



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2024-0401; FRL-12885-01-R4]

Air Plan Approval; North Carolina; Removal of Emissions Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve separate but related State Implementation Plan (SIP) revisions submitted by the North Carolina Division of Air Quality (NCDAQ). First, EPA is proposing to approve a SIP revision submitted by NCDAQ on behalf of the State of North Carolina on October 27, 2023, to remove certain exemptions available at the discretion of a State official for emissions exceeding otherwise applicable SIP emission limitations. Second, EPA is proposing to approve a SIP revision submitted by NCDAQ on behalf of Mecklenburg County Air Quality (MCAQ or Mecklenburg County) on October 25, 2023, to remove a parallel local exemption analogous to the State's for emissions exceeding otherwise applicable SIP emission limitations. In addition, EPA is proposing to approve minor and administrative changes to certain regulatory provisions that have been revised by the State and Mecklenburg County since EPA's last approval of those provisions. EPA is proposing to approve these SIP revisions pursuant to the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2024-0401 at [regulations.gov](https://www.regulations.gov). Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [regulations.gov](https://www.regulations.gov). EPA may publish any comment received to its public docket. Do not submit electronically any information you

consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Faith Goddard, Multi-Air Pollutant Coordination 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) 562-8757. Ms. Goddard can also be reached via electronic mail at goddard.faith@epa.gov.

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I. Background

A. *North Carolina's October 27, 2023, Submittal*

In its October 27, 2023, SIP revision¹ NCDAQ requested that EPA incorporate into the North Carolina SIP “15A NCAC 02D .0535 as submitted in the April 13, 2021, Group 6 rule-readoption submission but . . . exclude paragraphs (c) and (g) from such approval.”² Approving this SIP revision would have the effect of removing paragraphs (c) and (g) from the SIP and incorporating the changes to the remaining portions of Rule 02D .0535 into the SIP. In the existing North Carolina SIP, Rules 02D .0535(c) and (g) provide exemptions for emissions exceeding otherwise applicable SIP emission limitations at the discretion of a State official during malfunctions at paragraph (c) and startup and shutdown at paragraph (g). The October 27, 2023, SIP revision also included minor and administrative changes to the remaining Rule 02D .0535 regulatory provisions made since EPA’s last approval on August 1, 1997.³

B. *Mecklenburg County's October 25, 2023, Submittal*

In its October 25, 2023, SIP revision, NCDAQ on behalf of MCAQ requested that EPA incorporate recently adopted Mecklenburg County Air Pollution Control Ordinance (MCAPCO) Article 2.0000, Section 2.0500, Rule 2.0535 (“Rule 2.0535”), *Excess Emissions Reporting and Malfunctions*⁴ into the Mecklenburg County portion of the North Carolina SIP to “replace the obsolete version” of SIP Rule 2.0535 “with the current version, except for paragraphs (c) and (g), and remove existing paragraph (c).” In the existing Mecklenburg County portion of the North Carolina SIP, Rule 2.0535(c) provides exemptions for emissions exceeding otherwise applicable

¹ NCDAQ submitted a SIP revision on October 25, 2023, and supplemented it with additional required materials on October 27, 2023; therefore, EPA considers October 27, 2023, to be the date on which the Agency received the SIP revision submission.

² On April 13, 2021, as part of a SIP revision with a group of readopted air quality rules termed “Group 6,” NCDAQ requested action on the readopted Rule 02D .0535, including paragraphs (c) and (g), but on January 19, 2023, NCDAQ withdrew Rule 02D .0535 from the Group 6 SIP revision. Rule 02D .0535, as originally transmitted to EPA in the April 13, 2021, Group 6 SIP revision has been resubmitted by NCDAQ, except for paragraphs (c) and (g). The Group 6 and October 27, 2023, SIP revisions also requested action on the readoption, in full and in part, respectively, of 15A NCAC 02D .1423 into the North Carolina SIP, but on December 16, 2024, in a letter dated December 13, NCDAQ withdrew the portion of the October 27, 2023, SIP revision revising Rule 02D .1423. That letter is included in the rulemaking docket for this proposed action.

³ See 62 FR 41277.

⁴ The Rule 2.0535 title was previously revised from *Excess Emissions Reporting and Malfunction* to *Malfunctions, Start-Up and Shut-Down* in an administrative update to materials incorporated by reference into the North Carolina SIP. See 88 FR 50773 (August 2, 2023).

SIP emission limitations at the discretion of a local official during malfunctions, comparable to Title 15A of the North Carolina Administrative Code (15A NCAC) Subchapter 02D, Section .0500, Rule .0535 (“Rule 02D .0535”), *Excess Emissions Reporting and Malfunctions*, paragraph (c).⁵ Approving this SIP revision would have the effect of removing paragraph (c) from the SIP, not incorporating paragraph (g) or the changes to paragraph (a)(1) into the SIP, and incorporating the changes to the remaining portions of Rule 2.0535 into the SIP. The October 25, 2023, SIP revision also included minor and administrative changes to the remaining Rule 2.0535 regulatory provisions made since EPA’s original approval on May 2, 1991.⁶

II. Analysis of North Carolina’s SIP Submittal

A. 15A NCAC 02D .0535(c) and (g)

North Carolina requested that EPA incorporate the November 1, 2020, state-effective version of Rule 02D .0535 into the North Carolina SIP, excluding paragraphs (c) and (g). Removing paragraphs (c) and (g) from the North Carolina SIP would mean that emission limits incorporated into the SIP that were formerly inapplicable under certain circumstances at the discretion of a State official are no longer subject to those exemptions. If removed from the SIP, Rules 02D .0535(c) and (g) would continue to exist in North Carolina state law and would apply to North Carolina in its exercise of enforcement authority for state law purposes only. Because Rules 02D .0535(c) and (g) would no longer be part of the North Carolina SIP, citizens and EPA could seek injunctive relief or civil penalties for exceedances of emission limits during the periods that would otherwise have been covered by Rules 02D .0535(c) and (g). EPA proposes to approve the State’s request to remove Rules 02D .0535(c) and (g) from the North Carolina SIP as consistent with CAA requirements.

B. Other Changes – 15A NCAC 02D .0535

⁵ Rule 2.0535(g), comparable to North Carolina’s 15A NCAC 02D .0535(g), is not approved into the Mecklenburg County portion of the North Carolina SIP.

⁶ See 56 FR 20140.

Minor and administrative changes to Rule 02D .0535 have been adopted by the State since EPA's last approval in 1997, resulting in an inconsistency between the federally approved SIP and state rules (i.e., a "SIP gap"). North Carolina's October 27, 2023, SIP revision included administrative changes that update the formatting of rule references or are minor, generally clarifying edits. EPA is proposing to approve the administrative changes because they are non-substantive and therefore have no impact on air quality. The October 27, 2023, SIP revision also included minor changes to Rules 02D .0535(a), (b), (d), (e), and (f) that revise the definition of "excess emissions," rule applicability, malfunction abatement plan requirements, and certain notification and source testing requirements. EPA discusses its proposed action with respect to those minor changes below.

1. 15A NCAC 02D .0535(a)

The changes to Rule 02D .0535(a)(1) in the October 27, 2023, SIP revision revise what is included in the definition of "excess emissions" by adding emission rates exceeding applicable nitrogen oxide (NO_x) emission limitations or standards in Section 02D .1400 and update a recodified air toxics permitting cross-reference. The revised provision states that "excess emissions" means an emission rate exceeding any applicable emission limitation or standard in Sections 02D .0500, .0900, .1200, or .1400, a permit condition, or a permit issued pursuant to Section 02Q .0700, whereas the existing provision provides that "excess emissions" are those emissions that exceed applicable emission limitations or standards in Sections 02D .0500, .0900, or .1200, a permit condition, or a permit issued pursuant to Rule 02H .0610. North Carolina recodified Rule 02H .0610 to Section 02Q .0700 in 1998.⁷ In the North Carolina SIP, Section 02D .1400 establishes emission standards for sources of NO_x in the State, particularly to prevent and address violations of the National Ambient Air Quality Standards (NAAQS) for ozone. EPA proposes to approve the addition to Rule 02D .0535(a)(1) of the cross-reference to Section 02D

⁷ *North Carolina Register* Volume 13, Issue 1, pp. 81-85 (July 1, 1998) noted the recodification of 15A NCAC 02H .0610 to 02Q .0700 effective July 1, 1998. The North Carolina Register is available at <https://www.oah.nc.gov/rules-division/north-carolina-register>.

.1400 because the change adds malfunction requirements to the SIP for sources with emission limits under Section 02D .1400. Section 02Q .0700 provides procedures for permitting emissions of toxic air pollutants.⁸ The reference to Section 02Q .0700 captures toxic air pollutant emissions within the definition of “excess emissions” if emissions exceed permitted limits for such sources. Therefore, EPA proposes to approve the update to this cross-reference.⁹

2. *15A NCAC 02D .0535(b)*

The changes to Rule 02D .0535(b) in the October 27, 2023, SIP revision revise the rule’s applicability to update a reference to recodified Rule 02H .0610 (now Section 02Q .0700). The revised provision states that Rule 02D .0535 does not apply to sources subject to Rules 02D .0524, .1110, or .1111 unless emissions exceed an emission limit in a permit issued pursuant to Section 02Q .0700 that is more stringent than emission limits set in the aforementioned rules, whereas the existing provision provides that those sources are not subject to the rule unless emissions exceed a more stringent emission limit in a permit issued pursuant to now recodified Rule 02H .0610. In Rule 02D .0535(b), the reference to Section 02Q .0700 captures a narrow subset of sources emitting toxic air pollutants for purposes of rule applicability—namely, toxic air pollutant sources with permitted limits more stringent than the national emission standards for hazardous air pollutants (NESHAP) limits. With the removal of the exemptions for emissions exceeding otherwise applicable SIP emission limitations (i.e., the removal of Rules 02D .0535(c) and (g) from the SIP), the updated rule reference would simply maintain the universe of sources subject to the malfunction abatement plan requirements and certain reporting and testing requirements within the rule. Therefore, EPA proposes to approve the update to this cross-reference.

⁸ Section 02Q .0700 is a state-only (i.e., not SIP-approved) permitting program.

⁹ *North Carolina Register* Volume 12, Issue 8, p. 650 (October 15, 1997) noted that certain provisions, including certain Section 02Q .0700 provisions, were proposed for adoption and that Rule 02H .0610 was proposed for repeal to, among other reasons, “amend the air toxics rules by recodifying them into a new Section.”

3. *15A NCAC 02D .0535(d) and (e)*

The changes to Rules 02D .0535(d) and (e) in the October 27, 2023, SIP revision revise and update malfunction abatement plan requirements. Rule 02D .0535(d) is revised to require a source other than an electric utility boiler to submit a malfunction abatement plan, if the Director requires a plan, within 60 days after receipt of the Director's request. SIP-approved Rule 02D .0535(e) currently requires sources other than electric utility boilers to submit those plans within six months of the Director's requirement to prepare a plan. The added 60-day deadline for sources other than electric utility boilers at Rule 02D .0535(d), by shortening the timeframe for plan submittal, would not interfere with any applicable requirement concerning attainment of the NAAQS or any other applicable requirement of the Act.¹⁰

Rule 02D .0535(e) is revised to remove an obsolete sentence that reads, "The owner or operator of any electric utility boiler unit required to have a malfunction abatement plan shall submit a malfunction abatement plan to the Director within 60 days of the effective date of this Rule." The existing subsequent sentence requires "any other source" required to have a malfunction abatement plan to submit that plan within six months of the Director's requirement to do so, whereas the revised provision states that "any source" required to have a malfunction abatement plan must submit that plan within six months of the Director's requirement to do so. Because SIP-approved Rule 02D .0535(d) requires all electric utility boiler units to have an approved malfunction abatement plan and the change to Rule 02D .0535(d) in the October 27, 2023, SIP revision now also requires the submission of malfunction abatement plans within 60 days of receipt of the Director's request for sources other than electric utility boilers, the six-month submission deadline in Rule 02D .0535(e) would now apply to electric utility boilers only. The six-month deadline for electric utility boilers by which malfunction abatement plans must be submitted, by replacing the obsolete timeframe based on the effective date of the rule with a

¹⁰ See CAA section 110(l), which prohibits EPA from approving a SIP revision that would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in CAA section 171), or any other applicable requirement of the Act.

specific timeframe for sources constructed after the effective date of the rule, would not interfere with any applicable requirement concerning attainment of the NAAQS or any other applicable requirement of the Act.

At Rule 02D .0535(e), the timeframe within which amendments can be submitted to remedy malfunction abatement plan deficiencies is also revised. The revised provision states that, if a malfunction abatement plan does not carry out objectives described in Rule 02D .0535(d) and is therefore disapproved, an amendment that corrects the deficiencies identified must be submitted “within 30 days of receipt of the Director’s notification of disapproval,” whereas the existing provision requires a satisfactory amendment to be submitted “within a period of time prescribed by the Director.” The revised timeframe within which amendments can be submitted to remedy malfunction abatement plan deficiencies, due to the increased enforceability of the specific timeframe compared to the former, uncertain one, would not interfere with any applicable requirement concerning attainment of the NAAQS or any other applicable requirement of the Act. For these reasons, EPA proposes to approve the changes to Rules 02D .0535(d) and (e).

4. *15A NCAC 02D .0535(f)*

The changes to Rule 02D .0535(f) in the October 27, 2023, SIP revision revise and update certain notification and source testing requirements. Rule 02D .0535(f)(1) is revised to update a malfunction notification requirement. The revised provision states that, if excess emissions lasting more than four hours resulting from “a malfunction, a breakdown of process or control equipment or any other abnormal conditions” occur, the source owner or operator, after becoming aware of the occurrence, must notify a State official on the air agency’s next business day by 9:00 a.m. (Eastern Time), whereas the existing provision requires the owner or operator to notify a State official “within 24 hours.” According to a description of the proposed state rule revision in the *North Carolina Register*,¹¹ the State revised the time for reporting malfunctions

¹¹ *North Carolina Register* Volume 10, Issue 18, p. 2,382 (December 15, 1995).

because notification to a State official “within 24 hours may be difficult when the day on which the malfunction or abnormal condition occurs and the following day are weekend days or holidays,” noting that “allowing notification on the following business day would alleviate this problem” and make rule reporting requirements compatible with permitting rule reporting requirements. EPA proposes to approve the change to Rule 02D .0535(f)(1) because, based on the description above, it would not interfere with any applicable requirement concerning attainment of the NAAQS or any other applicable requirement of the Act.

Rule 02D .0535(f)(2) is revised to update a corrective-measures notification requirement. The revised provision states that, “after” measures correcting excess emissions as described in prefatory text at paragraph (f) have been accomplished, the source owner or operator must notify a State official, whereas the existing provision requires the owner or operator to notify a State official “immediately when . . . corrective measures have been accomplished.” The reported information in Rule 02D .0535(f) regarding excess emissions remains unchanged. EPA proposes to approve the change to Rule 02D .0535(f)(2) because it would not interfere with any applicable requirement concerning attainment of the NAAQS or any other applicable requirement of the Act as it does not impact the timing of the corrective action, the information required to be reported in paragraph (f), or the need to report completion of corrective action.

Rule 02D .0535(f) is also revised to update a cross-reference to source testing requirements. In the final sentence of Rule 02D .0535(f), the revised provision directs any source owner or operator required to demonstrate compliance to test the source in accordance with Section 02D .2600, the purpose of which “is to assure consistent application of testing methods and methodologies to demonstrate compliance with emission standards.”¹² The existing provision requires source testing in accordance with Rule 02D .0501, which in turn, requires the owner or operator of any subject source or control equipment to use the source testing procedures of Section 02D .2600 to demonstrate compliance with Section 02D .0500 if required

¹² See Rule 02D .2601(a).

to do so.¹³ EPA proposes to approve this change to Rule 02D .0535(f) because the updated source testing requirements cross-reference simply clarifies testing requirements to which certain sources may be subject. For these reasons, EPA proposes to approve the changes to Rule 02D .0535(f).

III. Analysis of Mecklenburg County’s SIP Submittal

A. MCAPCO 2.0535(c)

Mecklenburg County requested that EPA incorporate recently adopted Rule 2.0535, which was locally effective on October 19, 2021, into the Mecklenburg County portion of the North Carolina SIP to replace obsolete SIP Rule 2.0535, excluding paragraph (c) and new paragraph (g), which is substantively identical to North Carolina’s 15A NCAC 02D .0535(g). Removing paragraph (c) and excluding paragraph (g) from the Mecklenburg County portion of the North Carolina SIP would mean that emission limits incorporated into the SIP that were formerly inapplicable under certain circumstances at the discretion of a local official are not subject to those exemptions. If removed from the SIP, Rule 2.0535(c) would continue to exist in Mecklenburg County local law and would apply to Mecklenburg County in its exercise of enforcement authority for local law purposes only, along with local-only Rule 2.0535(g). Because Rules 2.0535(c) and (g) would not be part of the Mecklenburg County portion of the North Carolina SIP, citizens and EPA could seek injunctive relief or civil penalties for exceedances of emission limits during the periods that would otherwise have been covered by Rules 2.0535(c) and (g). EPA proposes to approve Mecklenburg County’s request to remove Rule 2.0535(c) and exclude Rule 2.0535(g) from the Mecklenburg County portion of the North Carolina SIP as consistent with CAA requirements.

B. Other Changes – MCAPCO 2.0535

Minor and administrative changes to Rule 2.0535 have been adopted by Mecklenburg County since EPA’s original approval in 1991, resulting in a “SIP gap.” Mecklenburg County’s

¹³ See the final sentence of Rule 02D .0501.

October 25, 2023, SIP revision included administrative changes that update the rule title¹⁴ and re-number paragraphs or are minor, generally clarifying edits. EPA is proposing to approve the administrative changes because they are non-substantive and therefore have no impact on air quality. The October 25, 2023, SIP revision also included changes to Rules 2.0535(a) and (b) that revise the definition of “excess emissions” and rule applicability and minor changes to Rules 2.0535(d), (e), and (f) that revise malfunction abatement plan requirements and certain notification and source testing requirements. EPA discusses its proposed action with respect to those changes below.

1. MCAPCO 2.0535(a)

EPA is proposing to approve administrative changes to Rules 2.0535(a)(2), (3), and (4) that re-number paragraphs or are minor, generally clarifying edits. EPA is not proposing to act on the changes to Rule 2.0535(a)(1) in the October 25, 2023, SIP revision at this time. The changes to Rule 2.0535(a)(1) revise what is included in the definition of “excess emissions” by adding emission rates exceeding applicable title V emission limitations or standards in Section 1.5500, incinerator emission limitations or standards in Section 2.1200, NO_x emission limitations or standards in Section 2.1400, and emission limits in an air toxics permit issued pursuant to Section 1.5700, and removing emission rates exceeding applicable emission control emission limitations or standards in Section 2.0500. The existing provision provides that “excess emissions” exceed applicable emission control emission limitations or standards in Section 2.0500, applicable volatile organic compound emission limitations or standards in Section 2.0900, or a permit condition.¹⁵ Sections 1.5700, 2.1200, and 2.1400 are comparable to regulations in North Carolina’s 15A NCAC, and references to those sections within the definition of “excess emissions” in Rule 2.0535(a)(1) are comparable to references within North

¹⁴ Mecklenburg County revises the Rule 2.0535 title from *Malfunctions, Start-Up and Shut-Down* to *Excess Emissions Reporting and Malfunctions*, consistent with North Carolina’s 15A NCAC 02D .0535 title.

¹⁵ Sections 1.5500, 2.1200, 2.1400, and 1.5700 are local-only (i.e., not SIP-approved) provisions.

Carolina’s definition of “excess emissions” in 15A NCAC 02D .0535(a)(1).¹⁶ However, the added reference to Section 1.5500, which contains Mecklenburg County’s title V operating permit rules,¹⁷ in lieu of the reference to Section 2.0500, which provides emission control standards “to establish maximum limits on the rate of emission of air contaminants into the atmosphere,”¹⁸ is not comparable to North Carolina’s 15A NCAC 02D .0535(a)(1), which, in the October 27, 2023, SIP revision, retains an analogous cross-reference to Section 2.0500, 15A NCAC 02D .0500, and does not include an analogous reference to 15A NCAC 02Q .0500, North Carolina’s title V operating permit rules.

EPA is not proposing to act on changes to Rule 2.0535(a)(1) in the October 25, 2023, SIP revision at this time because the Agency cannot approve under the definition of “excess emissions” the replacement of emission rates that exceed applicable emission control limitations or standards in Mecklenburg’s Section 2.0500 with emission rates exceeding applicable limitations or standards in Section 1.5500 because Section 1.5500 itself contains no emission limits or standards. Furthermore, Section 1.5500 is not in the SIP, and title V rules are generally not included in SIPs. EPA also finds that the remaining Rule 2.0535(a)(1) regulatory text in the October 25, 2023, SIP revision is not severable from the previously described changes to Rule 2.0535(a)(1), and the Agency is therefore not proposing to act on any changes to Rule 2.0535(a)(1) through this rulemaking.

2. *MCAPCO 2.0535(b)*

The changes to Rule 2.0535(b) in the October 25, 2023, SIP revision revise the rule’s applicability to update a reference to recodified Rule 2.0525 (now Rule 2.1110),¹⁹ remove cross-references to 40 CFR parts 60 and 61, exclude from rule applicability certain sources subject to maximum achievable control technology (MACT) standards in Rule 2.1111, and expand rule

¹⁶ Unlike North Carolina’s comparable 15A NCAC 02D .1400, Section 2.1400 is not approved into the Mecklenburg County portion of the North Carolina SIP.

¹⁷ See Rule 1.5501(a).

¹⁸ See Rule 2.0502.

¹⁹ Rule 2.0535(b)’s cross-reference to Rule 2.0525, which was repealed from the local regulations effective July 1, 1996, is changed to a cross-reference to Rule 2.1110.

applicability to capture certain sources of toxic air pollutants permitted under Section 1.5700. The revised provision states that Rule 2.0535 does not apply to sources subject to Rules 2.0524, 2.1110, or 2.1111 unless emissions exceed an emission limit in a permit issued pursuant to Section 1.5700 that is more stringent than emission limits set in the aforementioned rules, whereas the existing provision provides that sources subject to Rule 2.0524, now recodified Rule 2.0525, or 40 CFR parts 60 or 61 are not subject to the rule.²⁰ Rule 2.0524, comparable to North Carolina's 15A NCAC 02D .0524, requires sources subject to federal new source performance standards (NSPS) at 40 CFR part 60 to, with certain exceptions,²¹ comply with all applicable requirements promulgated at 40 CFR part 60. Rule 2.1110, comparable to North Carolina's 15A NCAC 02D .1110, requires sources subject to federal NESHAPs at 40 CFR part 61 to, with certain exceptions,²² comply with all applicable requirements promulgated at 40 CFR part 61. Likewise, Rule 2.1111, comparable to North Carolina's 15A NCAC 02D .1111, requires sources subject to federal source category NESHAPs at 40 CFR part 63 to, with certain exceptions,²³ comply with all applicable requirements promulgated at 40 CFR part 63. EPA proposes to approve the addition to Rule 2.0535(b) of the updated cross-reference to Rule 2.1110 and the cross-reference to Rule 2.1111 and the concurrent removal of the cross-references to now-recodified Rule 2.0525 and 40 CFR parts 60 and 61 because the changes simply reflect that, in Mecklenburg County, sources subject to applicable NSPS and NESHAPs are subject to those same standards under Rules 2.0524, 2.1110, or 2.1111.

In Rule 2.0535(b), the added reference to Section 1.5700 captures a narrow subset of sources emitting toxic air pollutants for purposes of rule applicability—namely, toxic air pollutant sources with permitted limits more stringent than the NESHAP limits. With the

²⁰ Sections 2.0524, 2.1110, and 2.1111 are local-only (i.e., not SIP-approved) provisions.

²¹ See Rule 2.0524(b) and (c).

²² See Rule 2.1110(b).

²³ See Rules 2.1111(b) and (c).

removal of the exemption for emissions exceeding otherwise applicable SIP emission limitations (i.e., the removal of Rule 2.0535(c) from the SIP), the added rule reference would simply capture that narrow subset of sources under rule applicability so that those sources are subject to the malfunction abatement plan requirements and certain reporting and testing requirements within the rule, consistent with North Carolina's 15A NCAC 02D .0535(b). Therefore, EPA proposes to approve the addition of this cross-reference.

3. *MCAPCO 2.0535(d) and (e)*

The changes to Rules 2.0535(d) and (e) in the October 25, 2023, SIP revision revise and update malfunction abatement plan requirements. These changes are comparable to the changes to North Carolina's 15A NCAC 02D .0535(d) and (e) as described in Section II.B.3, above.

Rule 2.0535(d) is revised to require a source other than an electric utility boiler to submit a malfunction abatement plan, if the Director requires a plan, within 60 days after receipt of the Director's request. SIP-approved Rule 2.0535(e) currently requires sources other than electric utility boilers to submit those plans within six months of the Director's requirement to prepare a plan. The added 60-day deadline for sources other than electric utility boilers at Rule 2.0535(d), by shortening the timeframe for plan submittal, would not interfere with any applicable requirement concerning attainment of the NAAQS or any other applicable requirement of the Act.²⁴

Rule 2.0535(e) is revised to remove an obsolete sentence that reads, "The owner or operator of any electric utility boiler unit required to have a malfunction abatement plan shall submit a malfunction abatement plan to the director within 60 days of the effective date of this Regulation." The existing subsequent sentence requires "any other source" required to have a malfunction abatement plan to submit that plan within six months of the Director's requirement to do so, whereas the revised provision states that "any source" required to have a malfunction abatement plan must submit that plan within six months of the Director's requirement to do so.

²⁴ See CAA section 110(l).

Because SIP-approved Rule 2.0535(d) requires all electric utility boiler units to have an approved malfunction abatement plan and the change to Rule 2.0535(d) in the October 25, 2023, SIP revision now also requires the submission of malfunction abatement plans within 60 days of receipt of the Director's request for sources other than electric utility boilers, the six-month submission deadline in Rule 2.0535(e) would now apply to electric utility boilers only. The six-month deadline for electric utility boilers by which malfunction abatement plans must be submitted, by replacing the obsolete timeframe based on the effective date of the rule with a specific timeframe for sources constructed after the effective date of the rule, would not interfere with any applicable requirement concerning attainment of the NAAQS or any other applicable requirement of the Act.

At Rule 2.0535(e), the timeframe within which amendments can be submitted to remedy malfunction abatement plan deficiencies is also revised. The revised provision states that, if a malfunction abatement plan does not carry out objectives described in Rule 2.0535(d) and is therefore disapproved, an amendment that corrects the deficiencies identified must be submitted "within 30 days of receipt of the Director's notification of disapproval," whereas the existing provision requires a satisfactory amendment to be submitted "within a period of time prescribed by the director." The revised timeframe within which amendments can be submitted to remedy malfunction abatement plan deficiencies, due to the increased enforceability of the specific timeframe compared to the former, uncertain one, would not interfere with any applicable requirement concerning attainment of the NAAQS or any other applicable requirement of the Act. For these reasons, EPA proposes to approve the changes to Rules 2.0535(d) and (e).

4. *MCAPCO 2.0535(f)*

The changes to Rule 2.0535(f) in the October 25, 2023, SIP revision revise and update certain notification and source testing requirements. These changes are comparable to the changes to North Carolina's 15A NCAC 02D .0535(f) as described in Section II.B.4, above. Rule 2.0535(f)(1) is revised to update a malfunction notification requirement. The revised

provision states that, if excess emissions lasting more than four hours resulting from “a malfunction, a breakdown of process or control equipment or any other abnormal conditions” occur, the source owner or operator, after becoming aware of the occurrence, must notify a local official on the air agency’s next business day by 9:00 a.m. (Eastern Time), whereas the existing provision requires the owner or operator to notify a local official “within 24 hours.” EPA proposes to approve the change to Rule 2.0535(f)(1) because, as discussed in Section II.B.4, it would not interfere with any applicable requirement concerning attainment of the NAAQS or any other applicable requirement of the Act.

Rule 2.0535(f)(2) is revised to update a corrective-measures notification requirement. The revised provision states that, “after” measures correcting excess emissions as described in prefatory text at paragraph (f) have been accomplished, the source owner or operator must notify a local official, whereas the existing provision requires the owner or operator to notify a local official “immediately when . . . corrective measures have been accomplished.” The reported information in Rule 2.0535(f) regarding excess emissions remains unchanged. EPA proposes to approve the change to Rule 2.0535(f)(2) because it would not interfere with any applicable requirement concerning attainment of the NAAQS or any other applicable requirement of the Act as it does not impact the timing of the corrective action, the information required to be reported in paragraph (f), or the need to report completion of corrective action.

Rule 2.0535(f) is also revised to update a cross-reference to source testing requirements. In the final sentence of Rule 2.0535(f), the revised provision directs any source owner or operator required to demonstrate compliance to test the source in accordance with Section 2.2600, whereas the existing provision requires source testing in accordance with Rule 2.0501, which in turn, requires the owner or operator of any subject source or control equipment to use the source testing procedures of Section 2.2600 to demonstrate compliance with Section 2.0500 if required to do so.²⁵ EPA proposes to approve this change to Rule 2.0535(f) because the

²⁵ See the final sentence of Rule 2.0501.

updated source testing requirements cross-reference simply clarifies testing requirements to which certain sources may be subject. For these reasons, EPA proposes to approve the changes to Rule 2.0535(f).

IV. Proposed Actions

Under the CAA, the Administrator is required to approve SIP submissions that comply with the provisions of the CAA and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). EPA is proposing to approve North Carolina's October 27, 2023, SIP revision requesting changes to Title 15A of the North Carolina Administrative Code Subchapter 02D, Section .0500, Rule.0535, *Excess Emissions Reporting and Malfunctions* and incorporate those changes into the North Carolina SIP. Specifically, EPA is proposing to remove Rules 02D .0535(c) and (g) from the North Carolina SIP and to approve the remaining changes to Rule 02D .0535 into the North Carolina SIP.

EPA is also proposing to approve Mecklenburg County's October 25, 2023, SIP revision requesting changes to Mecklenburg County Air Pollution Control Ordinance Article 2.0000, Section 2.0500, Rule 2.0535, *Malfunctions, Start-Up and Shut-Down*, except for the changes to Rule 2.0535(a)(1), and incorporate those changes into the Mecklenburg County portion of the North Carolina SIP. Specifically, EPA is proposing to remove Rule 2.0535(c) from the Mecklenburg County portion of the North Carolina SIP and to approve the remaining changes to Rule 2.0535 into the Mecklenburg County portion of the North Carolina SIP, with the exceptions of the October 19, 2021, locally effective version of paragraph (a)(1), which EPA is not proposing to act on at this time, and new paragraph (g). EPA is proposing to approve these SIP revisions for the reasons discussed in Sections II and III.

V. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, and as discussed in Sections I, II, and IV of this preamble, EPA is proposing to incorporate by reference

Title 15A of the North Carolina Administrative Code Subchapter 02D, Section .0500, Rule .0535, *Excess Emissions Reporting and Malfunctions*, state effective November 1, 2020, except for paragraphs (c) and (g).²⁶ Also, in accordance with requirements of 1 CFR 51.5, and as discussed in Sections I, III, and IV of this preamble, EPA is proposing to incorporate by reference Mecklenburg County Air Pollution Control Ordinance Article 2.0000, Section 2.0500, Rule 2.0535, *Excess Emissions Reporting and Malfunctions*,²⁷ locally effective October 19, 2021, except for paragraphs (a)(1), (c), and (g).²⁸ 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).

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA 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 proposed actions merely propose to approve state law as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law. For that reason, these proposed actions:

- Are not significant regulatory actions subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Are not subject to Executive Order 14192 (90 FR 9065, February 6, 2025) because SIP actions are exempt from review under Executive Order 12866;

²⁶ If EPA takes final action to approve the October 27, 2023, SIP revision, Rule 02D .0535(c) and (g) would not be included in the North Carolina SIP, and the Agency would update the SIP table at 40 CFR 52.1770(c) to reflect this.

²⁷ If EPA takes final action to approve the October 25, 2023, SIP revision, the Rule 2.0535 title would change from *Malfunctions, Start-Up and Shut-Down* to *Excess Emissions Reporting and Malfunctions*, and the Agency would update the SIP table at 40 CFR 52.1770(c) to reflect this.

²⁸ If EPA takes final action to approve the October 25, 2023, SIP revision, Rule 2.0535(c) and (g) and the October 19, 2021, locally effective version of Rule 2.0535(a)(1) would not be included in the Mecklenburg County portion of the North Carolina SIP, and the Agency would update the SIP table at 40 CFR 52.1770(c) to reflect this. The SIP would retain the version of Rule 2.0535(a)(1) that was locally effective on April 3, 1989.

- 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 (Pub. L. 104-4);
- Do not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because they approve a state program;
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- 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.

In addition, 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 and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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: August 6, 2025.

Kevin McOmber
Regional Administrator,
Region 4.

[FR Doc. 2025-15557 Filed: 8/14/2025 8:45 am; Publication Date: 8/15/2025]