



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2016-0072; FRL- 9947-22-Region 4]

Air Plan Approval; North Carolina;

Prong 4—2008 Ozone, 2010 NO₂, SO₂, and 2012 PM_{2.5}

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving portions of revisions to the North Carolina State Implementation Plan (SIP), submitted by the North Carolina Department of Environment and Natural Resources (NC DENR), addressing the Clean Air Act (CAA or Act) visibility transport (prong 4) infrastructure SIP requirements for the 2008 8-hour Ozone, 2010 1-hour Nitrogen Dioxide (NO₂), 2010 1-hour Sulfur Dioxide (SO₂), and 2012 annual Fine Particulate Matter (PM_{2.5}) National Ambient Air Quality Standards (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.” Specifically, EPA is approving the prong 4 portions of North Carolina’s November 2, 2012, 2008 8-hour Ozone infrastructure SIP submission; August 23, 2013, 2010 1-hour NO₂ infrastructure SIP submission; March 18, 2014, 2010 1-hour SO₂ infrastructure SIP submission; and December 4, 2015, 2012 Annual PM_{2.5} infrastructure SIP submission. All other applicable infrastructure requirements for these SIP submissions have been or will be addressed in separate rulemakings.

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-2016-0072. All documents in the docket are listed on the <http://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 <http://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 of 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. Mr. Lakeman can be reached by telephone at (404) 562-9043 or via electronic mail at lakeman.sean@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

By statute, 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 to provide for the implementation, maintenance, and enforcement of the new or revised NAAQS. EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of sections 110(a)(1) and 110(a)(2) as “infrastructure SIP” submissions. Sections 110(a)(1) and (2) require states to address basic SIP elements such as the requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the newly established or revised NAAQS. More specifically, section 110(a)(1) provides the procedural and timing requirements for infrastructure SIPs. Section 110(a)(2) lists specific elements that states must meet for the infrastructure SIP requirements related to a newly established or revised NAAQS. The contents of an infrastructure SIP submission may vary depending upon the data and analytical tools available to the state, as well as the provisions already contained in the state’s implementation plan at the time in which the state develops and submits the submission for a new or revised NAAQS.

Section 110(a)(2)(D) has two components: 110(a)(2)(D)(i) and 110(a)(2)(D)(ii). Section 110(a)(2)(D)(i) includes four distinct components, commonly referred to as “prongs,” that must be addressed in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another

state (prong 1) and from interfering with maintenance of the NAAQS in another state (prong 2). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state (prong 3) or from interfering with measures to protect visibility in another state (prong 4). Section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement.

North Carolina's November 2, 2012, 2008 8-hour Ozone submission; August 23, 2013, 2010 1-hour NO₂ submission; March 18, 2014, 2010 1-hour SO₂ submission; and December 4, 2015, 2012 Annual PM_{2.5} submission cite to the State's regional haze SIP as satisfying prong 4 requirements. However, at those dates, EPA had not yet fully approved North Carolina's regional haze SIP because the SIP relied on the Clean Air Interstate Rule (CAIR) to satisfy the nitrogen oxides (NO_x) and SO₂ Best Available Retrofit Technology (BART) requirements for the CAIR-subject electric generating units (EGUs) in the State and the requirement for a long-term strategy (LTS) sufficient to achieve the state-adopted reasonable progress goals.¹

EPA demonstrated that CAIR achieved greater reasonable progress toward the national visibility goal than BART for NO_x and SO₂ at BART-eligible EGUs in CAIR affected states, and revised the regional haze rule (RHR) to provide that states participating in CAIR's cap-and-trade program need not require affected BART-eligible EGUs to install, operate, and maintain BART

¹ CAIR, promulgated in 2005, required 27 states and the District of Columbia to reduce emissions of NO_x and SO₂ that significantly contribute to, or interfere with maintenance of, the 1997 NAAQS for fine particulates and/or ozone in any downwind state. CAIR imposed specified emissions reduction requirements on each affected State, and established an EPA-administered cap and trade program for EGUs in which States could join as a means to meet these requirements.

for emissions of SO₂ and NO_x. See 70 FR 39104 (July 6, 2005). As a result, a number of states in the CAIR region designed their regional haze SIPs to rely on CAIR as an alternative to NO_x and SO₂ BART for CAIR-subject EGUs. These states also relied on CAIR as an element of a LTS for achieving their reasonable progress goals.

The United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) initially vacated CAIR in 2008,² but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR.³ On August 8, 2011, acting on the D.C. Circuit's remand, EPA promulgated the Cross State Air Pollution Rule (CSAPR) to replace CAIR and thus to address the interstate transport of emissions contributing to nonattainment and interfering with maintenance of the two air quality standards covered by CAIR as well as the 2006 PM_{2.5} NAAQS.⁴ See 76 FR 48208.

Due to CAIR's status as a temporary measure following the D.C. Circuit's 2008 ruling, EPA could not fully approve regional haze SIP revisions to the extent that they relied on CAIR to satisfy the BART requirement and the requirement for a long-term strategy sufficient to achieve the state-adopted reasonable progress goals. On these grounds, EPA finalized a limited disapproval of North Carolina's regional haze SIP on June 7, 2012, triggering the requirement for EPA to promulgate a federal implementation plan (FIP) unless North Carolina submitted and

² *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008).

³ *North Carolina v. EPA*, 550 F.3d 1176 (D.C. Cir. 2008).

⁴ Although a number of parties challenged the legality of CSAPR and the D.C. Circuit initially vacated and remanded CSAPR to EPA in *EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7, 38 (D.C. Cir. 2012), the United States Supreme Court reversed the D.C. Circuit's decision on April 29, 2014, and remanded the case to the D.C. Circuit to resolve remaining issues in accordance with the high court's ruling. *EPA v. EME Homer City Generation, L.P.*, 134 S. Ct. 1584 (2014). On remand, the D.C. Circuit affirmed CSAPR in most respects and CSAPR is now in effect. *EME Homer City Generation, L.P. v. EPA*, 795 F.3d 118 (D.C. Cir. 2015).

EPA approved a SIP revision that corrected the deficiency. *See* 77 FR 33642. EPA finalized a limited approval of North Carolina's regional haze SIP on June 27, 2012, as meeting the remaining applicable regional haze requirements set forth in the CAA and the RHR. *See* 77 FR 38185.

On October 31, 2014, North Carolina submitted a regional haze plan revision 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. EPA finalized approval of the October 31, 2014, SIP revision and converted North Carolina's regional haze plan from a limited approval to a full approval on May 12, 2016. That action also removed EPA's obligation to implement a FIP to correct the previous deficiencies for North Carolina's initial regional haze plan.

In a proposed rulemaking (NPRM) published on April 8, 2016 (81 FR 20600), EPA proposed to approve the prong 4 portions of North Carolina's infrastructure SIP submissions for the 2008 8-hour Ozone, 2010 1-hour NO₂, 2010 1-hour SO₂, and 2012 annual PM_{2.5} NAAQS based on final approval of the State's October 31, 2014, SIP revision. As discussed above, EPA subsequently finalized that SIP revision and converted North Carolina's regional haze plan from a limited approval to a full approval. The details of the aforementioned North Carolina infrastructure SIP submissions and the rationale for EPA's action is explained in the NPRM. Comments on the proposed rulemaking were due on or before April 29, 2016. EPA received no adverse comments on the proposed action.

II. Final Action

EPA is approving the prong 4 portions of North Carolina's November 2, 2012, 2008 8-hour Ozone infrastructure SIP submission; August 23, 2013, 2010 1-hour NO₂ infrastructure SIP submission; March 18, 2014, 2010 1-hour SO₂ infrastructure SIP submission; and December 4, 2015, 2012 Annual PM_{2.5} infrastructure SIP submission. All other applicable infrastructure requirements for these SIP submissions have been or will be addressed in separate rulemakings.

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. 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: May 23, 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 new entries for “110(a)(1) and (2) Infrastructure Requirements for the 2008 8-Hour Ozone NAAQS”, “110(a)(1) and (2) Infrastructure Requirements for the 2010 1-hour NO₂ NAAQS”, “110(a)(1) and (2) Infrastructure Requirements for the 2010 1-hour SO₂ NAAQS” and “110(a)(1) and (2) Infrastructure Requirements for the 2012 Annual PM_{2.5} NAAQS” 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 2008 8-Hour Ozone NAAQS	11/2/2012	[Insert date of publication in <u>Federal Register</u>]	[Insert citation of publication in <u>Federal Register</u>]	Addressing prong 4 of section 110(a)(2)(D)(i) only

110(a)(1) and (2) Infrastructure Requirements for the 2010 1-hour NO ₂ NAAQS	8/23/2013	[Insert date of publication in <u>Federal Register</u>]	[Insert citation of publication in <u>Federal Register</u>]	Addressing prong 4 of section 110(a)(2)(D)(i) only
110(a)(1) and (2) Infrastructure Requirements for the 2010 1-hour SO ₂ NAAQS	3/18/2014	[Insert date of publication in <u>Federal Register</u>]	[Insert citation of publication in <u>Federal Register</u>]	Addressing prong 4 of section 110(a)(2)(D)(i) only
110(a)(1) and (2) Infrastructure Requirements for the 2012 Annual PM _{2.5} NAAQS	12/4/2015	[Insert date of publication in <u>Federal Register</u>]	[Insert citation of publication in <u>Federal Register</u>]	Addressing prong 4 of section 110(a)(2)(D)(i) only

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