



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2015-0518; FRL-9946-76-Region 4]

Air Plan Approval; North Carolina; Regional Haze

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing approval of a revision to North Carolina's regional haze State Implementation Plan (SIP), submitted by the North Carolina Department of Environmental Quality (formerly known as the North Carolina Department of Environment and Natural Resources (NC DENR)) on October 31, 2014, that relies on an alternative to Best Available Retrofit Technology (BART) to satisfy BART requirements for electric generating units (EGUs) formerly subject to the Clean Air Interstate Rule (CAIR). EPA is also finalizing its determination that final approval of this SIP revision corrects the deficiencies that led to EPA's limited disapproval of the State's regional haze SIP on June 7, 2012, and is converting EPA's June 27, 2012, limited approval to a full approval. This submittal addresses the requirements of the Clean Air Act (CAA or Act) and EPA's rules that require states to prevent any future, and remedy any existing, manmade impairment of visibility in mandatory Class I areas caused by emissions of air pollutants from numerous sources located over a wide geographic area (also referred to as the regional haze program). States are required to assure reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas.

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

ADDRESSES: EPA has established a docket for these actions under Docket Identification No. EPA-R04-OAR-2015-0518. 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: Michele Notarianni, 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. Ms. Notarianni can be reached via electronic mail at notarianni.michele@epa.gov or via telephone at (404) 562-9031.

SUPPLEMENTARY INFORMATION:

I. Background and Overview

Regional haze is visibility impairment that is produced by a multitude of sources and activities which are located across a broad geographic area and emit fine particles (e.g., sulfates, nitrates, organic carbon, elemental carbon, and soil dust) and their precursors (e.g., sulfur dioxide (SO₂), nitrogen oxides (NO_x), and in some cases, ammonia and volatile organic compounds). In section 169A of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. In the 1990 CAA Amendments, Congress amended the visibility provisions in the CAA to focus attention on the problem of regional haze.

In 1999, EPA promulgated the regional haze rule (RHR), which requires states to develop and implement SIPs to ensure reasonable progress toward improving visibility in Class I areas by reducing emissions that cause or contribute to regional haze. *See* 64 FR 35713 (July 1, 1999). The RHR requires each state, the District of Columbia, and the Virgin Islands to each submit a regional haze SIP no later than December 17, 2007. Under 40 CFR 51.308(e), the SIP must contain emission limitations representing BART and schedules for compliance with BART for each BART-eligible source, unless the SIP demonstrates that an emissions trading program or other alternative (BART Alternative) will achieve greater reasonable progress toward natural visibility conditions than would have resulted from the installation and operation of BART at all sources subject to BART and covered by the BART Alternative. An approvable BART Alternative must meet the criteria in 40 CFR 51.308(e)(2).

North Carolina submitted its regional haze SIP on December 17, 2007, the regional haze SIP submittal deadline. Fully consistent with EPA's regulations at the time, the SIP relied on CAIR to satisfy NO_x and SO₂ BART requirements for CAIR-subject EGUs in the State and to

partially satisfy the requirement for a long-term strategy sufficient to achieve the State-adopted reasonable progress goals. EPA finalized a limited disapproval of North Carolina's regional haze SIP on June 7, 2012 (77 FR 33642), triggering the requirement for EPA to promulgate a Federal Implementation Plan (FIP) unless EPA approves a SIP revision that corrects the deficiency. EPA finalized a limited approval of North Carolina's regional haze SIP on June 27, 2012 (77 FR 38185), as meeting the remaining applicable regional haze requirements set forth in the CAA and the RHR. On October 31, 2014, NC DENR submitted a revision to North Carolina's regional haze SIP to correct the deficiencies identified in the June 7, 2012, limited disapproval by replacing reliance on CAIR with reliance on a BART Alternative to satisfy NO_x and SO₂ BART requirements for EGUs formerly subject to CAIR.

In a notice of proposed rulemaking (NPRM) published on April 5, 2016 (81 FR 19519), EPA proposed to approve North Carolina's October 31, 2014, BART Alternative regional haze SIP revision; to determine that final approval of the SIP revision would correct the deficiencies that led to EPA's limited disapproval of the State's regional haze SIP; and to convert EPA's limited approval of the State's regional haze SIP to a full approval, thereby eliminating the need for EPA to issue a FIP to remedy the deficiencies. The details of North Carolina's submission and the rationale for EPA's actions are explained in the NPRM. Comments on the proposed rulemaking were due on or before April 26, 2016.

EPA received one set of comments supporting the proposed actions and no adverse comments. The supporting comments were provided by Duke Energy. Table 1 in EPA's NPRM indicates that Units 5-9 at Duke Energy's Buck power plant were converted from coal to natural gas. *See* 81 FR 19521 (April 5, 2016). Duke Energy's supporting comments clarify that these five EGUs were retired from operation in 2011 and 2012 and that the units have been replaced

by two new natural gas-fired combined cycle turbines equipped with Selective Catalytic Reduction for NO_x control. This clarification does not impact EPA's conclusions because it does not alter the analysis supporting the BART Alternative.

II. Final Actions

EPA is finalizing approval of North Carolina's October 31, 2014, regional haze SIP revision because EPA has determined that the BART Alternative contained therein meets the requirements of 40 CFR 51.308(e)(2). EPA is also converting EPA's June 27, 2012, limited approval of North Carolina's regional haze SIP to a full approval because EPA finds that final approval of the State's October 31, 2014, regional haze SIP revision corrects the deficiencies that led to EPA's limited disapproval of the State's regional haze SIP.

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, 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 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);
- do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- are 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.*);
- do 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);
- do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- are not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- are not a significant regulatory action 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, 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 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 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 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 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 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 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.

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

Dated: May 12, 2016.

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 an entry for “BART Alternative Plan” 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
**	**	**		*
BART Alternative Plan	10/31/2014	[Insert date of publication in <u>Federal Register</u>]	[Insert <u>Federal Register</u> citation]	This plan modifies the Regional Haze Plan approved with a state effective date of 11/17/2007 (see above) and converts the June 27, 2012, limited approval to a full approval

§ 52.1776 [Removed and Reserved]

3. Section 52.1776 is removed and reserved.

[FR Doc. 2016-12096 Filed: 5/23/2016 8:45 am; Publication Date: 5/24/2016]