Implementation Plan generally available through the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, the revised materials as stated above 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 partial approval and will be incorporated by reference in the next update to the SIP compilation.¹⁶

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. This action merely approves state law as meeting Federal

.06: 1200–3–20–.06(1), 1200–3–20–.06(4), and 1200–3–20–.06(5).

¹¹ As explained in Section I, with the removal of Rule 1200–3–20–.06, Rule 1200–3–20–.07 is being renumbered to 1200–3–20–.06 in the SIP for those provisions of Rule 1200–3–20–.06 (State effective on November 16, 2016) that EPA is approving in this action. Because EPA is not acting on Rules 1200–3–20–.06(1) and (4) (formerly part of 1200–3–20–.07(1) and all of 1200–3–20–.07(3), respectively), the corresponding portions of Rule 1200–3–20–.07 (which are the first sentence of 1200–3–20–.07(1) and the entirety of 1200–3–20–.07(3)), State effective on March 21, 1979, are retained in the Tennessee SIP.

¹² As explained in Section I, with the removal of 1200–3–20–.06, 1200–3–20–.08 is being renumbered to 1200–3–20–.07.

¹³ As explained in Section I, with the removal of 1200–3–20–.06, 1200–3–20–.09 is being renumbered to 1200–3–20–.08.

¹⁴ As explained in Section I, with the removal of 1200–3–20–.06, 1200–3–20–.10 is being renumbered to 1200–3–20–.09.

¹⁵ As explained in Section I, while 1200–3–20–.06, “Scheduled Maintenance,” is being removed from the SIP, other rules codified as 1200–3–20–.07 through .10 are being renumbered as 1200–3–20–.06 through .09.

¹⁶ See 62 FR 27968 (May 22, 1997).

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);
- 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); and
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, this action 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.

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation,

⁹ 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.

¹⁰ EPA is not incorporating into the Tennessee SIP the following provisions of Rule 1200–3–20–

and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

TDEC did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving EJ for people of color, low-income populations, and Indigenous peoples.

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 August 22, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by Reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping

requirements, Sulfur oxides, Volatile organic compounds.

Jeaneanne Gettle,

Acting Regional Administrator, Region 4.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart RR—Tennessee

■ 2. In § 52.2220, in paragraph (c), table 1 is amended under “Chapter 1200–3–20 Limits on Emissions Due to Malfunctions, Start-ups, and Shutdowns” by:

■ a. Revising the entries for Section 1200–3–20–.01, Section 1200–3–20–.02, Section 1200–3–20–.06, Section 1200–3–20–.07, Section 1200–3–20–.08, and Section 1200–3–20–.09; and

■ b. Removing the entry for Section 1200–3–20–.10.

The revisions 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 1200–3–20 LIMITS ON EMISSIONS DUE TO MALFUNCTIONS, START-UPS, AND SHUTDOWNS				
* * *	* * *	* * *	* * *	* * *
Section 1200–3–20–.01	Purpose	9/26/1994	6/23/2023, [Insert citation of publication].	
Section 1200–3–20–.02	Reasonable Measures Required	11/11/1997	6/23/2023, [Insert citation of publication].	
* * *	* * *	* * *	* * *	* * *
Section 1200–3–20–.06	Report Required Upon the Issuance of Notice of Violation.	11/16/2016	6/23/2023, [Insert citation of publication].	Except for paragraphs (1), (4), and (5).
Section 1200–3–20–.07	Report Required Upon the Issuance of Notice of Violation.	3/21/1979	2/6/1980, 45 FR 8004	Except for the second and third sentences of paragraph (1) (“The owner . . . 20 day period.”) and the entirety of paragraph (2).
	Special Reports Required	9/26/1994	6/23/2023, [Insert citation of publication].	
Section 1200–3–20–.08	Rights Reserved	9/26/1994	6/23/2023, [Insert citation of publication].	
Section 1200–3–20–.09	Additional Sources Covered	9/26/1994	6/23/2023, [Insert citation of publication].	
*	*	*	*	*

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[FR Doc. 2023-13465 Filed 6-22-23; 8:45 am]

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**ENVIRONMENTAL PROTECTION
AGENCY****40 CFR Part 372**[EPA-HQ-OPPT-2023-0223; FRL 10781-
01-OCSPP]

RIN 2070-AL40

**Implementing Statutory Addition of
Certain Per- and Polyfluoroalkyl
Substances (PFAS) to the Toxics
Release Inventory Beginning With
Reporting Year 2023****AGENCY:** Environmental Protection
Agency (EPA).**ACTION:** Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is updating the list of chemicals subject to toxic chemical release reporting under the Emergency Planning and Community Right-to-Know Act (EPCRA) and the Pollution Prevention Act (PPA). Specifically, this action updates the regulations to identify nine per- and polyfluoroalkyl substances (PFAS) that must be reported pursuant to the National Defense Authorization Act for Fiscal Year 2020 (FY2020 NDAA) enacted on December 20, 2019. As this action is being taken to conform the regulations to a Congressional legislative mandate, notice and comment rulemaking is unnecessary.

DATES: This final rule is effective July 24, 2023.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA-HQ-OPPT-2023-0223, is available at <https://www.regulations.gov>. Additional instructions on visiting the docket, along with more information about dockets generally, is available at <https://www.epa.gov/dockets>. For the latest status information on EPA/DC services and docket access, visit <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Brian Ventura, Data Gathering and Analysis Division (7406M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (202) 566-0897; email address: ventura.brian@epa.gov.

For general information contact: The Emergency Planning and Community Right-to-Know Act Hotline; telephone

numbers: toll free at (800) 424-9346 (select menu option 3) or (703) 348-5070 in the Washington, DC, Area and International; or go to <https://www.epa.gov/home/epa-hotlines>.

SUPPLEMENTARY INFORMATION:**I. General Information***A. Does this action apply to me?*

You may be potentially affected by this action if you manufacture, process, or otherwise use any of the PFAS listed in this rule. The following list of North American Industry Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this action applies to them. Potentially affected entities may include:

- Facilities included in the following NAICS manufacturing codes (corresponding to Standard Industrial Classification (SIC) codes 20 through 39): 311*, 312*, 313*, 314*, 315*, 316, 321, 322, 323*, 324, 325*, 326*, 327*, 331, 332, 333, 334*, 335*, 336, 337*, 339*, 11199*, 113310, 211130*, 212323*, 212390*, 488390*, 512230*, 512250*, 5131*, 516210*, 519290*, 541713*, 541715* or 811490*.

*Exceptions and/or limitations exist for these NAICS codes.

- Facilities included in the following NAICS codes (corresponding to SIC codes other than SIC codes 20 through 39): 211130* (corresponds to SIC code 1321, Natural Gas Liquids, and SIC 2819, Industrial Inorganic Chemicals, Not Elsewhere Classified); or 212114, 212115, 212220, 212230, 212290*; or 2211*, 221210*, 221330 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce) (corresponds to SIC codes 4911, 4931, and 4939, Electric Utilities); or 424690, 424710 (corresponds to SIC code 5171, Petroleum Bulk Terminals and Plants); 425120 (limited to facilities previously classified in SIC code 5169, Chemicals and Allied Products, Not Elsewhere Classified); or 562112 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis (previously classified under SIC code 7389, Business Services, NEC)); or 562211*, 562212*, 562213*, 562219*, 562920 (limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 *et seq.*) (corresponds to SIC code 4953, Refuse Systems). *Exceptions and/or limitations exist for these NAICS codes.

- Federal facilities.

A more detailed description of the types of facilities covered by the NAICS codes subject to reporting under EPCRA section 313 can be found at: <https://www.epa.gov/toxics-release-inventory-tri-program/tri-covered-industry-sectors>.

www.epa.gov/toxics-release-inventory-tri-program/tri-covered-industry-sectors. To determine whether your facility would be affected by this action, you should carefully examine the applicability criteria in 40 CFR part 372, subpart B. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What action is the Agency taking?

EPA is codifying the nine additional PFAS that were added to the EPCRA section 313 list of reportable chemicals (more commonly known as the Toxics Release Inventory (TRI)) since the last conforming rule pursuant to the FY2020 NDAA (87 FR 42651; July 18, 2022) (FRL-9427-01-OCSPP).

C. What is the Agency's authority for taking this action?

This action is issued under the authority of section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) (42 U.S.C. 11001 *et seq.*), section 6607 of the Pollution Prevention Act (PPA) (42 U.S.C. 13106), and section 7321 of the National Defense Authorization Act for Fiscal Year 2020 (FY2020 NDAA) (Pub. L. 116-92).

II. Background*A. What is NDAA section 7321?*

On December 20, 2019, the FY2020 NDAA was signed into law. Among other provisions, section 7321(c) identifies certain regulatory activities that automatically add PFAS or classes of PFAS to the EPCRA section 313 list of reportable chemicals. Specifically, PFAS or classes of PFAS are added to the EPCRA section 313 list of reportable chemicals beginning January 1 of the calendar year after any one of the following dates:

- Final Toxicity Value. The date on which the Administrator finalizes a toxicity value for the PFAS or class of PFAS;
- Significant New Use Rule. The date on which the Administrator makes a covered determination for the PFAS or class of PFAS;
- Addition to Existing Significant New Use Rule. The date on which the PFAS or class of PFAS is added to a list of substances covered by a covered determination;
- Addition as an Active Chemical Substance. The date on which the PFAS or class of PFAS to which a covered determination applies is:

(1) Added to the list published under section 8(b)(1) of the Toxic Substances