



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R04-OAR-2009-0140(b); FRL - 9662-3]**

Approval and Promulgation of Air Quality Implementation Plans; North Carolina; Annual Emissions Reporting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve a portion of a state implementation plan (SIP) revision submitted on January 31, 2008, by the State of North Carolina, through the North Carolina Division of Air Quality (NCDAQ), to meet the emissions statements requirement for Charlotte, North Carolina. EPA is approving the addition of Cabarrus, Lincoln, Rowan, and Union Counties in their entirety and Davidson Township and Coddle Creek Township in Iredell County to the annual emissions reporting requirement into the North Carolina SIP. This action is being taken pursuant to section 110 and section 182 of the Clean Air Act (CAA or Act).

**DATES:** This direct final rule is effective [Insert date 60 days after publication in the Federal Register] without further notice, unless EPA receives adverse comment by [Insert date 30 days after publication in the Federal Register]. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the Federal Register and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID Number, “EPA-R04-OAR-2009-0140,” by one of the following methods:

1. [www.regulations.gov](http://www.regulations.gov): Follow the on-line instructions for submitting comments.
2. E-mail: [benjamin.lynorae@epa.gov](mailto:benjamin.lynorae@epa.gov).
3. Fax: 404-562-9019.
4. Mail: “EPA-R04-OAR-2009-0140,” 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.
5. Hand Delivery or Courier: Ms. Lynorae Benjamin, Chief, 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. Such deliveries are only accepted during the Regional Office’s normal hours of operation. The Regional Office’s official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding federal holidays.

*Instructions:* Direct your comments to Docket ID Number, “EPA-R04-OAR-2009-0140.”

EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through [www.regulations.gov](http://www.regulations.gov) or e-mail, information that you consider to be CBI or otherwise protected. The [www.regulations.gov](http://www.regulations.gov) website is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your

comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*Docket:* All documents in the electronic docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, i.e., CBI 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 in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the FOR FURTHER INFORMATION CONTACT section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sara Waterson of the Regulatory Development Section, in the Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9061. Ms. Sara Waterson can be reached via electronic mail at [waterson.sara@epa.gov](mailto:waterson.sara@epa.gov).

**SUPPLEMENTARY INFORMATION:**

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**I. What is the Background for EPA’s Action?**

On July 18, 1997, EPA promulgated a revised NAAQS for ozone, setting the standard at 0.08 parts per million (ppm) averaged over an 8-hour time frame. This revised standard was established based on scientific evidence demonstrating that ozone causes adverse health effects at lower ozone concentrations and over longer periods of time, than was understood when the pre-existing 1-hour ozone standard was promulgated (62 FR 38855).<sup>1</sup>

On April 30, 2004, EPA published designations and classifications for the revised 1997 8-hour ozone standard (69 FR 23858). These actions became effective on June 15, 2004. North Carolina was required to develop nonattainment SIP revisions addressing the CAA requirements

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<sup>1</sup> EPA issued a revised 8-hour ozone standard on March 27, 2008 (73 FR 16436). The designation and implementation process for that standard is underway and does not relate to this action.

for its nonattainment areas. Among other things, North Carolina was required to address the emissions statements requirement pursuant to CAA section 182(a)(3)(B).

Section 182(a)(3)(B) of the CAA, requires states with areas designated nonattainment for the ozone NAAQS (under subpart 2 of the Act) to submit a SIP revision to require emissions statements to be submitted to the state by sources within that nonattainment area. Specifically, CAA section 182(a)(3)(B) reads:

(i) Within 2 years after November 15, 1990, the State shall submit a revision to the State implementation plan to require that the owner or operator of each stationary source of oxides of nitrogen or volatile organic compounds provide the State with a statement, in such form as the Administrator may prescribe (or accept an equivalent alternative developed by the State), for classes or categories of sources, showing the actual emissions of oxides of nitrogen and volatile organic compounds from that source. The first statement shall be submitted within 3 years after November 15, 1990. Subsequent statements shall be submitted at least every year thereafter. The statement shall contain a certification that the information contained in the statement is accurate to the best knowledge of the individual certifying the statement.

(ii) The State may waive the application of clause (i) to any class or category of stationary sources which emit less than 25 tons per year of volatile organic compounds or oxides of nitrogen if the State, in its submissions under subparagraph (1) or (3)(A), provides an inventory of emissions from such

class or category of sources based on the use of the emission factors established by the Administrator or other methods acceptable to the Administrator.

In a March 14, 2006,<sup>2</sup> memorandum from Thomas C. Curran, Director Air Quality Assessment Division to EPA Regional Air Division Directors (Curran Memo), EPA clarified that the emissions statements requirement under the CAA section 182(a)(3)(B), is applicable to all areas designated nonattainment for the 1997 8-hour ozone NAAQS and classified marginal or higher under subpart 2, part D, title I of the CAA. Consistent with EPA's interpretation of the submission period for other subpart 2 obligations, the Curran Memo states that the 2-year submission period for the emissions statements rule for the 1997 8-hour ozone standard will run from the date an area was designated nonattainment and classified under subpart 2 for the 8-hour standard. Thus, states were required to submit their emissions statements rule by June 15, 2006, and the rule is required to provide that sources submit their first emissions statements to the state by no later than June 15, 2007 (for the 2006 calendar year). The Curran Memo further states that if an area has a previously approved emissions statements rule for the 1-hour standard that covers all portions of the designated 1997 8-hour ozone nonattainment area, such rule should be sufficient for purposes of the emissions statements requirement for the 1997 8-hour standard.

North Carolina's annual emissions reporting requirement was approved into the SIP on August 1, 1997. *See* 64 FR 41277. The counties included in the August 1, 1997, approval included Davidson, Durham, Forsyth, Gaston, Guilford, Mecklenburg, and Wake County, the Dutchville Township in Granville County, and that part of Davie County bounded by the Yadkin

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<sup>2</sup> The March 14, 2006, Curran Memo can be found at [http://www.epa.gov/ttnchie1/eidocs/eiguid/8hourozone\\_naaqs\\_031406.pdf](http://www.epa.gov/ttnchie1/eidocs/eiguid/8hourozone_naaqs_031406.pdf)

River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to the Yadkin River. On January 31, 2008, North Carolina submitted additional counties to be included in the annual emissions reporting requirements to be consistent with the requirements of the CAA as a result of EPA's designation boundary for the 1997 8-hour ozone standard. In today's action, EPA is approving the addition of Cabarrus, Lincoln, Rowan, and Union Counties in their entireties and Davidson Township and Coddle Creek Township in Iredell County to the annual emissions reporting portion of the SIP revision submitted by the State of North Carolina on January 31, 2008, as required by section 182(a)(3)(B). EPA will take action on the remaining portions of North Carolina's January 31, 2008, SIP revision in a separate action.<sup>3</sup>

## **II. What is EPA's Analysis of the Emissions Statements for North Carolina?**

North Carolina's SIP revision updates its regulation at 15A North Carolina Administrative Code (NCAC) 02Q .0207, to include Cabarrus, Lincoln, Rowan, and Union Counties in their entireties and Davidson Township and Coddle Creek Township in Iredell County and requires all owners or operators of stationary sources located in these areas with actual emissions of 25 tons per year or more of volatile organic compounds or nitrogen oxides, to submit a statement of actual emissions by June 30<sup>th</sup> of each year. EPA has evaluated North Carolina's January 31, 2008, SIP revision as it relates to the emissions statements and has made the determination that it meets the requirements of CAA section 182(a)(3)(B).

## **III. Final Action**

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<sup>3</sup> The January 31, 2008, SIP submittal includes amendments to North Carolina Rules 15A NCAC 02D .0902, .0909, .1402, .1403, and 02Q .0207. This action is approving the amendments to NCAC 02Q .0207.

EPA is taking direct final action to approve a portion of a SIP revision, submitted on January 31, 2008, by the State of North Carolina, through the NCDAQ, to meet the emissions statements requirement for the 1997 8-hour ozone NAAQS. This action is being taken pursuant to section 110 and section 182 of the CAA.

EPA is publishing this rule without prior proposal because the Agency views this as a non-controversial amendment and anticipates no adverse comments. However, in the proposed rules section of this Federal Register publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comment be filed. This rule will be effective on [Insert date 60 days from date of publication] without further notice unless the Agency receives adverse comment by [Insert date 30 days from date of publication]. If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. If no such comments are received, the public is advised this rule will be effective on [Insert date 60 days from date of publication] and no further action will be taken on the proposed rule.

#### **IV. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as

meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this final 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 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's Federal Register, rather than file an immediate petition for judicial review

of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: March 4, 2012

A. Stanley Meiburg,  
Acting Regional Administrator,  
Region 4.

40 CFR part 52 is amended as follows:

**PART 52--[AMENDED]**

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

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

**Subpart II—North Carolina**

2. Section 52.1770(c) Table 1, is amended under Subchapter 2Q, section .0200 by revising the entry for “Sect .0207” to read as follows:

**§ 52. 1770 Identification of plan.**

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(c) \* \* \*

Table 1-EPA Approved North Carolina Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanation
**	**	**	*	
Subchapter 2Q Air Quality Permits				
**	**	**	*	
Section .0200 Permit Fees				
Sect .0207	Annual Emissions Reporting	7/1/07	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	
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[FR Doc. 2012-9618 Filed 04/23/2012 at 8:45 am; Publication Date: 04/24/2012]