



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2007-0602; FRL-9813-5]

**Approval and Promulgation of Implementation Plans; North Carolina; State
Implementation Plan Miscellaneous Revisions**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a portion of a revision to the North Carolina State Implementation Plan (SIP) submitted on February 3, 2010, through the North Carolina Department of Environment and Natural Resources (NC DENR). This revision updates the North Carolina SIP to reflect EPA's current national ambient air quality standards for ozone, lead, and particulate matter found in the Code of Federal Regulations.

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 No. EPA-R04-OAR-2007-0602, 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-2007-0602, 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: 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 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R04-OAR-2007-0602. 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, 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: Kelly Sheckler, Air Quality Modeling and Transportation 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. Sheckler's telephone number is 404-562-9222. She can also be reached via electronic mail at Sheckler.kelly@epa.gov.

SUPPLEMENTARY INFORMATION:

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I. Background

Sections 108 and 109 of the CAA govern the establishment, review, and revision, as appropriate, of the NAAQS to protect public health and welfare. The CAA requires periodic review of the air quality criteria — the science upon which the standards are based — and the standards themselves. EPA's regulatory provisions that govern the NAAQS are found at 40 CFR 50 – *National Primary and Secondary Ambient Air Quality Standards*. In this rulemaking, EPA is proposing to approve a portion of North Carolina's February 3, 2010, submission amending the State's NAAQS table for ozone, lead and particulate matter that are found at 15A NCAC 02D .0405, .0408, .0409, and .0410. The SIP submittal amending North Carolina's rules to incorporate the NAAQS can be found in the Docket for this proposed rulemaking at www.regulations.gov and are summarized below. The remainder of North Carolina's February 3, 2010, SIP revision is being considered in a separate rulemaking.

II. Analysis of the State's Submittal

a. Ozone

On March 27, 2008, EPA revised the primary and secondary NAAQS for the 8-hour ozone to 75 parts per billion (ppb) to provide increased protection of public health and welfare, respectively. *See* 73 FR 16436. Accordingly, in a February 3, 2010, SIP submission, North Carolina updated state rule 15A NCAC 02D .0405 “Ozone” to update the definition for ozone to be consistent with the 8-hour ozone NAAQS that were promulgated in 2008. EPA has reviewed this revision to North Carolina’s rule for ozone and has made the determination that this change is consistent with federal regulations; thus EPA is approving this change to North Carolina’s SIP.

b. Lead

On November 12, 2008, EPA revised the lead NAAQS from 1.5 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) to 0.15 $\mu\text{g}/\text{m}^3$ based on a rolling 3-month average for both the primary and secondary standards. *See* 73 FR 66964. Accordingly, in a February 3, 2010, SIP submission, North Carolina updated state rule 15A NCAC 02D .0408 “Lead” to update the definition for lead to be consistent with the NAAQS that were promulgated in 2008. EPA has reviewed this revision to North Carolina’s rule for lead and has made the determination that this change is consistent with federal regulations; thus, EPA is approving this change to North Carolina’s SIP.

c. Particulate Matter

On October 17, 2006, EPA retained the annual average NAAQS at 15 $\mu\text{g}/\text{m}^3$ but revised the 24-hour NAAQS to 35 $\mu\text{g}/\text{m}^3$, based again on the 3-year average of the 98th percentile of 24-hour concentrations. Under EPA regulations at 40 CFR part 50, the primary and secondary 2006 24-hour $\text{PM}_{2.5}$ NAAQS are attained when the annual arithmetic mean concentration, as

determined in accordance with 40 CFR part 50, Appendix N, is less than or equal to 35 $\mu\text{g}/\text{m}^3$ at all relevant monitoring sites in the subject area over a 3-year period. *See* 71 FR 61144.

Accordingly, in a February 3, 2010, SIP submission, North Carolina updated state rule 15A NCAC 02D .0410 “PM_{2.5} Particulate Matter” to update the definition for 24-hour PM_{2.5} NAAQS to be consistent with the NAAQS that were promulgated in 2006. EPA has reviewed this revision to North Carolina’s rule for the 24-hour PM_{2.5} NAAQS and has made the determination that this change is consistent with federal regulations; thus, EPA is approving this change to North Carolina’s SIP.

Additionally, on October 17, 2006, EPA revoked the PM₁₀ annual NAAQS of 50 $\mu\text{g}/\text{m}^3$, while keeping in place the 24-hour PM₁₀ NAAQS of 150 $\mu\text{g}/\text{m}^3$. *See* 71 FR 61144.

Accordingly, in a February 3, 2010, SIP submission, North Carolina updated state rule 15A NCAC 02D .0409 “PM₁₀ Particulate Matter” to update the definition for the PM₁₀ NAAQS to be consistent with the NAAQS that were promulgated in 2006. EPA has reviewed this revision to North Carolina’s rule for the 24-hour PM₁₀ NAAQS and has made the determination that this change is consistent with federal regulations; thus, EPA is approving this change to North Carolina’s SIP.

III. Final Action

EPA is approving the aforementioned changes to the State of North Carolina SIP, because it is consistent with EPA’s standards for ozone, lead and particulate matter. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal 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 comments be filed. This rule will be effective [Insert date 60 days from the date of publication] without further notice unless the Agency receives adverse comments 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. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that 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 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate Matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 1, 2013.

A. Stanley Meiburg,
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) is amended under Table 1, at Subchapter 2D Air Pollution Control Requirements, Section .0400 Ambient Air Quality Standards by revising the entries for “.0405,” “.0408,” “.0409” and “.0410” to read as follows:

§52.1770 Identification of plan

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(c)* * *

EPA Approved North Carolina Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanation
Subchapter 2D Air Pollution Control Requirements				
**	**	*	*	*
Section .0400 Ambient Air Quality Standards				
**	**	*	*	*
Section .0405	Ozone	1/1/2010	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	
**	**	*	*	*
Section .0408	Lead	1/1/2010	[Insert date of publication in <u>Federal Register</u>]	

			[Insert citation of publication]	
Section .0409	Particulate Matter	1/1/2010	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	
Section .0410	PM _{2.5} Particulate Matter	1/1/2010	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	
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[FR Doc. 2013-11562 Filed 05/15/2013 at 8:45 am; Publication Date: 05/16/2013]