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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2018-0432; FRL-9988-25-Region 4]

Air Plan Approval; North Carolina: NOx Rule Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving portions of a State Implementation Plan (SIP) revision submitted by the State of North Carolina, through the North Carolina Division of Air Quality (NCDAQ) on June 5, 2017, as supplemented on June 28, 2018. This submittal seeks to revise the State's SIP-approved rules regarding nitrogen oxides (NOx) emissions from large stationary combustion sources. This action is being taken pursuant to section 110 of the Clean Air Act (CAA or Act).

DATES: This rule will be effective [insert date 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-2018-0432. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information may not be 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: Jane Spann, Air Regulatory Management Section, Air Planning and Implementation Branch, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Ms. Spann can be reached by phone at (404) 562-9029 or via electronic mail at spann.jane@epa.gov.

SUPPLEMENTARY INFORMATION:

I. This Action

Pursuant to section 110 of the CAA, EPA is approving changes to the North Carolina SIP. EPA has evaluated the relevant portions of North Carolina's June 5, 2017, SIP revision, as supplemented on June 28, 2018, and has determined that they meet the applicable requirements of the CAA and EPA regulations.¹ In this final rulemaking, EPA is also responding to comments received on the proposed rulemaking.

II. Background

On September 18, 2001, North Carolina submitted rule sections regarding the control of NOx emissions from large stationary combustion sources to EPA for approval into its SIP.² North Carolina submitted rule changes under 15A North Carolina Administrative Code (NCAC) 02D .1400 - "Nitrogen Oxides" at the following Sections: .1401 - "Definitions"; .1403 - "Compliance Schedules"; .1413 - "Sources Not Otherwise Listed in This Section"; .1414 - "Tune-up Requirements"; and .1423 - "Large Internal Combustion Engines" as well as other rules not related to today's proposed action.³ The submittal also included Section .1406 - "Utility Boilers (Repealed)" with no regulatory text. EPA approved the September 18, 2001, SIP

¹ On June 5, 2017, NCDAQ submitted a SIP revision addressing regulations under 15A North Carolina Administrative Code (NCAC) 02D Sections .1407 - "Boilers and Indirect-Fired Process Heaters" and .1408 - "Stationary Combustion Turbines" that is separate from the SIP revision that EPA is finalizing today. On August 14, 2002, and again on November 19, 2008, NCDAQ submitted amendments to Sections .1407 and .1408 along with many other rule amendments. NCDAQ's intention, as outlined in its June 5, 2017, SIP submittal for Sections .1407 and .1408, was to withdraw the November 19, 2008, submittal related to these rules. However, EPA already approved the portion of the November 19, 2008, submittal related to Sections .1407 and .1408 on May 9, 2013. See 78 FR 27065. Therefore, no further action is needed on the June 5, 2017 SIP submittal containing Sections .1407 and .1408 as the latest version of these rules have been previously incorporated into the federally-approved SIP.

² See Section .1402 - "Applicability" and the definition of "source" in Section .1401 for the scope of this rule section.

³ In the table of North Carolina regulations federally approved into the SIP at 40 CFR 52.1770(c), 15A NCAC 02D is referred to as "Subchapter 2D Air Pollution Control Requirements."

revision on December 27, 2002, with the exception of Section .1406 and the addition of Sections .1413 and .1414, among others. EPA did not act on Section .1406 because the rule contained no regulatory text and because Section .1406 was not in the SIP, thus there was nothing to repeal. See 67 FR 78987 for further information.

On August 14, 2002, North Carolina submitted a SIP revision to EPA containing changes under Subchapter 2D to its Section .1400 NOx rules. The submission included changes to Sections .1401 - “Definitions”; .1403 - “Compliance Schedules”; .1413 - “Sources Not Otherwise Listed in This Section”; .1414 - “Tune-up Requirements”; and .1423 - “Large Internal Combustion Engines” as well as changes to other rules not related to today’s proposed action. The submittal again included Section .1406 - “Utility Boilers (Repealed)” with no regulatory text. North Carolina took these rule changes to hearing on May 21, 2001, and June 5, 2001. EPA did not act on the August 14, 2002, submittal.

On June 5, 2017, North Carolina withdrew its August 14, 2002, SIP submittal and resubmitted the changes to Sections .1401, .1403, .1413, .1414, and .1423 contained in the 2002 submittal along with the repeal of Section .1406. The June 5, 2017, submittal relies on the hearing record associated with the August 14, 2002, submittal because the rule text is identical. On June 28, 2018, North Carolina supplemented its June 5, 2017, submittal to acknowledge that Sections .1413 and .1414 are not in the SIP.

In a notice of proposed rulemaking (NPRM) published on November 5, 2018, EPA proposed approval of the June 5, 2017, SIP submission, as supplemented June 28, 2018. *See* 83 FR 55335. Comments on the NPRM were due on or before November 26, 2018. EPA received supporting comments and adverse comments on the proposed rule. The Agency has summarized

and responded to the potentially adverse comments below (the commenters are hereinafter collectively referred to as “the Commenter”).

III. Response to Comment

Comment 1: The Commenter states that the world has vastly changed since the enactment of the Clean Air Act and that the “science used through the NC DAQ has changed along with it.” The Commenter further states that the “State Implementation Plan though the Clean Air Act has been untouched since 2001, and if this is the third of these attempts it is vital to comply with some of the requests. Climate change policy as matured in North Carolina, and this is another part of that development.”

Response 1: It is unclear how the comment relates to the proposal or how the Commenter would like EPA to change the proposed rule. EPA has modified the North Carolina SIP numerous times since 2001 in response to SIP revisions submitted by the State and is taking action to further modify the SIP as described in the NPRM. *See* 40 CFR 52.1770(c) and (e). Furthermore, the SIP revision at issue is focused on the control of NOx emissions and does not expressly address climate change.

Comment 2: The Commenter notes that North Carolina replaced the phrase “optimization of” with “utilization” in the definition of “reasonable effort” in Section .1401. According to the Commenter, “it seems as though North Carolina is trying to avoid an efficient use of the abatement technology,” “avoiding the Clean Air Act’s goal,” and “not putting in maximum effort to abate NOx.”

Response 2: The criterion for EPA approval in this instance is whether, under CAA section 110(l), the SIP revision would interfere with any applicable requirement concerning

attainment and reasonable further progress or any other applicable CAA requirement. As discussed in the NPRM, EPA does not believe that approval would violate section 110(l) given the limited applicability of the provision, the continued requirement to follow manufacturers' recommendations or other similar guidance, the fact that it was state effective in 2002, and the lack of nonattainment areas in the State for any criteria pollutant.

Comment 3: Regarding Section .1413 - Sources Not Otherwise Listed in This Section, the Commenter states that it is important to specify RACT in the SIP "as it shows the EPA is requiring all sources of NOx combustion to specify their usage of RACT." The Commenter states that the rule "could go a step further and the EPA could mandate Best Available Control Technology [BACT]. This makes it seem like North Carolina is trying to slide around the rule and not implement the best-case scenario in terms of abatement."

Response 3: EPA agrees that it should incorporate Section .1413 into the SIP as a strengthening measure. As a point of clarification, the rule does not require "all sources of NOx combustion to specify their usage of RACT." The rule requires certain sources of NOx - other than boilers, indirect-fired process heaters, stationary combustion turbines, and stationary internal combustion engines - at facilities with a potential to emit of 100 tons per year or more of NOx or 560 pounds per calendar day or more from May 1 through September 30 to apply RACT.

Regarding the comments concerning BACT, EPA cannot mandate the use of this control technology under this circumstance. BACT is a CAA requirement for major new or modified stationary sources subject to the Prevention of Significant Deterioration (PSD) program under Title I, Part C of the Act. North Carolina did not submit Section .1413 to EPA to satisfy the State's PSD obligations under the CAA, and EPA has already approved North Carolina's PSD

program at 15A NCAC 02D .0530, including its BACT provisions, as meeting CAA requirements and incorporated the program into the SIP. *See, e.g.*, 47 FR 7836 (February 23, 1982).

Comment 4: Regarding Section .1403 - Compliance Schedules, the Commenter notes that EPA is not acting on this rule because it already approved a previous submission. The Commenter then states that EPA “should look into this rule further, as the last effective revision for this rule was in 2002. Schedules change, and this could be another example of the EPA not being strict enough in implementing the Clean Air Act’s statutes on North Carolina.”

Response 4: It is unclear how the Commenter would like EPA to change the proposed rule, and EPA does not agree that the last effective revision for Section .1403 was in 2002. North Carolina last modified Section .1403 on July 1, 2007, and EPA approved that version of the rule into the SIP on May 9, 2013. *See* 78 FR 27065. Because the 2007 version of the rule (approved by EPA in 2013) superseded the July 15, 2002, version contained in the June 5, 2017, SIP revision, EPA is not taking action on the portion of the submittal regarding Section .1403.

Comment 5: The Commenter states that the SIP revisions “do a good job in creating a better understanding of North Carolina’s abatement efforts, however the EPA could revisit rules of the previous submissions. They have chosen to not take action on several rules, but these rules .1403, .1406 and .1423 could better strengthen the SIP if they were updated and better evaluated.”

Response 5: It is unclear how the Commenter would like EPA to change the proposed rule or how Sections .1403, .1406, and .1423 could strengthen the SIP “if they were updated and better evaluated.” As discussed in Response 4, EPA has already incorporated the most recent

state-effective version of Section .1403 into the SIP. EPA is not acting on Section .1406 - Utility Boilers (Repealed) because the rule contains no regulatory text and because EPA never incorporated Section .1406 into the SIP. EPA is not acting on Section .1423 at this time. Any future action on that rule will occur in a separate rulemaking. To the extent that the Commenter wants EPA to revisit rules of previous SIP submissions, EPA notes that this action is limited to the June 5, 2017 SIP revision and that previous SIP submissions on these rules are no longer before the Agency for review.

IV. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference North Carolina regulations under Subchapter 2D Air Pollution Control Requirements, Section .1401 - “Definitions,” modified to clarify which definitions outside of the rule apply to Section .1400, including definitions from the CFR, add a definition for “combustion turbine,” modify the definition of “reasonable effort,” “emergency generator,” “emergency use internal combustion engines,” “fossil fuel fired,” “ozone season,” “seasonal energy input” and “seasonal energy output,” and renumber the paragraphs within the rule, state effective on July 15, 2002; Section .1413 - “Sources Not Otherwise Listed in This Section,” which includes rules for NOx sources not otherwise listed in section .1400, state effective on July 18, 2002; and Section .1414 - “Tune-Up Requirements,” which includes tune-up requirements for certain boilers, indirect-fired process heaters and stationary internal combustion engines, state effective on July 18, 2002. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 4 Office (please contact the person

identified in the ‘‘For Further Information Contact’’ section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA’s approval, and will be incorporated by reference in the next update to the SIP compilation.⁴

V. Final Action

Pursuant to section 110 of the CAA, EPA is approving the aforementioned changes to the North Carolina SIP.

VI. 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. 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);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;

⁴ See 62 FR 27968 (May 22, 1997).

- 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. 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 after date of publication 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, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 6, 2018.

Mary S. Walker,

Acting 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. In §52.1770, the table in paragraph (c)(1) is amended by:

- a. Revising the entry “Section .1401”.
- b. Adding the entries “Section .1413” and “Section .1414” in numerical order.

The additions and revision read as follows:

§52.1770 Identification of plan.

(c) * * *

(1) EPA APPROVED NORTH CAROLINA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
Subchapter 2D Air Pollution Control Requirements				
**	**	*	*	*
Section .1400 Nitrogen Oxides				
Section .1401	Definitions	7/15/2002	[insert date of publication in the Federal Register], [insert Federal Register citation]	
**	**	*	*	*

Section .1413	Sources Not Otherwise Listed in This Section	7/18/2002	[insert date of publication in the Federal Register], [insert Federal Register citation]	
Section .1414	Tune-Up Requirements	7/18/2002	[insert date of publication in the Federal Register], [insert Federal Register citation]	
**	**	*	*	*

[FR Doc. 2018-27747 Filed: 12/21/2018 8:45 am; Publication Date: 12/26/2018]