



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2017-0422; FRL-9996-43-Region 4]

Air Plan Approval; NC; Emission Control Standards, Open Burning, and Miscellaneous Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve portions of a revision to the North Carolina State Implementation Plan (SIP) submitted by the State of North Carolina through the North Carolina Department of Environmental Quality (formerly the North Carolina Department of Environment and Natural Resources (NCDENR)), Division of Air Quality, on January 31, 2008. The revision includes changes to emission control standards and open burning regulations. The changes are part of North Carolina's strategy to meet and maintain the national ambient air quality standards (NAAQS). This action is being taken pursuant to the Clean Air Act (CAA or Act) and its implementing regulations.

DATES: This rule is 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-2017-0422. 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 and Radiation Division (formerly the 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: Andres Febres, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-8966. Mr. Febres can also be reached via electronic mail at febres-martinez.andres@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On January 31, 2008, the State of North Carolina, through NCDENR,¹ submitted changes to the North Carolina SIP for EPA approval. EPA is taking final action to approve changes to the following regulations under 15A North Carolina Administrative Code (NCAC) 02D: Section .0519, *Control of Nitrogen Dioxide and Nitrogen Oxides Emissions*; Section .0540, *Particulates From Fugitive Non-Process Dust Emission Sources*; and Section .1907, *Multiple Violations Arising From a Single Episode*.² These changes are a part of North Carolina's strategy to attain and maintain the NAAQS and are being approved pursuant to section 110 of the CAA. EPA has

¹ NCDENR is now the North Carolina Department of Environmental Quality.

² 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."

taken, will take, or, for various reasons, will not take separate action on all other changes submitted on January 31, 2008.³

The revisions that are the subject of this final action make changes to emission control standard regulations under Subchapter 2D of the North Carolina SIP. These changes revise the applicability of nitrogen dioxide (NO₂) and nitrogen oxides emissions standards to nitric acid plants; amend definitions and expand the applicability of provisions related to fugitive dust emissions, including renaming the rule to eliminate the word “non-process”; and add a new open burning rule for multiple violations that can occur from a single open burning event. The changes either do not interfere with attainment and maintenance of the NAAQS or they have the effect of strengthening the North Carolina SIP. In a notice of proposed rulemaking (NPRM) published on March 11, 2019 (84 FR 8654), EPA proposed to approve the aforementioned revisions to the North Carolina SIP. The NPRM provides additional detail regarding the background and rationale for EPA’s action. Comments on the NPRM were due on or before April 10, 2019. EPA received one comment on the proposed action, but it is not germane to the proposed action. That comment is discussed below.

II. Response to Comments

EPA received one comment, which addresses portions of North Carolina’s submittal on which EPA is not acting in this rulemaking. The comment concerns changes to 15A NCAC 02D .0521 and .1201, as well as the adoption of 15A NCAC 02D .1211. As explained herein and in

³ On February 5, 2015 (80 FR 6455), EPA took final action on 2D Section .1004. On July 18, 2017 (82 FR 32767), EPA took direct final action on 2D Sections .1901, .1902 and .1903. EPA will be taking separate action on 15A NCAC Sections 2D .1904 and 2Q .0102. EPA is not taking action on 2D Sections .0516 and .0521, because the changes to these rules reference incinerator rules under CAA sections 111(d) and 129 and 40 CFR part 60 and are not a part of the federally-approved SIP. EPA is not taking action on changes to 2Q Section .0506 because the proposed changes reference a regulation not approved into the SIP and which is being repealed by North Carolina. Lastly, EPA is not taking action on changes to 2D Sections .0524, .0960, .1201, .1202, .1208, .1211, and .2303 because the State withdrew these regulations from its January 31, 2008, submittal.

the NPRM, *see* 84 FR at 8655 n.3, those NCAC provisions are not the subject of this rulemaking, and EPA is not taking action on changes to them. Therefore, the comment is not relevant to this action.

III. Incorporation by Reference

In this rule, 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 of state regulations under Subchapter 2D Air Pollution Control Requirements, Section .0519, *Control of Nitrogen Dioxide and Nitrogen Oxides Emissions*; and Section .1907, *Multiple Violations Arising from a Single Episode*, which have a state effective date of July 1, 2007; as well as Section .0540, *Particulates From Fugitive Dust Emission Sources*, which has an effective date of August 1, 2007. 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 SIP, 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

IV. Final Action

For the reasons described above, EPA is taking final action to approve the aforementioned changes to the North Carolina SIP submitted by the State of North Carolina on January 31, 2008, pursuant to CAA section 110 because these changes are consistent with the CAA. Changes to the other sections in these submissions have been or will be processed in a

⁴ *See* 62 FR 27968 (May 22, 1997).

separate action, as appropriate, for approval into the North Carolina SIP.

V. 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;
- 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 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: June 26, 2019.

Mary S. Walker,
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 under Subchapter 2D Air Pollution Control Requirements by:

- a. Revising the entries for “Section .0519” and “Section .0540”; and
- b. Adding an entry for “Section .1907” in numerical order.

The revisions and addition 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 .0500 Emission Control Standards				
**	**	*	*	*
Section .0519	Control of Nitrogen Dioxide and Nitrogen Oxides Emissions	7/1/2007	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	
**	**	*	*	*

Section .0540	Particulates from Fugitive Dust Emission Sources	8/1/2007	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	
**	**	*	*	*
Section .1900 Open Burning				
**	**	*	*	*
Section .1907	Multiple Violations Arising from a Single Episode	7/1/2007	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	
**	**	*	*	*

* * * * *

[FR Doc. 2019-14879 Filed: 7/15/2019 8:45 am; Publication Date: 7/16/2019]