

Rulemaking Report

Updated: 03/04/2015

Affected Rule(s): Amendment to 10 CSR 10-6.220 Restriction of Emission of Visible Air Contaminants

1. What is the purpose of this proposed rulemaking?

This rulemaking is being proposed to—

- Amend subsection (3)(C) as a result of a petition received by the U.S. Environmental Protection Agency (EPA) concerning the treatment of excess emissions by sources during periods of Start-Up, Shutdown, or Malfunction (SSM). EPA’s proposed State Implementation (SIP) Call in response to the petition, published in the Federal Register on February 22, 2013 (78 FR 12460), indicated that the language in subsection (3)(C) of the rule is impermissible because it could be interpreted as allowing for exemptions from federally enforceable emission limitations through the state director’s discretion. The impermissible language in the rule must be revised within 18 months of the final SIP Call (expected May 2015).
- Amend section (1) to include the following exemptions from the entire rule:
 - Emission units that comply with more stringent particulate matter (PM) limits in 40 CFR 63 subpart UUUUU, Mercury and Air Toxics Standards or MATS, and have PM Continuous Emissions Monitoring Systems (CEMS) installed.
 - Emission units regulated by 40 CFR 63 subpart DDDDD, National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters, that meet specific criteria outlined in the rule.
 - Emission units regulated by 40 CFR 63 subpart JJJJJ, National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers Area Sources, that meet specific criteria outlined in the rule.
 - Emission units burning only natural gas, landfill gas, propane, liquefied petroleum gas, digester gas or refinery gas.
 - Internal combustion engines. (The exemption in subsection (1)(A) is being revised to include all internal combustion engines.)
 - Fugitive emissions subject to 10-CSR 10-6.170 Restriction of Particulate Matter to the Ambient Air Beyond the Premises of Origin.
- Clarify that this rule applies to outdoor emissions and does not apply to indoor emissions or water vapor.
- Remove definitions in this rule that can be found in 10 CSR 10-6.020 Definitions and Common Reference Tables.
- Clarify that sources required to install continuous monitoring systems must select either a continuous opacity monitoring system (COMS) or an alternative if approved and incorporated into the State Implementation Plan.

- Reorganize the subsections describing how sources must demonstrate compliance for greater clarity and user-friendliness. In addition, other nonsubstantive clarification/error correction modifications deemed necessary during the rulemaking process will be included.

2. Why is the rulemaking being proposed now?

This rulemaking is being initiated in response to EPA's February 22, 2013 proposed SIP Call requiring revisions to impermissible language regarding treatment of startup, shutdown, and malfunction conditions. This revision must be submitted to EPA within 18 months of the final SIP Call (expected May 2015). In addition, Missouri power plants recently requested the Air Program to consider removing the Continuous Opacity Monitoring Systems (COMS) requirement for sources subject to the federal MATS regulation. By reviewing Compliance Assurance Monitoring Plans for some of these power plants, it was determined that they would be within the 20% opacity limit of this rule when in compliance with the Mercury and Air Toxics Standards (MATS) limits. Therefore, an exemption will be added to the rule for power plants that comply with the federal MATS regulation and have PM CEMS installed.

While the rule is open several other amendments are being made; including the addition of several exemptions, clarification of exemptions, and removal of definitions that are now in the general definitions rule.

3. Will the rulemaking incorporate any document by reference, rather than state the language within the rulemaking?

This rulemaking will not incorporate any document by reference.

4. Does this rulemaking prescribe environmental standards, limits or conditions and is a Regulatory Impact Report required for this rulemaking?

During development of the draft rule text for this rulemaking, the program had added specific requirements for emissions monitoring and recordkeeping for compliance demonstration to the draft rulemaking text which required a Regulatory Impact Report. As a result, the regulatory impact report and the draft rulemaking text were posted for a 60-day comment period. In responding to comments received, we had additional discussions with the commenter and EPA. Based on these discussions, we determined that including the emissions monitoring and recordkeeping requirements for compliance demonstration would have required too many unique situations to be included in codification language. Including an exception to account for unique situations presented approvability issues from EPA's perspective. Therefore, these monitoring and recordkeeping requirements were removed and the proposed rulemaking text no longer requires a Regulatory Impact Report.

5. What authority does DNR have to carry out this rulemaking?

643.050, Powers and duties of commission, provides the commission shall have the power to adopt, promulgate, amend and repeal rules and regulations consistent with the general intent and purposes of sections 643.010 to 643.190, RSMo and chapter 536, RSMo.

643.055, Commission may adopt rules for compliance with federal law, provides the commission shall have authority to promulgate rules and regulations to establish standards and guidelines to ensure the State is in compliance with the provisions of federal Clean Air Act. The State is prohibited from being stricter than the federal Clean Air Act except for nonattainment and maintenance areas.

6. What does the rulemaking require and how does it produce benefits?

This rulemaking will remove the director discretion provision in subsection (3)(C) of the rule so the rule provisions comply with the Clean Air Act requirements. A timely response to EPA's SIP Call will prevent EPA from exercising its authority to impose a federal implementation plan, which could include additional requirements on Missouri sources. Also, exemptions will be added to the rule, including: an exemption for power plants that comply with federal MATS requirements and have PM CEMS installed, and an exemption for units regulated under the federal boiler MACT rules. This will benefit power plants by not requiring the expense of installing a COMS in addition to a PM CEMS. The rule will continue to be protective of air quality because the limits established by MATS and the boiler MACT rules are more stringent than the opacity limits.

The rulemaking will also add and clarify exemptions that will produce benefits by making it clear what sources are not meant to be subject to this rule and avoid redundant or unnecessary requirements.

7. Who is most likely affected by the rulemaking?

This rule applies to all sources of visible emissions (primarily particulate matter) throughout the state of Missouri except those listed under exemptions in 10 CSR 10-6.220. Applicable sources include, but are not limited to, painting facilities, facilities with non-gas fired boilers (i.e. coal, wood, or fuel oil fired), grain elevators, landfills, and wood products manufacturing facilities.

8. What impact will the proposed rulemaking have on small businesses? (A small business is defined as a for-profit enterprise with fewer than 100 full or part-time employees.)

This rulemaking will not have an effect on small business.

9. What are the probable costs for the department or any other public agency in the implementation and enforcement of the rulemaking?

This agency or any other public agency is not expected to incur additional costs to implement and enforce this proposed rulemaking.

10. What is the anticipated effect of the rulemaking on state revenue?

The proposed rulemaking will have no effect on state revenue.

11. Who was/will be involved in developing the rulemaking?

The Missouri Department of Natural Resources' Air Pollution Control Program, in collaboration with stakeholders, the Air Program Advisory Forum, and the EPA, will develop the rulemaking. The Air Program Advisory Forum has already provided significant early input and feedback on the preliminary draft rule text.

12. How has/will the development of the rulemaking been/be shared with interested parties and the public at large?

The Regulatory Impact Report and draft rule text was posted and made available for comment for 60 days on the program website on October 21, 2014. We received comments from a private citizen, Boeing Company, Kansas City Power & Light Company, Metropolitan St. Louis Sewer District, EPA Region 7, and Bayer CropScience.

As a result of comments received during the 60-day comment period on the draft rule text, the following changes were incorporated into the proposed rulemaking text:

- Added an exemption for certain emission units regulated by 40 CFR 63 subpart JJJJJ, National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers Area Sources.
- Removed the test methods 203, 203(A), and 203(B) from section (5) because they are not relevant to this rule.
- Added EPA Method ALT-082 to section (5) as an alternative to Method 9.

In addition, the normal rulemaking process will be followed: public hearing, MACC adoption, order of rulemaking, and publication in the Code of State Regulations. Information on the rulemaking is also made available on the department's web site and distributed to appropriate entities via email.

Information regarding rulemakings is also provided to the Air Program Advisory Forum, the Air Quality Advisory Committee of the East-West Gateway Council of Governments, and the Air Quality Forum of the Mid-America Regional Council.

13. Who may I contact to either ask questions or provide input on this rulemaking?

Questions and/or comments can be sent to:

Chief, Air Quality Planning Section
Missouri Department of Natural Resources' Air Pollution Control Program

P.O. Box 176
Jefferson City, MO 65102-0176

or

Missouri Air Conservation Commission
P.O. Box 176
Jefferson City, MO 65102-0176

or call: (573) 751-4817

14. What is the expected calendar for this rulemaking, particularly the dates for the comment period and public hearing?

A tentative filing of the proposed rulemaking is expected April 15, 2015 and a public hearing is expected June 25, 2015. The comment period will begin after the rulemaking is filed and end seven (7) days after the public hearing.