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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2011-0029-201103; FRL–9490-5]

Approval and Promulgation of Implementation Plans and Designations of Areas for Air Quality Planning Purposes; Charlotte-Gastonia-Rock Hill, North Carolina and South Carolina; Determination of Attainment of the 1997 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to determine that the Charlotte-Gastonia-Rock Hill, North Carolina-South Carolina nonattainment area has attained the 1997 8-hour ozone national ambient air quality standards (NAAQS). The Charlotte-Gastonia-Rock Hill, North Carolina-South Carolina 1997 8-hour ozone nonattainment area (hereafter referred to as the "bi-state Charlotte Area") is composed of Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, Union and a portion of Iredell (Davidson and Coddle Creek Townships) Counties in North Carolina; and a portion of York County in South Carolina. This determination is based upon complete, quality assured, quality controlled, and certified ambient air monitoring data for the years 2008-2010 showing that the bi-state Charlotte Area has monitored attainment of the 1997 8-hour ozone NAAQS. Under the provisions of EPA's ozone implementation rule the requirements for the States of North Carolina and South Carolina to submit an attainment demonstration and associated reasonably available control measures (RACM) analyses, reasonable further progress (RFP) plans, contingency measures, and other planning state implementation plans (SIPs) related to attainment of the 1997 8-hour ozone NAAQS for the bi-state Charlotte Area, shall be

suspended for as long as the Area continues to attain the 1997 8-hour ozone NAAQS. Additionally, EPA is responding to comments received on EPA's April 12, 2011, proposed rulemaking.

EFFECTIVE DATE: This final rule is effective on [insert 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R04-OAR-2011-0029. All documents in the docket are listed in the www.regulations.gov website. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy for public inspection during normal business hours at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960.

FOR FURTHER INFORMATION CONTACT: Jane Spann or Zuri Farngalo, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Ms. Spann may be reached by phone at (404) 562-9029 or via electronic mail at

spann.jane@epa.gov. Mr. Farngalo may be reached by phone at (404) 562-9152 or via electronic mail at farngalo.zuri@epa.gov.

SUPPLEMENTARY INFORMATION:

I. What Action is EPA Taking?

EPA is determining that the bi-state Charlotte Area has attained the 1997 8-hour ozone NAAQS. This determination is based upon complete, quality-assured, quality-controlled and certified ambient air monitoring data that shows the bi-state Charlotte Area has attained the 1997 8-hour ozone NAAQS based on the 2008–2010 data. Preliminary data available for 2011 are consistent with continued attainment of the 1997 8-hour ozone standard.

Other specific requirements of the determination and the rationale for EPA's final action are explained in the notice of proposed rulemaking published on April 12, 2011, (76 FR 20293) and will not be restated here. The comment period closed on May 12, 2011. EPA received one set of adverse comments. In this action, EPA is responding to those adverse comments.

II. What is the Effect of this Action?

In accordance with 40 CFR 51.918, this final determination suspends the requirements for North Carolina and South Carolina to submit attainment demonstrations, associated RACM, RFP, contingency measures, and other planning SIPs related to attainment of the 1997 8-hour ozone NAAQS in the bi-state Charlotte area, as long as the Area continues to meet the 1997 8-hour ozone NAAQS. Finalizing this action does not constitute a redesignation of the bi-state Charlotte Area to attainment for the 1997 8-hour ozone NAAQS under section 107(d)(3) of the Clean Air Act (CAA or Act), nor is it a determination that the States have met all requirements for redesignation of the Area.

III. What is EPA's Response to Comments?

EPA received one set of comments from Robert Ukeiley on the April 12, 2011, proposed determination of attainment for the bi-state Charlotte Area for the 1997 8-hour ozone NAAQS. A summary of the comments and EPA's responses are provided below.

Comment 1: The Commenter cites CAA section 110(l) and asserts that EPA's proposed determination is not in compliance with CAA section 110(l). Specifically, the Commenter states: "Clean Air Act § 110(l) provides that the 'Administrator shall not approve a revision of a plan if the revision would interfere with an applicable requirement concerning attainment and reasonable further progress … or any other applicable requirement of this chapter." 42 U.S.C. § 7410(l). The Commenter argues that EPA may not make the determination without providing an analysis under section 110(l).

Response 1: EPA disagrees with the Commenter that a section 110(l) analysis is required. This action is not approving a SIP revision, and thus CAA section 110(l) is not applicable. CAA Section 110(l) applies explicitly and only to a "revision to an implementation plan." EPA's rulemaking here is restricted to EPA's determination, based on ambient air quality, that the Area is attaining the 1997 8-hour ozone standard. It is not a SIP revision, and thus section 110(l) is by its own terms not applicable to this rulemaking. It is not this determination of attainment, but rather EPA's ozone implementation rule, 40 CFR 51.918, that specifies the consequence of the determination as suspension of the area's obligations to submit an attainment demonstration, a RFP plan, contingency measures and other planning requirements related to attainment as SIP revisions for as long as the area continues to attain. In any case, the requirements that are suspended by the regulation are related solely to attainment for the 1997 8-hour ozone standard. EPA is determining, and the Commenter does not contest, that the area is attaining that standard and the suspension of attainment planning SIP submissions lasts only as long as the area is meeting that standard. No other requirements are suspended. The Commenter is incorrect in arguing that the determination of attainment would delay implementation of measures needed for attainment of the 1997 8-hour ozone standard, and that it would relax SIP control measures. This action has no effect on control measures, or air quality, in the area. For example, contrary to Commenter's contention, reasonably available control technology (RACT) requirements for the 1997 8-hour ozone standard (or for any other standard), are not suspended or delayed by this determination, nor by 40 CFR 51.918. In sum, no evaluation under section 110(l) is required by law, and even if such an evaluation were required, EPA would conclude that this determination of attainment would not interfere with attainment, reasonable further progress towards attainment, or any other applicable requirement of the CAA.

Comment 2: The Commenter claims that the attainment determination "effectively relax[es] the SIP by staying its implementation," and goes on to say that "the Federal Register notice as well as the docket are devoid of any analysis of how delaying implementation of the attainment demonstration, RACM, [RFP], contingency measures and other planning requirements related to attainment of the 85 [parts per billion (ppb)] ozone NAAQS will interfere with attaining, making reasonable further progress on attaining and maintaining the 75 ppb ozone NAAQS as well as the 1-hour 100 ppb nitrogen oxides [NO_2] NAAQS." Further, the Commenter states that "[t]he notice and docket are also devoid of any analysis of how delaying implementation of the various 85 ppb ozone nonattainment SIP provisions will interfere with attaining, making reasonable further progress, and maintaining the other NAAQS through co-benefits. For example, transportation control measures should have the co-benefit of reduced carbon monoxide [CO] and sulfur dioxide [SO_2] emissions from mobile sources."

Response 2: The sole question addressed by EPA's rulemaking is whether the monitored ambient air quality in the Area shows that the Area has attained the 1997 8-hour ozone standard.[1] The Commenter does not contest EPA's finding that the bi-State Charlotte Area meets this NAAQS. Upon EPA's final determination that the Area has attained the standard, 40 CFR 51.918 provides that the CAA requirement to submit planning SIPs associated with attainment of that standard are suspended for as long as the Area continues to have ambient air quality data that meets that NAAQS. This regulation, which was upheld by the United States Court of Appeals for the District of Columbia Circuit (D.C. Cir.) in *NRDC* v. *EPA*, 571 F.3d 1245 (DC

[1]EPA notes that the 1997 8-hour ozone NAAQS as published in a July 18, 1997, (62 FR 38856) is 0.08 parts per million (ppm), which is effectively 0.084 ppm or 84 ppb (due to the rounding convention) and not 85 ppb as the Commenter stated.

Cir. 2009), is based on the principle that when an area is already attaining a standard, and continues in attainment, there is no basis for requiring planning SIPs to attain that standard. In other words, if an area is meeting the NAAQS, it does not need a plan to meet the NAAQS. No additional measures are required for the area to attain the standard, since the area is already in attainment. In any event, EPA's determination of attainment is based solely on quality-assured ambient air quality monitoring. It is 40 CFR 51.918 that directs the suspension of planning requirements for the 1997 8-hour ozone standard. This suspension lasts only for so long as the area continues in attainment. Contrary to the Commenter's contention, under these circumstances there are no adverse impacts from the suspension. Moreover, this action concerns only the 1997 8-hour ozone standard, and is not relevant to the revised 8-hour ozone NAAQS of 0.075 ppm (75 ppb) that EPA promulgated on March 12, 2008. Further, EPA's determination of attainment for the bi-state Charlotte Area does not revise or remove any existing emissions limit for any NAAQS, or any other existing substantive SIP provisions relevant to the 1997 8-hour ozone NAAQS or the new NO_2 and SO_2 NAAQS. Nor does this determination revise or remove any existing emissions limit, or any existing substantive SIP provisions related to the CO NAAQS. As a result, this action does not relax any existing requirements or alter the status quo air quality.

The Commenter expresses concerns that this action "will interfere with attaining, making reasonable further progress, and maintaining the other NAAQS through co-benefits." To support this claim, the Commenter mentions that transportation control measures should have the co-benefit of reduced CO and SO_2 emissions from mobile sources. EPA does not understand the concern the Commenter is expressing with regard to transportation control measures. There are no mandatory or statutory requirements for this Area to implement transportation control

measures even without EPA's action to suspend the requirements to submit attainment demonstrations, associated RACM, RFP, contingency measures, and other planning SIPs related to attainment of the 1997 8-hour ozone NAAQS.

Comment 3: The Commenter asserts that "EPA's analysis must conclude that this proposed action would [violate] § 110(l) if finalized." To support this statement, the Commenter gives the example "42 U.S.C. § 7502(a)(2)(A) & (B) provides that the attainment date for nonattainment areas 'shall be the date by which attainment can be achieved as expeditiously as practicable[.]" The Commenter goes on to contend that "delaying implementing the nonattainment SIP [measures] for the 85 ppb NAAQS will delay the date by which the area can achieve the 75 ppb NAAQS, or a more protective NAAQS that EPA may promulgate."

Response 3: EPA disagrees with the Commenter's assertion that a final determination of attainment for the bi-state Charlotte Area for the 1997 8-hour ozone NAAQS would violate section 110(l). First, as noted above, this action is not approving a SIP revision and thus section 110(l) is not applicable. Second, EPA's implementing regulation, 40 CFR 51.918, provides that as a result of the determination that the Area is attaining, the nonattainment planning measures – which are designed to bring the Area into attainment - are no longer necessary so long as the Area continues to have attaining data for the 1997 8-hour ozone NAAQS. *See* 40 CFR 51.918. These logical consequences are articulated by regulation, and EPA's determination of attainment does not make any substantive revision that could result in any change in emissions. This action does not relax any existing requirements, delay implementation of measures, or alter the status quo air quality.

Comment 4: The Commenter expresses concerns regarding the sources' compliance with RACT and control techniques guidelines (CTG), and cites to 42 U.S.C. § 7502(c)(1) explaining "that nonattainment SIPs shall provide for RACM as expeditiously as practicable." Specifically, the Commenter states "[d]elay in implementing the nonattainment SIP for the 85 ppb NAAQS will interfere with the expeditious implementation of RACM for the 75 ppb NAAQS." The Commenter goes on to explain that "if a source has already installed pollution controls to comply with RACT for the 85 ppb NAAQS, then the source can expeditiously comply with RACT for the 75 ppb NAAQS. However, delaying compliance with RACT for the 85 ppb NAAQS will interfere with the expeditious compliance with RACT for the 75 ppb NAAQS. This is especially true for sources that comply with RACT set forth in the Control Techniques Guidelines (CTG)."

Response 4: EPA believes that the Commenter's concerns regarding compliance of RACT and meeting the requirements for CTG are misplaced because this action does not relieve North Carolina or South Carolina of meeting these requirements for the 1997 8-hour ozone NAAQS. Both North Carolina and South Carolina have provided EPA with SIP revisions to comply with the RACT and CTG requirements for the 1997 8-hour ozone NAAQS for the bi-state Charlotte Area. (EPA is taking action on these SIP revisions in rulemakings separate from today's action. In any event, a determination of attainment does not result in the suspension of any obligation to submit 8-hour ozone RACT requirements). The Commenter's concern regarding "expeditious compliance with RACT for the 75 ppb NAAQS," is misplaced. No designations have been made for the revised NAAQS, and thus no RACT requirements for that NAAQS are in place. Should the bi-state Charlotte Area (or any part thereof) be designated nonattainment for the 75 ppb

ozone NAAQS or another revised NAAQS, the States will be subject to the applicable CAA requirements for that area based on the area's classification after EPA's nonattainment designation process is complete.

Comment 5: The Commenter states that:

> "some nitrogen oxides (NOx) emissions which should be controlled by the 85 ppb nonattainment SIP provisions will become fine particulate matter. Allowing these NOx emission[s] will interfere with the national goal of remedying existing impairment of visibility in mandatory Class I [F]ederal areas which impairment results from manmade air pollution as set forth in 42 U.S.C. § 7491(a)(1) as well as making reasonable progress towards that goal as required by 42 U.S.C. § 7491(a)(4) and its implementing regulations."

The Commenter goes on to state that "[d]elay in requiring implementation of the 85 ppb nonattainment SIP provisions will also interfere with the requirement to procure, install and operate, as expeditiously as practicable best available retrofit technology as required by 42 U.S.C. § 7491(b)(2)(A) and its implementing regulations."

Response 5: The Commenter provides no basis for their assertion that determination of attainment for the 1997 8-hour ozone NAAQS for the bi-state Charlotte Area will delay implementation of controls and thus allow NOx emissions to interfere with "the national goal of remedying existing impairment of visibility in mandatory Class I [F]ederal areas" or "the requirement to procure, install and operate, as expeditiously as practicable best available retrofit technology." As previously described, EPA's determination of the bi-state Charlotte Area's

attainment of the 1997 8-hour ozone NAAQS does not make substantive revisions that could result in or delay required controls. Today's action, pursuant to 40 CFR 51.918 merely suspends the requirements for the bi-state Charlotte Area to submit attainment demonstrations, associated RACM, RFP, contingency measures, and other planning SIPs related to attainment of the 1997 8-hour ozone NAAQS (when the Area has already attained that standard). It does not, in and of itself, relax any existing requirements or alter the status quo air quality.

This action also does not relieve North Carolina and South Carolina of the requirements related to improving visibility impairment, including meeting reasonable progress goals and the consideration of best available control technology for Class I areas in North Carolina and South Carolina. Both North Carolina and South Carolina have submitted SIP revisions to address requirements related to improving visibility impairment including meeting reasonable progress goals and the consideration of best available control technology for their respective Class I areas. EPA will address these SIP submissions in a rulemaking separate from today's action.

IV. What is EPA's Final Action?

EPA is taking final action to determine that the bi-state Charlotte Area has attained the 1997 8-hour ozone NAAQS. This determination is based upon complete, quality-assured, quality-controlled, and certified ambient air monitoring data showing that the bi-state Charlotte Area has monitored attainment of the 1997 8-hour ozone NAAQS during the period 2008–2010. This final action, in accordance with 40 CFR 51.918, will suspend the requirements for the States of North Carolina and South Carolina to submit attainment demonstrations, associated RACM, RFP plans, contingency measures, and other planning SIPs for the bi-State Charlotte Area related to attainment of the 1997 8-hour ozone NAAQS, for as long as the Area continues to meet the

1997 8-hour ozone NAAQS.

V. What are Statutory and Executive Order Reviews?

This action makes a determination of attainment based on air quality, and will result in the suspension of certain federal requirements, and it will not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a ‘‘significant regulatory action’’ subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this 1997 8-hour ozone NAAQS determination of attainment for the bi-state Charlotte Area does not have tribal implications as specified by Executive Order 13175 (65 FR 67,249, November 9, 2000), because the determination does not have substantial direct effects on an Indian Tribe. The Catawba Indian Nation Reservation is located within the South Carolina portion of the bi-state Charlotte Area. EPA notes that the proposal for this rule incorrectly stated that the South Carolina SIP is not approved to apply in Indian country located in the State. While this statement is generally true with regard to Indian country throughout the United States, for purposes of the Catawba Indian Nation Reservation in Rock Hill, the SIP does apply within the Reservation. Pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27-16-120, "all state and local environmental laws and regulations apply to the [Catawba Indian Nation] and Reservation and are fully enforceable by all relevant state and local agencies and authorities." However, because today's action will not result in any direct effects on the Catawba, EPA's initial assessment that Executive Order 13175 does not apply remains valid. Furthermore, EPA notes today's action also will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Incorporation by reference, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 2, 2011

Gwendolyn Keyes Fleming,

Regional Administrator,

Region 4.

40 CFR part 52 is amended as follows:

PART 52 - [AMENDED]

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

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

Subpart II – North Carolina

2. Section 52.1779 is added to read as follows:

§ 52.1779 Control strategy: Ozone.

(a) *Determination of attaining data*. EPA has determined, as of [insert date of publication], the bi-state Charlotte-Gastonia-Rockhill, North Carolina-South Carolina nonattainment area has attaining data for the 1997 8-hour ozone NAAQS. This determination, in accordance with 40 CFR 51.918, suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standards for as long as this area continues to meet the 1997 8-hour ozone NAAQS.

(b) [Reserved]

Subpart PP – South Carolina

3. Section 52.2125 is added to read as follows:

§ 52.2125 Control strategy: Ozone.

(a) *Determination of attaining data*. EPA has determined, as of [insert date of publication], the bi-state Charlotte-Gastonia-Rockhill, North Carolina-South Carolina nonattainment area has attaining data for the 1997 8-hour ozone NAAQS. This determination, in accordance with 40 CFR 51.918, suspends the requirements for this area to submit an attainment

demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standards for as long as this area continues to meet the 1997 8-hour ozone NAAQS.

(b) [Reserved]

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