



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R04-OAR-2015-0501; FRL-9983-43-Region 4]**

**Air Plan Approval; North Carolina:**

**New Source Review for Fine Particulate Matter (PM<sub>2.5</sub>)**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving changes to the North Carolina State Implementation Plan (SIP), submitted by the North Carolina Department of Environmental Quality (NC DEQ) through the Division of Air Quality, to EPA through a letter dated October 17, 2017. This SIP submittal modifies North Carolina's Prevention of Significant Deterioration (PSD) regulations and includes the adoption of specific federal provisions needed to meet the New Source Review (NSR) permitting program requirements for the fine particulate matter (PM<sub>2.5</sub>) national ambient air quality standards (NAAQS). In addition, North Carolina's October 17, 2017, SIP submittal addresses portions of the PSD requirements for the infrastructure SIPs for the following NAAQS: 1997 Annual and 24-hour PM<sub>2.5</sub>; 2006 24-hour PM<sub>2.5</sub>; 2008 lead; 2008 8-hour ozone; 2010 sulfur dioxide (SO<sub>2</sub>); 2010 nitrogen dioxide (NO<sub>2</sub>); and 2012 Annual PM<sub>2.5</sub>. As a result of this approval of North Carolina's modified PSD regulations, EPA is also approving North Carolina's submittal with respect to the related PSD infrastructure SIP requirements for these NAAQS. In addition, these approvals remove EPA's obligation to promulgate a Federal Implementation Plan (FIP) to meet the relevant Clean Air Act (CAA or Act) requirements.

**DATES:** This rule is 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-2015-0501. All documents in the docket are listed on the [www.regulations.gov](http://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](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:** Joel Huey of the 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. Huey can be reached by telephone at (404) 562-9104 or via electronic mail at [huey.joel@epa.gov](mailto:huey.joel@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background.**

In an action published on June 21, 2018 (83 FR 28789), EPA proposed to approve changes to the North Carolina SIP, submitted by the NC DEQ to EPA through a letter dated

October 17, 2017.<sup>1</sup> The details of North Carolina’s submittal and the rationale for EPA’s actions are explained in the proposal notice and briefly summarized below. EPA did not receive any adverse comments on the proposed action.

EPA is approving two actions with regard to North Carolina’s SIP submittal updating the State’s PSD regulations found at 15A North Carolina Administrative Code (NCAC) 02D .0530. First, EPA is approving North Carolina’s October 17, 2017, SIP submittal with regard to changes to the State’s regulation at 15A NCAC 02D .0530 because EPA has determined that the State’s changes fully meet the requirements of EPA’s rulemaking, “Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM<sub>2.5</sub>) – Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC),” Final Rule, 75 FR 64864 (October 20, 2010) (hereafter referred to as the “2010 PSD PM<sub>2.5</sub> Rule”). Second, as a result of the approval of North Carolina’s October 17, 2017, SIP submittal for these PSD requirements, EPA is approving this submittal for portions of the infrastructure SIP PSD elements for the following NAAQS: 1997 Annual and 24-hour PM<sub>2.5</sub>; 2006 24-hour PM<sub>2.5</sub>; 2008 lead; 2008 8-hour ozone; 2010 SO<sub>2</sub>; 2010 NO<sub>2</sub>; and 2012 Annual PM<sub>2.5</sub>.<sup>2,3</sup>

*A. Requirements of the 2010 PSD PM<sub>2.5</sub> Rule for PSD SIP Programs*

North Carolina’s October 17, 2017, SIP submittal adopts changes in the State’s PSD permitting program at 15A NCAC 02D .0530 by incorporating by reference EPA’s PSD regulations as of July 1, 2014. This incorporation by reference includes the federally-required

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<sup>1</sup> EPA notes that the Agency may not have received this submittal on the date of the State’s letter.

<sup>2</sup> North Carolina’s October 17, 2017, SIP submittal requested approval of the PSD infrastructure SIPs for the 2008 lead, 2008 8-hour ozone, 2010 SO<sub>2</sub>, 2010 NO<sub>2</sub> and the 2012 PM<sub>2.5</sub> NAAQS. On April 16, 2018, the State submitted a letter to EPA clarifying that the same submittal is intended to satisfy the PSD elements of the State’s infrastructure SIP submittals for the 1997 and 2006 PM<sub>2.5</sub> NAAQS as well.

<sup>3</sup> The background for various NAAQS is provided in EPA’s proposed and final rulemaking entitled “Air Plan Approval and Disapproval; North Carolina: New Source Review for Fine Particulate Matter (PM<sub>2.5</sub>).” See 81 FR 28797 (May 10, 2016) and 81 FR 63107 (September 14, 2016).

provisions of EPA's 2010 PSD PM<sub>2.5</sub> Rule needed to implement the PSD PM<sub>2.5</sub> program in North Carolina. Adopting the federal rule as of July 1, 2014, has the effect of adding to the North Carolina SIP the required definitions of "major source baseline date," "minor source baseline date," and "baseline area" that were lacking in the State's previous PM<sub>2.5</sub> submittals. This incorporation by reference as of July 1, 2014, also captures EPA's October 25, 2012 (77 FR 65107), amendment to the definition of "regulated NSR pollutant" concerning condensable particulate matter. North Carolina's incorporation by reference of EPA's PSD regulations as of July 1, 2014, is not only consistent with the current federal rule, but it also will not interfere with North Carolina's efforts to prevent significant deterioration of air quality and to attain and maintain compliance with the PM<sub>2.5</sub> NAAQS.

*B. Requirements for Infrastructure SIPs*

Because North Carolina's October 17, 2017, SIP submittal addresses certain NSR/PSD requirements, it thereby meets the related infrastructure SIP requirements of section 110(a)(2)(C), 110(a)(2)(D)(i)(II) and 110(a)(2)(J). As finalized, North Carolina's SIP includes a complete PSD program that addresses all structural PSD requirements due under the CAA and EPA regulations. Therefore, because EPA is approving North Carolina's SIP revisions for the PSD program, it is also approving the October 17, 2017, submittal for the PSD infrastructure SIP requirements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J) for the 2008 lead NAAQS, 2008 ozone NAAQS, 2010 SO<sub>2</sub> NAAQS, 2010 NO<sub>2</sub> NAAQS, and 1997, 2006 and 2012 PM<sub>2.5</sub> NAAQS.<sup>4</sup>

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<sup>4</sup> EPA has already approved or will consider in separate actions all other elements from North Carolina infrastructure SIP submissions related to the 2008 lead, 2008 8-hour ozone, 2010 NO<sub>2</sub>, 2010 SO<sub>2</sub> NAAQS, and 1997, 2006 and 2012 PM<sub>2.5</sub> NAAQS.

## **II. 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 North Carolina's regulations 15A NCAC 02D .0530, entitled "Prevention of Significant Deterioration," which modify the NSR permitting regulations, effective September 1, 2017. EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://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.<sup>5</sup>

## **III. Final Actions**

EPA is approving changes to the North Carolina SIP, provided by the NC DEQ, to EPA through a letter dated October 17, 2017. Specifically, EPA is approving changes to North Carolina's NSR permitting regulations codified at 15A 02D .0530 – *Prevention of Significant Deterioration*, which relate to the requirements to comply with EPA's 2010 PSD PM<sub>2.5</sub> Rule. EPA also notes that North Carolina's incorporation by reference of EPA's PSD regulations as of July 1, 2014, includes EPA's amendment to the definition of "regulated NSR pollutant" concerning condensable PM promulgated on October 25, 2012. EPA is approving the version of 15A NCAC 02D .0530 (PSD) that became effective in the State on September 1, 2017, which will be incorporated into North Carolina's SIP. As a result of this approval, EPA is also

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<sup>5</sup> See 62 FR 27968 (May 22, 1997).

approving portions of the PSD elements of North Carolina's infrastructure SIP submittals (*i.e.*, CAA sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J)) for the 1997 Annual and 24-hour PM<sub>2.5</sub>, 2006 24-hour PM<sub>2.5</sub>, 2008 lead, 2008 8-hour ozone, 2010 SO<sub>2</sub>, 2010 NO<sub>2</sub> and the 2012 Annual PM<sub>2.5</sub> NAAQS. This final action removes EPA's obligation under section 110(c) to promulgate a FIP to address the PM<sub>2.5</sub> increments requirements of EPA's 2010 PSD PM<sub>2.5</sub> Rule PSD and the related PSD elements for the above listed infrastructure SIPs.

#### **IV. 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. 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);
- Are not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- 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 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, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: August 28, 2018.

Onis “Trey” Glenn, III

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(c) Table 1 is amended under Subchapter 2D, Section .0500 by revising the entry for “Sect .0530” to read as follows:

**§ 52.1770 Identification of plan.**

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(c) \* \* \*

**Table 1- EPA Approved North Carolina Regulations**

<b>State Citation</b>	<b>Title/Subject</b>	<b>State effective date</b>	<b>EPA approval date</b>	<b>Explanation</b>
Subchapter 2D Air Pollution Control Requirements				
**	**	*	*	*
Section .0500 Emission Control Standards				
**	**	*	*	*
Sect .0530	Prevention of Significant Deterioration	9/1/2017	[Insert date of publication in <u>Federal Register</u> ], [Insert citation of publication in <u>Federal Register</u> ]	
**	**	*	*	*

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3. Section 52.1770(e), is amended by adding entries for “110(a)(1) and (2) Infrastructure Requirements for 1997 Fine Particulate Matter NAAQS”, “110(a)(1) and (2) Infrastructure Requirements for 2006 Fine Particulate Matter NAAQS”, “110(a)(1) and (2) Infrastructure Requirements for the 2008 Lead NAAQS”, “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 NO<sub>2</sub> NAAQS”, “110(a)(1) and (2) Infrastructure Requirements for the 2010 1-hour SO<sub>2</sub> NAAQS”, and “110(a)(1) and (2) Infrastructure Requirements for the 2012 Annual PM<sub>2.5</sub> 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**

<b>Provision</b>	<b>State effective date</b>	<b>EPA approval date</b>	<b>Federal Register citation</b>	<b>Explanation</b>
**	**	*		*
110(a)(1) and (2) Infrastructure Requirements for 1997 Fine Particulate Matter NAAQS.	4/1/2008	[Insert date of publication in <u>Federal Register</u> ]	[Insert citation of publication in <u>Federal Register</u> ]	Approved the PSD elements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3) and 110(a)(2)(J).
110(a)(1) and (2) Infrastructure Requirements for 2006 Fine Particulate Matter NAAQS.	9/21/2009	[Insert date of publication in <u>Federal Register</u> ]	[Insert citation of publication in <u>Federal Register</u> ]	Approved the PSD elements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3) and 110(a)(2)(J).

110(a)(1) and (2) Infrastructure Requirements for the 2008 Lead NAAQS	6/15/2012	[Insert date of publication in <u>Federal Register</u> ]	[Insert citation of publication in <u>Federal Register</u> ]	Approved the PSD elements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3) and 110(a)(2)(J).
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> ]	Approved the PSD elements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3) and 110(a)(2)(J).
110(a)(1) and (2) Infrastructure Requirements for the 2010 1-hour NO <sub>2</sub> NAAQS	8/23/2013	[Insert date of publication in <u>Federal Register</u> ]	[Insert citation of publication in <u>Federal Register</u> ]	Approved the PSD elements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3) and 110(a)(2)(J).
110(a)(1) and (2) Infrastructure Requirements for the 2010 1-hour SO <sub>2</sub> NAAQS	3/18/2014	[Insert date of publication in <u>Federal Register</u> ]	[Insert citation of publication in <u>Federal Register</u> ]	Approved the PSD elements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3) and 110(a)(2)(J).
110(a)(1) and (2) Infrastructure Requirements for the 2012 Annual PM <sub>2.5</sub> NAAQS	12/4/2015	[Insert date of publication in <u>Federal Register</u> ]	[Insert citation of publication in <u>Federal Register</u> ]	Approved the PSD elements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3) and 110(a)(2)(J).

[FR Doc. 2018-19603 Filed: 9/10/2018 8:45 am; Publication Date: 9/11/2018]