



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2015-0440; FRL-9936-35-Region 4]

Air Plan Approval; North Carolina;

Conflict of Interest Infrastructure Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve revisions to the North Carolina State Implementation Plan (SIP), submitted by the North Carolina Department of Environment and Natural Resources (DENR), Division of Air Quality (DAQ), on February 5, 2013, and supplemented on July 27, 2015. The submissions pertain to conflict of interest requirements of the Clean Air Act (CAA or Act) and were submitted to satisfy the infrastructure SIP sub-element related to the state board for the 2010 Nitrogen Dioxide (NO₂) National Ambient Air Quality Standards (NAAQS), 2010 Sulfur Dioxide (SO₂) NAAQS, 2008 8-hour Ozone NAAQS and 2008 Lead NAAQS. The CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA, commonly referred to as an “infrastructure” SIP, which includes conflict of interest requirements. EPA is taking final action to approve the portions of North Carolina’s 2010 NO₂ infrastructure SIP, 2010 SO₂ infrastructure SIP, 2008 8-hour ozone infrastructure SIP, and 2008 Lead infrastructure SIP as meeting these State board requirements. EPA is also taking final action to convert conditional approvals related to the state board requirements for the 1997 8-hour ozone NAAQS, and the 1997 Annual Fine Particulate Matter (PM_{2.5}) and 2006 24-hour

PM_{2.5} NAAQS to full approval under the CAA. EPA notes that all other applicable North Carolina infrastructure SIP elements for the above listed NAAQS have been or will be addressed in separate rulemakings.

DATES: This rule will be effective [insert 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2015-0440. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, 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 at the Air Regulatory Management Section, Air Planning and Implementation 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 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Mr. Lakeman can be reached by telephone at (404) 562-9043 or via electronic mail at lakeman.sean@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

SIPs meeting the requirements of sections 110(a)(1) and (2) of the CAA are to be submitted by states within three years after promulgation of a new or revised NAAQS. Sections 110(a)(1) and (2) require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the NAAQS. More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for “infrastructure” SIP requirements related to a newly established or revised NAAQS.

EPA is taking final action to approve North Carolina’s February 5, 2013, and July 27, 2015, submissions as: (1) satisfying the requirements of section 128 of the CAA; and (2) the infrastructure SIP sub-element for section 110(a)(2)(E)(ii) related to the state board requirements for the 2010 NO₂ NAAQS, 2010 SO₂ NAAQS, 2008 8-hour Ozone NAAQS and 2008 Lead NAAQS.¹ Additionally, North Carolina’s February 5, 2013, and July 27, 2015, submissions

¹ Sub-element 110(a)(2)(E)(ii) was previously submitted by North Carolina DAQ previous submissions to EPA to satisfy the state board requirements for the referenced NAAQS. EPA is taking final action to approve the February 5, 2013, and July 27, 2015, final submissions in conjunction with the previously submissions for the 2010 NO₂ NAAQS (August 23, 2013), 2010 SO₂ NAAQS (March 18, 2014), 2008 8-hour Ozone NAAQS (November 2,

satisfy EPA's multiple conditional approvals of sub-element 110(a)(2)(E)(ii) published on February 6, 2012 (77 FR 5703), and October 16, 2012 (77 FR 63234), for the 1997 8-hour ozone NAAQS, and 1997 annual and 2006 24-hour PM_{2.5} NAAQS, respectively.² As a result of today's action approving the State's submissions as meeting section 128 of the CAA, EPA is converting the aforementioned conditional approvals to full approvals regarding North Carolina's infrastructure requirements for section 110(a)(2)(E)(ii) for the 1997 8-hour ozone NAAQS, and 1997 annual and 2006 24-hour PM_{2.5} NAAQS.

EPA proposed to approve the February 5, 2013, and July 27, 2015, submissions in a notice of proposed rulemaking (NPR) published on August 24, 2015. *See* 80 FR 51167. The details of North Carolina's submittals and the rationale for EPA's actions are explained in the NPR. Comments on the proposed rulemaking were due on or before September 23, 2015. No adverse comments were received.

II. Final Action

As described above, EPA is taking final action to approve North Carolina's February 5, 2013, and July 27, 2015, submissions concerning the conflict of interest requirements of CAA section 128(a)(2) for inclusion into the North Carolina SIP.³ Specifically, EPA is approving North Carolina's submissions related to the Secretary of the DENR and his/her delegatee that approve air permits or enforcement orders and as it relates to appealed matters decided by

2012), and 2008 Lead NAAQS (July 20, 2012) as satisfying for the state board requirements of section 110(a)(2)(E)(ii) sub-element.

² Sub-element 110(a)(2)(E)(ii) was previously submitted by North Carolina DAQ to EPA to satisfy the state board requirements for the referenced NAAQS. EPA is taking final action to approve the February 5, 2013, and July 27, 2015, final submissions in conjunction with the previous conditional approvals for the 1997 8-hour ozone NAAQS and 1997 annual and 2006 24-hour PM_{2.5} NAAQS as satisfying the state board requirements for this sub-element.

³ As noted in the NPR, as of October 1, 2012, North Carolina has no boards or bodies with authority over air pollution permits or enforcement orders and therefore the requirements of section 128(a)(1) are not applicable.

administrative law judges (ALJs). Additionally, EPA is approving the portions of North Carolina's 2010 NO₂ infrastructure SIP, 2010 SO₂ infrastructure SIP, 2008 8-hour ozone infrastructure SIP, and 2008 Lead infrastructure SIP related to 110(a)(2)(E)(ii). EPA is also converting previous conditional approvals for North Carolina's infrastructure submissions for the 1997 8-hour ozone NAAQS, 1997 annual and 2006 24-hour PM_{2.5} NAAQS addressing CAA section 110(a)(2)(E)(ii) requirements to approvals.

III. 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. *See* 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. section 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. 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, Particulate Matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 20, 2015.

Heather McTeer Toney

Regional Administrator,

Region 4.

40 CFR part 52 is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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(e), is amended by adding new entries for “110(a)(1) and (2) Infrastructure

Requirements for the 1997 8-hour Ozone NAAQS”, “110(a)(1) and (2) Infrastructure Requirements for the 1997 Annual PM_{2.5} NAAQS”, “110(a)(1) and (2) Infrastructure Requirements for the 2006 24-hour PM_{2.5} NAAQS”, “110(a)(1) and (2) Infrastructure Requirements for the 2008 Lead NAAQS”, “110(a)(1) and (2) Infrastructure Requirements for the 2008 8-hour Ozone NAAQS”, “110(a)(1) and (2) Infrastructure Requirements for the 2010 NO₂ NAAQS”, “110(a)(1) and (2) Infrastructure Requirements for the 2010 SO₂ NAAQS” and “Chapter 7A section 754 of the North Carolina General Statutes” at the end of the table to read as follows:

§52.1770 Identification of plan.

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(e) * * *

EPA-Approved North Carolina Non-Regulatory Provisions

Provision	State effective date	EPA approval date	Federal Register citation	Explanation
**	**	*		*
110(a)(1) and (2) Infrastructure Requirements for the 1997 8-hour Ozone NAAQS	7/27/2015	[Insert date of publication in <u>Federal Register</u>]	[Insert Federal Register citation]	approving 110(a)(2)(E)(ii) as it relates to the Secretary of the DENR and his/her delegatee that approve permit or enforcement orders and appealed matters decided by ALJs.

110(a)(1) and (2) Infrastructure Requirements for the 1997 Annual PM _{2.5} NAAQS	7/27/2015	[Insert date of publication in <u>Federal Register</u>]	[Insert Federal Register citation]	approving 110(a)(2)(E)(ii) as it relates to the Secretary of the DENR and his/her delegatee that approve permit or enforcement orders and appealed matters decided by ALJs.
110(a)(1) and (2) Infrastructure Requirements for the 2006 24-hour PM _{2.5} NAAQS	7/27/2015	[Insert date of publication in <u>Federal Register</u>]	[Insert Federal Register citation]	approving 110(a)(2)(E)(ii) as it relates to the Secretary of the DENR and his/her delegatee that approve permit or enforcement orders and appealed matters decided by ALJs.
110(a)(1) and (2) Infrastructure Requirements for the 2008 Lead NAAQS	7/27/2015			approving 110(a)(2)(E)(ii) as it relates to the Secretary of the DENR and his/her delegatee that approve permit or enforcement orders and appealed matters decided by ALJs.
110(a)(1) and (2) Infrastructure Requirements for the 2008 8-hour Ozone NAAQS	7/27/2015			approving 110(a)(2)(E)(ii) as it relates to the Secretary of the DENR and his/her delegatee that approve permit or enforcement orders and appealed matters decided by ALJs.
110(a)(1) and (2) Infrastructure Requirements for the 2010 NO ₂ NAAQS	7/27/2015	[Insert date of publication in <u>Federal Register</u>]	[Insert Federal Register citation]	approving 110(a)(2)(E)(ii) as it relates to the Secretary of the DENR and his/her delegatee that approve permit or enforcement orders and appealed matters decided by ALJs.

110(a)(1) and (2) Infrastructure Requirements for the 2010 SO ₂ NAAQS	7/27/2015	[Insert date of publication in <u>Federal Register</u>]	[Insert Federal Register citation]	approving 110(a)(2)(E)(ii) as it relates to the Secretary of the DENR and his/her delegatee that approve permit or enforcement orders and appealed matters decided by ALJs.
Chapter 7A section 754 of the North Carolina General Statutes	7/27/2015	[Insert date of publication in <u>Federal Register</u>]	[Insert Federal Register citation]	Specifically, the following paragraph of 7A-754 stating “The Chief Administrative Law Judge and the administrative law judges shall comply with the Model Code of Judicial Conduct for State Administrative Law Judges, as adopted by the National Conference of Administrative Law Judges, Judicial Division, American Bar Association, (revised August 1998), as amended from time to time, except that the provisions of this section shall control as to the private practice of law in lieu of Canon 4G, and G.S. 126-13 shall control as to political activity in lieu of Canon 5.” is approved into the SIP.

§ 52.1773 [Amended]

3. Amend § 52.1773 by removing paragraph (a), and redesignating paragraphs (b) and (c) as paragraphs (a) and (b), respectively.

[FR Doc. 2015-27881 Filed: 11/2/2015 8:45 am; Publication Date: 11/3/2015]