



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2008-0177; FRL-9689-5]

**Approval and Promulgation of Air Quality Implementation Plans; South Carolina;
Emissions Statements**

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 April 29, 2010, by the State of South Carolina, through the Department of Health and Environmental Control (SC DHEC), to meet the emissions statements requirement for the York County portion of the bi-state Charlotte-Gastonia-Rock Hill, North Carolina-South Carolina 1997 8-hour ozone nonattainment area. 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 comprised 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 (i.e., the boundary for the Rock Hill-Fort Mill Area Transportation Study) in South Carolina. EPA is addressing the emissions statements requirement for the North Carolina portion of this Area in a separate action. 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-2008-0177,” by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
2. E-mail: R4-RDS@epa.gov.
3. Fax: 404-562-9019.
4. Mail: “EPA-R04-OAR-2008-0177,” 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-2008-0177.”

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, 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 or e-mail, information that you consider to be CBI or otherwise protected. The 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, 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 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 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.

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I. What is the Background for EPA's Action?

On July 18, 1997, EPA promulgated a revised national ambient air quality standard (NAAQS or standard) for ozone, setting the standard at 0.08 parts per million (ppm) averaged over an 8-hour time frame.¹ This revised standard was established based on scientific evidence

¹ EPA notes that the Agency issued a revised 8-hour ozone standard on March 27, 2008 (73 FR 16436). Today's action, however, relates to the 1997 ozone standard. The designation and implementation process for the 2008 standard does not relate to this action.

demonstrating that ozone causes adverse health effects at lower ozone concentrations and over longer periods of time.²

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. South Carolina was required to develop nonattainment SIP revisions addressing the CAA requirements for its nonattainment areas. Among other things, South Carolina was required to address the emissions statements requirement pursuant to CAA section 182(a)(3)(B).

Section 182(a)(3)(B)(i) of the CAA, requires states with areas designated nonattainment for the ozone NAAQS (under subpart 2 of the Act) to submit within 2 years of designations a SIP revision to require emissions statements to be submitted annually by nitrous oxides (NO_x) and volatile organic compound (VOC) sources to the state within that nonattainment area. Section 182(a)(3)(B)(ii) provides criteria for waiving the application of clause (i) to sources which emit less than 25 tons per year of NO_x or VOC.

In a March 14, 2006, memorandum from Thomas C. Curran, Director Air Quality Assessment Division to EPA Regional Air Division Directors (Curran Memo),³ EPA clarified that the emissions statements requirement under 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 provides 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

² When the pre-existing 1-hour ozone standard was promulgated (62 FR 38856), the risks associated with exposure to lower concentrations of ozone over longer periods of time was less understood.

³ The March 14, 2006, Curran Memo can be found at http://www.epa.gov/ttnchie1/eidocs/eiguid/8hourozone_naaqs_031406.pdf

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 provides 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 will generally be sufficient for purposes of the emissions statements requirement for the 1997 8-hour ozone standard.

On April 29, 2010, South Carolina submitted an attainment demonstration⁴ and associated reasonably available control measures, a reasonable further progress (RFP) plan, contingency measures, emissions statement, a 2002 base year emissions inventory and other planning SIP revisions related to attainment of the 1997 8-hour ozone NAAQS for its portion of the bi-state Charlotte Area. On November 15, 2011, EPA determined the bi-state Charlotte Area attained the 1997 8-hour ozone NAAQS; and subsequently, on March 7, 2012, EPA determined that the bi-state Charlotte Area attained the 1997 8-hour ozone NAAQS by the applicable attainment date. *See* 76 FR 70656, and 77 FR 13493, respectively. Therefore, on January 12, 2012, South Carolina withdrew its portion of the bi-state Charlotte Area's attainment demonstration (the RFP, emissions statements, and the emissions inventory submittals, however, were not withdrawn) pursuant to 40 CFR 51.918. In today's action, EPA is approving the emissions statements portion of the attainment demonstration submitted by the State of South Carolina on April 29, 2010, as required by section 182(a)(3)(B). EPA will take action on the RFP and emissions inventory of South Carolina's April 29, 2010, SIP revision in separate actions.

⁴ South Carolina withdrew an August 31, 2007, attainment demonstration SIP for its portion of the bi-state Charlotte Area on December 22, 2008. On April 29, 2010, South Carolina resubmitted the attainment demonstration SIP for its portion of the bi-state Charlotte Area.

II. What is EPA's Analysis of the Emissions Statements for South Carolina?

The April 29, 2010, SIP revision states that South Carolina has the authority to require annual emissions statements and is taking specific actions to comply with the emissions statements requirements for any class or category of stationary sources that emits 25 tons per year or more of VOCs or NOx. Section VI. *Moderate Nonattainment Requirements* of the April 29, 2010, SIP revision states that the South Carolina portion of the moderate nonattainment area shall make submissions prescribed under the CAA section 182(a) and will comply with these mandates. Furthermore, South Carolina “has and is requiring, receiving, and archiving” emissions statements. SC DHEC has created a website at <http://www.scdhec.gov/environment/baq/OzoneNonattainmentReporting/> to assist in this effort. SC DHEC provided a letter to EPA on May 4, 2012, to further clarify the State's emissions statements requirements. The May 4, 2012, letter can be found in the docket for today's action. EPA has evaluated South Carolina's April 29, 2010, SIP revision as it relates to the emissions statements requirement and has made the determination that it meets the requirements of CAA section 182(a)(3)(B).

III. Final Action

EPA is taking direct final action to approve a portion of a SIP revision, submitted on April 29, 2010, by the State of South Carolina, through the SC DHEC, 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 revision 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 1997 8-hour ozone NAAQS emissions statements final approval for the bi-state Charlotte Area does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, 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. Generally SIPs do not apply in Indian country throughout the United States. However, for purposes of the Catawba Indian Nation Reservation in Rock Hill, the South Carolina 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.” Pursuant to Executive Order 13175 and the EPA Policy on Consultation and Coordination with Indian Tribes, in a letter dated October 13, 2011, EPA extended the opportunity for consultation between EPA and Catawba. Consultation with the Catawba Tribe began on October 14, 2011, and ended on October 31, 2011. The views and concerns raised by the Catawba Indian Nation during consultation have been taken into account in this final rule. Furthermore, EPA notes today’s action 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: June 8, 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 PP--South Carolina

2. Section 52.2120(e), is amended by adding a new entry for “South Carolina portion of bi-state Charlotte; 1997 8-Hour Ozone Emissions Statement” at the end of the table to read as follows:

§ 52.2120 Identification of plan.

* * * * *

(e) * * *

EPA-approved South Carolina non-regulatory provisions.

Provision	State effective date	EPA approval date	Explanation
**	**	**	*
South Carolina portion of bi-state Charlotte; 1997 8-Hour Ozone Emissions Statement	04/29/2010	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	Applicable to the 1997 8-hour Ozone boundary in York County only (Rock Hill-Fort Mill Area Transportation Study Metropolitan Planning Organization Area).

[FR Doc. 2012-14955 Filed 06/22/2012 at 8:45 am; Publication Date: 06/25/2012]