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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2018-0598; FRL-9999-55-Region 4]

Air Plan Approval; NC: Revision to I/M Program & Update to Charlotte Maintenance

Plan for the 2008 8-Hour Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a State Implementation Plan (SIP) revision submitted by the North Carolina Department of Environmental Quality, Division of Air Quality (DAQ), on July 25, 2018, which revises the model year coverage for vehicles in the 22 counties subject to North Carolina's expanded inspection and maintenance (I/M) program. The SIP revision also includes a demonstration that the requested revision to the vehicle model year coverage will not interfere with attainment or maintenance of any national ambient air quality standards (NAAQS) or with any other applicable requirements of the Clean Air Act (CAA or Act). In addition, North Carolina's July 25, 2018, SIP revision updates the State's maintenance plan and associated motor vehicle emissions budgets (MVEBs) used in transportation conformity for the North Carolina portion of the Charlotte-Rock Hill, NC-SC 2008 8-hour ozone nonattainment area (hereafter also referred to as the "Area" or the "Charlotte Area") to reflect the change in vehicle model year coverage for the I/M program. EPA has determined that North Carolina's July 25, 2018, SIP revision will not

interfere with and is consistent with the applicable provisions of the Clean Air Act (CAA or Act).

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-2018-0598. 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, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if 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: Kelly Sheckler, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9992. Ms. Sheckler can also be reached via electronic mail at sheckler.kelly@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In response to a North Carolina legislative act signed by the Governor on May 4, 2017, which changed the State's I/M requirements for the 22 counties subject to the State's expanded I/M program,¹ DAQ provided a SIP revision through a letter dated July 25, 2018,² seeking to have several of these changes incorporated into the North Carolina SIP. Primarily, North Carolina's July 25, 2018, SIP revision makes substantive changes to the applicability section of North Carolina's SIP-approved expanded I/M program found within 15A North Carolina Administrative Code (NCAC) 02D .1000 *Motor Vehicle Emission Control Standard*.³ Specifically, the July 25, 2018, SIP revision modifies Section .1002 *Applicability*, by changing, for applicability purposes, the vehicle model year coverage for the 22 counties subject to the expanded I/M program from a specific year-based timeframe for coverage (*i.e.*, beginning in 1996) to a rolling 20-year timeframe for coverage.⁴ More precisely, the revision being approved

¹ Under provisions of the State legislation, Session Law 2017-10, Senate Bill 131, the changes to North Carolina's I/M requirements for the 22 counties is not effective until the later of the following dates: October 1, 2017, or the first day of a month that is 60 days after the Secretary of the Department of Environmental Quality certifies that EPA has approved the SIP revision. The 22 counties are: Alamance, Buncombe, Cabarrus, Cumberland, Davidson, Durham, Forsyth, Franklin, Gaston, Guilford, Iredell, Johnston, Lee, Lincoln, Mecklenburg, New Hanover, Onslow, Randolph, Rockingham, Rowan, Union and Wake. *See* clarification letter dated August 31, 2018, from North Carolina in the docket for the proposed rulemaking.

² EPA received North Carolina's SIP submittal on July 31, 2018.

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."

⁴ By its terms, Section .1002(d) makes the 22 counties identified in North Carolina General Statute 143-215.107A subject to the I/M program's emission control standards. These same 22 counties are the counties currently subject to North Carolina's SIP-approved I/M program which was expanded from 9 counties to 48 counties in 2002 (and is referred to as the "expanded" I/M program). *See* 83 FR 48383 (September 25, 2018) (removing 26 of the 48 counties from North Carolina's SIP-approved expanded I/M program and leaving the 22 counties identified in

changes the applicability of the expanded I/M program to: (i) a vehicle with a model year within 20 years of the current year and older than the three most recent model years; or (ii) a vehicle with a model year within 20 years of the current year and has 70,000 miles or more on its odometer. Previously, the program applied to: (i) a 1996 or later model year vehicle and older than the three most recent model years; or (ii) a 1996 or later model year vehicle and has 70,000 miles or more on its odometer. It is estimated that this change will result in a small increase (less than one percent) in nitrogen oxides (NOx) and volatile organic compound (VOC) emissions. Additionally, the July 25, 2018, SIP revision makes formatting or other minor clarifying changes to several related SIP-approved I/M sections: .1001 *Purpose*, .1003 *Definitions*, and .1005 *On-Board Diagnostic Standards*.⁵

In addition, North Carolina's SIP revision evaluates the impact that the change to the vehicle model year coverage for the 22 counties would have on the State's ability to attain and maintain the NAAQS. The SIP revision contains a technical demonstration with revised emissions calculations showing that the change to Section .1002 for vehicle model year coverage for the expanded I/M program in the 22 counties will not interfere with North Carolina's attainment or maintenance of any NAAQS or with any other applicable requirement of the CAA. Based on this demonstration, EPA is taking final action to find that North Carolina's revised emissions calculations demonstrate that the change to the expanded I/M program for the 22 counties meets the requirements of CAA section 110(l) and will not interfere with State's ability

footnote 1 above as remaining). In addition, changes to Section .1002 also include language making the effective date of the change to the vehicle model year coverage correspond to the effective date set out in North Carolina Session Law 2017-10 referred to in footnote 1 above (*i.e.*, on the first day of the month that is 60 days after EPA approves the change into the SIP).

⁵ As noted in the notice of proposed rulemaking, North Carolina did not request EPA to act - and EPA is not acting - on sections .1006 and .1008.

to attain or maintain any NAAQS. In addition, EPA is taking final action to find that North Carolina's July 25, 2018, SIP revision to change the vehicle model year coverage for the 22 counties subject to the expanded I/M program contained in its SIP (which results in a small increase in NOx emissions and consequentially a small decrease in the amount of emissions reduction credits generated and available for use in the State's NOx emissions budget) will not interfere with the State's obligations under the NOx SIP Call to meet its Statewide NOx emissions budget. With regard to the related expanded I/M program provisions at Sections .1001, .1002, and .1003, EPA is taking final action to approve the changes to those Sections, which are formatting or clarifying in nature, do not alter the meaning of the Sections, and are thus approvable.

Finally, for 7 of the 22 counties in North Carolina's expanded I/M program, I/M emissions from those counties have been relied on by North Carolina for maintenance of the ozone NAAQS for the Charlotte Area, and the MVEBs with respect to the Area for transportation conformity purposes. Through the July 25, 2018, SIP revision (the subject of this rulemaking), North Carolina provided a maintenance demonstration for the Area that takes into account the small increase in NOx and VOC emissions estimated to result from the change to the vehicle model year coverage for the expanded I/M program for these counties. EPA is taking final action to approve the updated emissions for the 2008 8-hour ozone maintenance plan for the North Carolina portion of the Charlotte Area because it demonstrates that the projected emissions inventories for 2026 (the final year of the maintenance plan), 10 years beyond the redesignation year, as well as the interim years, are all less than the base year emissions inventory. Further, EPA is approving the updated sub-area MVEBs for the Charlotte Area because EPA has

determined that the Area maintains the 2008 8-hour ozone NAAQS with the emissions at the levels of the budgets, and that the budgets meet the adequacy criteria (see 40 CFR 93.118(e)(4)) because they are consistent with maintenance of the 2008 8-hour ozone NAAQS through 2026.⁶

In a notice of proposed rulemaking (NPRM) published on May 20, 2019 (84 FR 22774), EPA proposed approval of the North Carolina July 25, 2018, SIP revision to amend the I/M program for North Carolina, in addition to other associated changes as described above and in the NPRM. The details of North Carolina's submission and the rationale for EPA's actions are explained in the NPRM. EPA received one significant, adverse comment on the proposed action during the comment period for this action and offers a response below.

II. Response to Comments

Comment: The Commenter claims EPA must disapprove the changes to North Carolina I/M SIP because the Commenter explains that North Carolina failed to do performance standard modeling as the Commenter asserts is required by EPA's February 2014 guidance document titled "Performance Standard Modeling for New and Existing Vehicle Inspection and Maintenance (I/M) Programs Using the MOVES Mobile Source Emissions Model" (hereafter referred to as the February 2014 Guidance Document), available in the docket for this action. In the Commenter's opinion EPA must require states to do performance standard modeling when states revise their I/M programs to ensure the programs meet EPA's baseline requirements contained in 40 CFR part 51.

Response: The February 2014 Guidance Document provides clarification of 40 CFR part 51, subpart S, regarding how to quantify I/M emission reductions for planning purposes

⁶ Once the sub-area MVEBs for the North Carolina portion of the Charlotte Area are approved or found adequate (whichever is completed first), they must be used for future conformity determinations.

using the MOVES generation of mobile source emission factor models. The February 2014 Guidance Document clarifies that maintenance areas do not need to include I/M performance standard modeling as part of an I/M SIP revision. Specifically, the February 2014 Guidance Document includes the following question and response: “*4.0 Can an I/M Program be Changed Without Doing Performance Standard Modeling? States can change their I/M programs without doing performance standard modeling if the I/M program area in question has been redesignated to attainment for the pollutant(s) that originally triggered the I/M requirement and the I/M program is being continued as part of the area’s maintenance plan. In this case, the state must simply demonstrate that the revisions to the I/M program will not interfere with the area’s ability to attain or maintain any NAAQS, or with any other applicable CAA requirement.*”

As discussed in the May 20, 2019 (84 FR 22774) NPRM, North Carolina’s I/M program for nine counties was required due to nonattainment areas for the 1979 1-hour ozone NAAQS,⁷ and North Carolina is currently in attainment statewide for all the ozone NAAQS.⁸ As further discussed in the NPRM, the program was expanded to additional counties related to the NOx SIP Call, however the State was not required to adopt the I/M requirements for the NOx SIP Call.

⁷ See 60 FR 28720 (June 2, 1995).

⁸ The Charlotte Area was redesignated to attainment for the 1-hour ozone standard on July 5, 1995 (60 FR 34859); redesignated to attainment for the 1997 8-hour ozone standard on December 2, 2013 (78 FR 72036); and was designated to attainment for the 2008 8-hour ozone standard on July 28, 2015 (80 FR 44873). In addition, on December 26, 2007, EPA approved the Redesignation to attainment of the Raleigh-Durham-Chapel Hill Area (comprised of a portion of Chatham County, and the entire counties of Durham, Franklin, Granville, Johnston, Orange, Person, and Wake) for the 1997 8-hour ozone standard. See 72 FR 72948. This approval included approval of a 10-year maintenance plan which demonstrated that the Area would maintain the standard through the year 2017. The Raleigh-Durham-Chapel Hill Area has continued to maintain the 1997 8-hour ozone standard and subsequently was designated as unclassifiable/attainment for the 2008 8-hour ozone standard on May 21, 2012 (77 FR 30088). Further, counties in the Raleigh Area and Greensboro Area were redesignated to attainment for the 1-hour ozone standard on April 18, 1994 (59 FR 18300) and on September 9, 1993 (58 FR 47391), respectively. With regard to the 1997 8-hour ozone standard, the Great Smoky National Park Area was redesignated to attainment on December 7, 2009 (74 FR 63995), and the Rocky Mount Area was redesignated to attainment on November 6, 2006 (71 FR 64891). Recently, on November 6, 2017 (82 FR 54232), EPA designated the entire state of North Carolina attainment/unclassifiable for the 2015 8-hour ozone NAAQS.

Therefore, the option to change the I/M program without performance standard modeling under 40 CFR part 51, subpart S, was available to North Carolina if the State could demonstrate continued attainment. North Carolina provided a non-interference section 110(l) demonstration, as well as an update for modeling for the Charlotte Area maintenance plan including MVEBs that demonstrate the Area will continue to maintain the standard for the duration of the plan. In addition, EPA analyzed the effects on the NOx SIP call and found that the change will not interfere with the State's obligations under the NOx SIP Call. A detailed analysis of this modeling and demonstration of continued attainment is provided in the May 20, 2019 (84 FR 22774) NPRM.

III. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference the following air quality rules in Subchapter 2D Air Pollution Control Requirements, Section .1001 *Purpose*, Section .1002 *Applicability*, Section .1003 *Definitions*, and Section .1005 *On-Board Diagnostic Standards*, effective July 1, 2018, which makes changes that are formatting or clarifying in nature and modify the vehicle model year coverage requirements for the 22 counties in North Carolina's expanded I/M program. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and/or 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.⁹

IV. Final Action

EPA is taking final action to approve North Carolina's July 25, 2018, SIP revision. Specifically, EPA is approving the formatting and clarifying changes to Subchapter 2D, Sections .1001, .1003 and .1005. EPA is also finalizing approval of changes to Section .1002 relating to the vehicle model year coverage for the 22 counties in North Carolina's expanded I/M program (Alamance, Buncombe, Cabarrus, Cumberland, Davidson, Durham, Forsyth, Franklin, Gaston, Guilford, Iredell, Johnston, Lee, Lincoln, Mecklenburg, New Hanover, Onslow, Randolph, Rockingham, Rowan, Union and Wake). Additionally, EPA finds that the changes to the vehicle model year coverage for the 22 counties in North Carolina's expanded I/M program will not interfere with the State's obligations under the NOx SIP Call to meet its Statewide NOx emissions budget and will not interfere with continued attainment or maintenance of any applicable NAAQS or with any other applicable requirement of the CAA, and that North Carolina has satisfied the requirements of section 110(l) of the CAA. Finally, EPA is approving the updated emissions for the 2008 8-hour ozone maintenance plan, including the updated MVEBs, for the Charlotte Area.

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, if

⁹ See 62 FR 27968 (May 22, 1997).

they meet the criteria of the CAA. These actions merely approve state law as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law. For that reason, these actions:

- Are not significant regulatory actions 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);
- Are not Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory actions because SIP approvals are exempted under Executive Order 12866;
- Do not impose information collection burdens under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having significant economic impacts on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandates or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Do not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Are 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
- Do 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, these rules do not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will they 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 these actions 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. These actions are not “major rules” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of these actions must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days]**

from date of publication in the Federal Register]. Filing a petition for reconsideration by the Administrator of these final rules does not affect the finality of these actions 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. These actions may not be challenged later in proceedings to enforce their 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 dioxide, Volatile organic compounds.

Dated: August 28, 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. Section 52.1770 is amended:

- a. In paragraph (c), in Table (1), under “Subchapter 2D Air Pollution Control” by revising the heading for “Section .1000” and the entries for “Section .1001”, “Section .1002”, “Section .1003”, and “Section .1005”; and
- b. In paragraph (e), by adding an entry for “2008 8-hour Ozone Maintenance Plan for the North Carolina portion of the bi-state Charlotte Area” at the end of the table.

The revisions read as follows:

§ 52.1770 Identification of plan.

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(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 .1000 Motor Vehicle Emission Control Standard				

Section .1001	Purpose	7/1/2018	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	
Section .1002	Applicability	7/1/2018	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	
Section .1003	Definitions	7/1/2018	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	
Section .1005	On-Board Diagnostic Standards	7/1/2018	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	
**	**	*	*	*

(e) * * *

EPA-APPROVED NORTH CAROLINA NON-REGULATORY PROVISIONS

Provision	State effective date	EPA approval date	Federal Register citation	Explanation
**	**	*	*	*

2008 8-hour ozone Maintenance Plan for the North Carolina portion of the bi-state Charlotte Area	7/25/2018	[Insert date of publication in <u>Federal Register</u>]	[Insert citation of publication]	
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[FR Doc. 2019-19574 Filed: 9/10/2019 8:45 am; Publication Date: 9/11/2019]