in the Unfunded Mandates Reform Act of 1995 (Pub. L. 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 November 14, 2016. 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, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 2, 2016.

V. Anne Heard,

Acting 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 L—Georgia

■ 2. Section 52.570(e), is amended by adding the entry ''110(a)(1) and (2) Infrastructure Requirements for the 2010 1-hour NO_2 NAAQS'' at the end of the table to read as follows:

§ 52.570 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED GEORGIA NON-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approval date	Explanation
* *	* *	*	*	*
110(a)(1) and (2) Infrastructure Requirements for the 2010 1-hour NO_2 NAASQ.	Georgia	3/25/2013	9/14/2016	With the exception of sections 110(a)(2)(C), prong 3 of D(i), and (J) and sections 110(a)(2)(D)(i)(I) and (II) (prongs 1, 2, and 4).

[FR Doc. 2016–21991 Filed 9–13–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2015–0501; FRL–9952–31–Region 4]

Air Plan Approval and Disapproval; North Carolina: New Source Review for Fine Particulate Matter ($PM_{2.5}$)

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving, in part, and disapproving, in part, changes to the North Carolina State Implementation Plan (SIP), provided by the North Carolina Department of Environmental Quality (NC DEQ) through the Division of Air Quality (DAQ), to EPA in submittals dated May 16, 2011, (two separate submittals) and September 5, 2013. These SIP submittals modify North Carolina's New Source Review (NSR)—Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR)—permitting regulations and include the adoption of some federal requirements regarding implementation of the fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS) through the NSR permitting program. As a result of the disapproval of a portion of the State's NSR requirements, EPA is also approving, in part, and disapproving, in part, the PSD elements of North Carolina's infrastructure SIP submittals for the 2008 lead, 2008 8-hour ozone, 2010 sulfur dioxide (SO_2), 2010 nitrogen dioxide (NO_2) and the 2012 $PM_{2.5}$ NAAQS, and converting the Agency's previous conditional approvals of the PSD elements of North

Carolina's infrastructure SIP submittals for the 1997 Annual $PM_{2.5}$ and 2006 24-hour $PM_{2.5}$ NAAQS to partial approvals and partial disapprovals. This partial disapproval triggers the requirement for EPA to promulgate a Federal Implementation Plan (FIP) no later than two years from the date of the disapproval unless the State corrects the deficiencies through a SIP revision and EPA approves the SIP revision before EPA promulgates such a FIP.

DATES: This rule will be effective October 14, 2016.

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* 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: 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.*

SUPPLEMENTARY INFORMATION:

I. Background and Overview

In submittals dated May 16, 2011 (two separate submittals), and September 5, 2013, DAQ submitted to EPA changes to the North Carolina SIP with regard to the State's PSD and NNSR regulations found at 15A North Carolina Administrative Code (NCAC) 02D .0530 and 15A NCAC 02D .0531. These SIP submittals modify North Carolina's NSR permitting regulations (for both PSD and NNSR) and include the adoption of some federal requirements regarding implementation of the $PM_{2.5}$ NAAQS through the NSR permitting program. In the notice of proposed rulemaking (NPRM) published on May 10, 2016 (81 FR 28797), EPA proposed to take the following four actions, some with multiple parts, regarding the North Carolina submittals:

- Approval of a May 16, 2011, SIP submittal from North Carolina (as revised and updated by the State's September 5, 2013, SIP submittal) as meeting the requirements of EPA's rule, ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$),'' Final Rule, 73 FR 28321 (May 16, 2008) (hereafter referred to as the ''2008 NSR $PM_{2.5}$ Implementation Rule'').
- Disapproval of the portions of North Carolina's September 5, 2013, SIP submittal pertaining to adoption and implementation of the $PM_{2.5}$ increments because North Carolina's proposed SIP revisions do not fully meet the requirements of EPA's rulemaking, ''Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)—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 $PM_{2.5}$ Rule''). Specifically, though paragraphs (q) and (v) of North Carolina's revised PSD regulations at 15A NCAC 02D .0530 incorporate the federally required numerical $PM_{2.5}$ increments, North Carolina's regulations fail to include other federally required provisions needed to implement the $PM_{2.5}$ increments, including (1) the definition of ''[m]ajor source baseline date'' for $PM_{2.5}$ codified at 40 CFR 51.166(b)(14)(i)(*c*) (defined as October 20, 2010); (2) the definition of ''[m]inor source baseline date'' for $PM_{2.5}$ codified at 40 CFR 51.166(b)(14)(ii)(*c*) (which establishes the $PM_{2.5}$ trigger date as October 20, 2011); and (3) the definition of ''[b]aseline area'' codified at 40 CFR 51.166(b)(15)(i).[1] Without these definitions, North Carolina's PSD regulations do not require PSD sources to conduct the appropriate analyses demonstrating that emissions from proposed construction of new major stationary sources or major modifications will not cause or contribute to air quality deterioration beyond the amount allowed by the $PM_{2.5}$ increments. Therefore, EPA proposed to disapprove all of the $PM_{2.5}$ increment provisions set forth in North Carolina's September 5, 2013, SIP submittal, including all of the $PM_{2.5}$-related changes to 15A NCAC 02D .0530 at paragraphs (e), (q), and (v).[2]
- Approval of administrative changes to North Carolina's PSD and NNSR regulations at 15A NCAC 02D .0530 and 15A NCAC 02D .0531 provided by the State in a SIP submittal also dated May 16, 2011, including clarification of the applicability of best available control technology (BACT) and lowest achievable emission rate (LAER) for electrical generating units (EGUs) in the State, and the inclusion of an additional Federal Land Manager (FLM) notification provision.
- Approval, in part, and disapproval, in part, of the PSD elements of North Carolina's infrastructure SIP submittals for the 2008 lead, 2008 8-hour ozone, 2010 SO_2, 2010 NO_2 and 2012 $PM_{2.5}$ NAAQS and conversion of the Agency's previous conditional approvals of the PSD elements of North Carolina's infrastructure SIP submittals for the 1997 Annual $PM_{2.5}$ and 2006 24-hour $PM_{2.5}$ NAAQS to partial approvals and partial disapprovals.

Comments on the NPRM were due on or before June 9, 2016. The details of North Carolina's submittals and the rationale for EPA's actions are explained in the NPRM.

[1] North Carolina's regulations at 15A NCAC 02D .0530 use incorporation by reference (IBR) to adopt the federal regulations in the CFR as of May 16, 2008, which do not include the definitions of ''major source baseline,'' ''minor source baseline,'' and ''baseline area'' that EPA promulgated in the 2010 PSD $PM_{2.5}$ rule. Thus, the definition of ''major source baseline date'' incorporated into 15A NCAC 02D .0530 does not include the federally required $PM_{2.5}$ major source baseline date of October 20, 2010, but instead states: ''In the case of particulate matter and sulfur dioxide, January 6, 1975.'' Likewise, the definition of ''minor source baseline date'' incorporated into 15A NCAC 02D .0530 does not include the federally required $PM_{2.5}$ trigger date of October 20, 2011, but instead states: ''In the case of particulate matter and sulfur dioxide, August 7, 1977.'' It is EPA's understanding that North Carolina interprets the term ''particulate matter'' in North Carolina's regulations to encompass $PM_{2.5}$, resulting in a $PM_{2.5}$ major source baseline date of January 6, 1975, and a $PM_{2.5}$ trigger date of August 7, 1977.

[2] Paragraph (v) establishes the numerical $PM_{2.5}$ increments. Paragraph (q) addresses the Class I $PM_{2.5}$ variances. Paragraph (e) incorporates paragraph (v) by reference. EPA proposed to disapprove 15A NCAC 02D .0530, paragraphs (e), (q), and (v) in part, rather than in their entirety, because the paragraphs also include previously approved PM_{10} increment requirements. Specifically, in addition to making the $PM_{2.5}$-related changes to these paragraphs, North Carolina also revised 15A NCAC 02D .0530, paragraphs (e), (q), and (v), to directly incorporate the PM_{10} increments. Previously, North Carolina had incorporated the PM_{10} increments into 15A NCAC 02D .0530 by reference to the CFR. EPA is approving the PM_{10}-related changes to paragraphs (e), (q), and (v).

II. Response to Comments

EPA received one adverse comment submission, from DAQ, on the May 10, 2016, NPRM to approve, in part, and disapprove, in part, changes to North Carolina's SIP-approved NSR permitting regulations. The comment submission is available in the docket for this final rulemaking action.

In its comments, DAQ objects to EPA's proposed disapproval of the $PM_{2.5}$ increment-related portions of paragraphs (e), (q) and (v) of North Carolina's PSD rule 15A NCAC 02D .0530 for failing to incorporate the definitions of ''major source baseline date,'' ''minor source baseline date,'' and ''baseline area'' as found in EPA's 2010 PSD $PM_{2.5}$ Rule. DAQ contends that EPA's proposed disapproval of North Carolina's $PM_{2.5}$ increment provisions fails to properly account for the decision by the United States Court of Appeals for the District of Columbia (D.C. Circuit) in *Natural Resource Defense Council* v. *EPA,* 706 F.3d 428 (D.C. Cir., 2013) (*NRDC*), where the Court determined that $PM_{2.5}$ is not a new pollutant, but rather is encompassed by the statutory definition of the pollutant $PM_{10.}$ According to DAQ, North Carolina's regulations, which incorporate by reference the prior federal definitions applicable to ''particulate matter'' (rather than the definitions applicable to $PM_{2.5}$ promulgated in EPA's 2010 PSD $PM_{2.5}$ Rule), are consistent with the Clean Air Act (CAA or Act) and *NRDC* and can be approved into the SIP as written. For the same reason, DAQ also objects to EPA's proposed disapproval of the PSD elements of seven infrastructure SIP submittals. DAQ's comments incorporate by reference the following documents: (1) Opening Brief of Petitioner in *North Carolina* v. *United States Environmental Protection Agency,* 13–1312 and 14–1186, dated October 9, 2014; (2) Reply Brief of Petitioner for *North Carolina* v. *United States Environmental Protection Agency,* 13–1312 and 14–1186, dated February 10, 2015; and (3) letter from John Skvarla (North Carolina Department of Environment and Natural Resources [3]) to Gina McCarthy (EPA), dated August 22, 2013.

The legal briefs attached to DAQ's comments were filed in the D.C. Circuit by the State of North Carolina in support of the State's consolidated petitions for review of EPA's 2010 PSD $PM_{2.5}$ Rule and of EPA's denial of the State's administrative petition for reconsideration of the PSD $PM_{2.5}$ Rule. In the briefs, the State challenged the 2010 PSD $PM_{2.5}$ Rule on the basis that the rule improperly set new baseline dates for calculating $PM_{2.5}$ increment consumption rather than using the pre-existing particulate matter baseline dates set forth in the CAA. EPA filed a Response Brief in that case disputing the legal arguments in the briefs that DAQ has now submitted to support its comments on this SIP rule. The D.C. Circuit dismissed both of North Carolina's petitions for review as untimely. *See North Carolina* v. *EPA,* 614 Fed. Appx. 517, 2015 U.S. App. LEXIS 16246 (D.C. Cir. 2015).

The August 22, 2013, letter from John Skvarla that DAQ attached to its comments was sent by North Carolina to EPA prior to the D.C. Circuit litigation and raised the same concern regarding the $PM_{2.5}$ increment baseline dates in the 2010 PSD $PM_{2.5}$ Rule that North Carolina raised in the D.C. Circuit litigation. EPA responded to the April 22, 2013, letter from Secretary Skvarla to Administrator McCarthy in conjunction with EPA's August 28, 2014, response to the State's petition for EPA to reconsider or revise the 2010 PSD $PM_{2.5}$ Rule.

In response to DAQ's comments, EPA notes that DAQ does not claim that North Carolina's $PM_{2.5}$ increment provisions satisfy the relevant federal criteria for state PSD programs set forth at 40 CFR 51.166 (as promulgated in the 2010 PSD $PM_{2.5}$ Rule). Rather, DAQ's opposition to EPA's proposed disapproval of North Carolina's $PM_{2.5}$ increment provisions is based entirely on DAQ's claim that the federal $PM_{2.5}$ increment baseline provisions set forth at 40 CFR 51.166 are unlawful. In determining whether to approve North Carolina's $PM_{2.5}$ increment submittal, however, EPA considers only whether North Carolina's proposed SIP revision satisfies the minimum federal criteria set forth at 50 CFR 51.166 and other requirements governing SIP revisions. EPA's action on North Carolina's submittal does not reopen for comment EPA's determination of the appropriate $PM_{2.5}$ increment baselines for SIP-approved PSD programs, which were established in the final 2010 PSD $PM_{2.5}$ Rule published in the **Federal Register** on October 20, 2010 (75 FR 64864).

Under CAA section 307(b)(1), 42 U.S.C. 7607(b)(1), any petition for review of the 2010 PSD $PM_{2.5}$ Rule had to be filed in the D.C. Circuit within 60 days of EPA's publication of the rule in the **Federal Register**, unless such petition is based solely on grounds arising after the 60th day, in which case the petition had to be filed within 60 days after such grounds arose. As the D.C. Circuit explained in dismissing North Carolina's petition for review of the 2010 PSD $PM_{2.5}$ Rule, North Carolina missed the statutory deadline for filing a petition for review of the $PM_{2.5}$ increment baseline provisions set forth in that Rule and did not file its court challenge within 60 days of the *NRDC* court decision that the State alleged to establish ''after arising'' grounds for such a challenge. *See North Carolina,* 614 Fed. Appx. at 517.[4]

Based on its view of the *NRDC* court decision, North Carolina separately petitioned EPA to reconsider or revise the baseline date in the 2010 PSD $PM_{2.5}$ Rule and subsequently challenged EPA's response to that petition in the D.C. Circuit. EPA determined that revision of the baseline dates for $PM_{2.5}$ in the 2010 rule was not appropriate or compelled by the court decision cited by North Carolina. EPA also considered and responded to the April 22, 2013, letter from Secretary Skvarla in the manner described above. Accordingly, EPA has already given due consideration to the concern raised by North Carolina in its comment regarding the content of the EPA regulations. The Court upheld EPA's response to the State's petition to change the rule. 614 Fed. Appx. at 519.

Thus, the legal issues raised by North Carolina concerning the content of EPA's regulations are settled and not open to reconsideration in this action regarding North Carolina's SIP submittal. For purposes of this action, the $PM_{2.5}$ increment baseline provisions for SIP-approved state PSD programs set forth in 40 CFR 51.166 are final and effective for all states, including North Carolina. EPA is required to apply its regulations as they are presently written. *See, e.g.,* 78 FR 63883, 63885 (Oct. 25, 2013) (EPA action on the Utah SIP based on the terms of the current version of 40 CFR 51.166). Accordingly, DAQ's comments regarding alleged defects in the $PM_{2.5}$ increment baseline dates established in the 2010 PSD $PM_{2.5}$

[3] The North Carolina Department of Environment and Natural Resources is now the North Carolina Department of Environmental Quality.

[4] In the D.C. Circuit litigation, North Carolina argued that the 2013 *NRDC* decision constituted grounds arising after the 60th day following EPA's publication of the 2010 PSD $PM_{2.5}$ Rule in the **Federal Register**, and therefore started a new 60-day period during which North Carolina could petition the D.C. Circuit to review the 2010 $PM_{2.5}$ PSD Rule. *North Carolina,* 614 Fed. Appx. at 518. The D.C. Circuit found that even if *NRDC* constituted after-arising grounds, ''North Carolina brought its petition more than ten months after [the Court] issued *NRDC*—well outside of the sixty-day window for petitions that the after-arising grounds exception [in CAA section 307(b)] provides.'' *Id.* Therefore, the Court concluded: ''Even assuming, without deciding, that *NRDC* constituted after-arising grounds, North Carolina's petition is thus still untimely.'' *Id.*

Rule (including arguments made in attachments to DAQ's comment submission) are not relevant to EPA's determination in this final action of whether the $PM_{2.5}$ increment provisions in North Carolina's September 5, 2013, SIP submittal are approvable.

To be federally-approvable, North Carolina's $PM_{2.5}$ increment provisions must meet the requirements of 40 CFR 51.166 unless North Carolina can demonstrate that it has alternative measures in its plan other than $PM_{2.5}$ increments that satisfy the PSD requirements under sections 166(c) and 166(d) of the CAA. *See* 40 CFR 51.166(c)(2). Specifically regarding the definitions of key terms set forth at 40 CFR 51.166(b), the regulations state that ''[a]ll State plans shall use'' these definitions, unless ''the State specifically demonstrates that the submitted definition is more stringent, or at least as stringent, in all respects'' as the federal definition. *See* 40 CFR 51.166(b). As EPA explained in the NPRM, North Carolina's $PM_{2.5}$ increment provisions at 15A NCAC 02D .0530 do not incorporate the federally required definitions of ''major source baseline date,'' ''minor source baseline date,'' and ''baseline area.'' Nor has North Carolina demonstrated—or even claimed—that alternative definitions in the State's plan are more stringent, or at least as stringent, as the federal definitions set forth at 40 CFR 51.166. Likewise, North Carolina has not identified measures in its plan other than $PM_{2.5}$ increments that satisfy the PSD requirements under sections 166(c) and 166(d) of the CAA and would warrant approval under 40 CFR 51.166(c)(2). DAQ's comments do not refute EPA's determination that North Carolina's $PM_{2.5}$ increment provisions are not in compliance with 40 CFR 51.166. Therefore, EPA disagrees with DAQ's comment that North Carolina's rules can be approved into the SIP as written.

III. Incorporation by Reference

In this rule, EPA is including in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is incorporating by reference portions of North Carolina's regulations 15A NCAC 02D .0530 and 15A NCAC 02D .0531, entitled ''Prevention of Significant Deterioration'' and ''Sources in Nonattainment Areas,'' effective September 1, 2013. 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 by the Director of the Federal Register in the next update to the SIP compilation.[5] EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and/or at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Final Actions

EPA is approving, in part, and disapproving, in part, changes to the North Carolina SIP provided by the DAQ to EPA on May 16, 2011, (two submittals) and September 5, 2013. These changes modify North Carolina's NSR permitting regulations codified at 15A 02D .0530—*Prevention of Significant Deterioration* and 15A NCAC 02D.0531—*Sources in Nonattainment Areas,* and include the adoption of some federal requirements respecting implementation of the $PM_{2.5}$ NAAQS through the NSR permitting program. Specifically, EPA is approving the State's changes as they relate to the requirements to comply with EPA's 2008 NSR $PM_{2.5}$ Implementation Rule (provided in the first May 16, 2011, SIP submittal and the September 5, 2013, SIP submittal) and the State's miscellaneous changes as described in Section III.C. of the NPRM (provided in the second May 16, 2011, SIP submittal and the September 5, 2013, SIP submittal). EPA is disapproving North Carolina's September 5, 2013, SIP submittal as it relates to the requirements to comply with EPA's 2010 PSD $PM_{2.5}$ Rule. The versions of 15A NCAC 02D .0530 (PSD) and 15A NCAC 02D .0531 (NNSR) that became effective in the State on September 1, 2013, will be incorporated into North Carolina's SIP, with the exception of the portions of paragraphs 15A NCAC 02D .0530(e), (q), and (v) that pertain to $PM_{2.5}$ increments. EPA is approving the portions of paragraphs 15A NCAC 02D .0530(e), (q), and (v) that pertain to PM_{10}.[6] As a result of the disapproval of a portion of the State's NSR requirements, EPA also is disapproving the PSD elements of the North Carolina's infrastructure SIP submittals for the 2008 lead, 2008 8-hour ozone, 2010 SO_2, 2010 NO_2 and the 2012 $PM_{2.5}$ NAAQS; and is converting the Agency's previous conditional approvals of the PSD elements of North Carolina's infrastructure SIP submittals for the 1997 Annual $PM_{2.5}$ and 2006 24-hour $PM_{2.5}$ NAAQS to partial approvals and partial disapprovals.

North Carolina did not submit its $PM_{2.5}$ increment provisions or its infrastructure SIPs to meet requirements for Part D of the CAA or a SIP call; therefore, EPA's final action to disapprove North Carolina's $PM_{2.5}$ increment provisions and to partially disapprove the PSD portions of the State's infrastructure SIP submittals does not trigger sanctions. However, this final disapproval action does trigger the requirement under section 110(c) for EPA to promulgate a FIP no later than two years from the date of the disapproval unless the State corrects the deficiency through a SIP revision and EPA approves the SIP revision before EPA promulgates such a FIP.[7]

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submittal 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 submittals, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action approves, in part, and disapproves, in part, state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. EPA is determining that the PSD portion of some of the aforementioned SIP submittals do not meet federal requirements. 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

[5] 62 FR 27968 (May 22, 1997).

[6] As explained in the NPRM (81 FR at 28803, fn. 17), the revisions to paragraphs (e), (q), and (v) provided in North Carolina's September 5, 2013, SIP submittal include PM_{10} increment provisions in addition to $PM_{2.5}$ provisions. Prior to these rule changes, North Carolina had incorporated the PM_{10} increments into 15A NCAC 02D .0530 by reference to the CFR. North Carolina's decision to write the PM_{10} increment requirements directly into its rule rather than to incorporate them by reference does not change the applicable SIP requirements with respect to PM_{10} increments.

[7] EPA expects North Carolina sources that are subject (or become subject) to PSD requirements to continue complying with federal $PM_{2.5}$ increment requirements following this disapproval action, including use of the federally required baseline dates for calculating $PM_{2.5}$ increment consumption.

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 (Pub. L. 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.

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: September 6, 2016.

V. Anne Heard,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart II—North Carolina

■ 2. Section 52.1770 is amended by:

■ a. In paragraph (c), Table 1, under Subchapter 2D, Section .0500, revising the entries for ''Sect .0530'' and ''Sect .0531''.

■ b. In paragraph (e), 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_2 NAAQS'', ''110(a)(1) and (2) Infrastructure Requirements for the 2010 1-hour SO_2 NAAQS'' and ''110(a)(1) and (2) Infrastructure Requirements for the 2012 Annual $PM_{2.5}$ NAAQS'' at the end of the table.

The revisions and additions read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

TABLE 1—EPA APPROVED NORTH CAROLINA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
Subchapter 2D Air Pollution Control Requirements				
*	*	*	*	*
Section .0500 Emission Control Standards				
*	*	*	*	*
Sect .0530	Prevention of Significant Deterioration.	9/1/2013	.....	Disapproved the portions of paragraphs 15A NCAC 02D .0530(e), (q), and (v) that pertain to $PM_{2.5}$ increments.
Sect .0531	Sources in Nonattainment Areas ..	9/1/2013	9/14/2016, [Insert citation of publication in ***Federal Register***].	
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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 1997 Fine Particulate Matter NAAQS.	4/1/2008	9/14/2016	[Insert citation of publication in **Federal Register**].	Partially approve the PSD elements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3) and 110(a)(2)(J) and disapprove with respect to the $PM_{2.5}$ increment requirements of 2010 PSD $PM_{2.5}$ Rule.
110(a)(1) and (2) Infrastructure Requirements for 2006 Fine Particulate Matter NAAQS.	9/21/2009	9/14/2016	[Insert citation of publication in **Federal Register**].	Partially approve the PSD elements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3) and 110(a)(2)(J) and disapprove with respect to the $PM_{2.5}$ increment requirements of 2010 PSD $PM_{2.5}$ Rule.
110(a)(1) and (2) Infrastructure Requirements for the 2008 Lead NAAQS.	6/15/2012	9/14/2016	[Insert citation of publication in **Federal Register**].	Partially approve the PSD elements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3) and 110(a)(2)(J) and disapprove with respect to the $PM_{2.5}$ increment requirements of 2010 PSD $PM_{2.5}$ Rule.
110(a)(1) and (2) Infrastructure Requirements for the 2008 8-Hour Ozone NAAQS.	11/2/2012	9/14/2016	[Insert citation of publication in **Federal Register**].	Partially approve the PSD elements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3) and 110(a)(2)(J) and disapprove with respect to the $PM_{2.5}$ increment requirements of 2010 PSD $PM_{2.5}$ Rule.
110(a)(1) and (2) Infrastructure Requirements for the 2010 1-hour NO_2 NAAQS.	8/23/2013	9/14/2016	[Insert citation of publication in **Federal Register**].	Partially approve the PSD elements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3) and 110(a)(2)(J) and disapprove with respect to the $PM_{2.5}$ increment requirements of 2010 PSD $PM_{2.5}$ Rule.
110(a)(1) and (2) Infrastructure Requirements for the 2010 1-hour SO_2 NAAQS.	3/18/2014	9/14/2016	[Insert citation of publication in **Federal Register**].	Partially approve the PSD elements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3) and 110(a)(2)(J) and disapprove with respect to the $PM_{2.5}$ increment requirements of 2010 PSD $PM_{2.5}$ Rule.
110(a)(1) and (2) Infrastructure Requirements for the 2012 Annual $PM_{2.5}$ NAAQS.	12/4/2015	9/14/2016	[Insert citation of publication in **Federal Register**].	Partially approve the PSD elements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3) and 110(a)(2)(J) and disapprove with respect to the $PM_{2.5}$ increment requirements of 2010 PSD $PM_{2.5}$ Rule.

§ 52.1773 [Removed and Reserved]

■ 3. Section 52.1773 is removed and reserved.

[FR Doc. 2016–21994 Filed 9–13–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2006–0790; FRL–9951–64–OAR]

RIN 2060–AS10

National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and Institutional Boilers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of final action on reconsideration.

SUMMARY: This action sets forth the Environmental Protection Agency's (EPA's) final decision on the issues for which it announced reconsideration on January 21, 2015, that pertain to certain aspects of the February 1, 2013, final amendments to the ''National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and Institutional Boilers'' (Area Source Boilers Rule). The EPA is retaining the subcategory and separate requirements for limited-use boilers, consistent with the February 2013 final rule. In addition, the EPA is amending three reconsidered provisions regarding: The alternative particulate matter (PM) standard for new oil-fired boilers; performance testing for PM for certain boilers based on their initial compliance test; and fuel sampling for mercury (Hg) for certain coal-fired boilers based on their initial compliance demonstration, consistent with the alternative provisions for which comment was solicited in the January 2015 proposal. The EPA is making minor changes to the proposed definitions of startup and shutdown based on comments received. This final action also addresses a limited number of technical corrections and clarifications on the rule, including removal of the affirmative defense for malfunction in light of a court decision on the issue. These corrections will clarify and improve the implementation of the February 2013 final Area Source Boilers Rule. In this action, the EPA is also denying the requests for reconsideration with respect to the issues raised in the petitions for reconsideration of the final Area Source Boilers Rule for which reconsideration was not granted.

DATES: This final rule is effective on September 14, 2016.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2006–0790. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* 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