

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[EPA-R04-OAR-2018-0760; FRL-9995-85-Region 4]

**Air Plan Approval; North Carolina; Revision To Permit Term for Non-Title V Air Quality Permits****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve a State Implementation Plan (SIP) revision provided by the State of North Carolina, through the North Carolina Department of Environmental Quality, Division of Air Quality (DAQ), on January 12, 2018. The SIP revision makes changes to the State's combined construction and operating permit program for non-Title V sources. EPA is proposing to approve the revision to the North Carolina SIP because it is consistent with the Clean Air Act (CAA or Act).

**DATES:** This rule is effective August 2, 2019.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R04-OAR-2018-0609. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) website. 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 and Radiation Division (formerly the 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:** Evan Adams of the Air Regulatory Management 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) 562-9009. Mr. Adams can also be reached via electronic mail at [adams.evan@epa.gov](mailto:adams.evan@epa.gov).

**SUPPLEMENTARY INFORMATION:****I. Background**

EPA is taking final action to approve changes to the North Carolina SIP that were provided to EPA through a letter dated January 12, 2018.<sup>1</sup> EPA is finalizing approval of the portions of this SIP revision that make changes to 15 North Carolina Administrative Code (NCAC) 02Q.0300—*Construction and Operation Permits*.<sup>2</sup> These regulations set forth the State's process for issuing combined construction and operating permits. They do not apply to Title V permits issued by DAQ. See 15A NCAC 02Q.0301(a). The January 12, 2018, submittal requests minor typographical/administrative edits to 15 NCAC 02Q.0308. For example, the submittal fixes a grammar error in 15 NCAC 02Q.0308(b) by replacing the word "which" with the word "that" in the first sentence. In addition, the submittal changes the permit term (duration) for combined construction and operating permits from five years, or less as determined reasonable by the Director, to eight years. This permit term in Section .0308 of the rule affects only minor sources because sources subject to Title V (*i.e.*, major sources) are subject to the separate operating permit term provisions of North Carolina's Title V program.

In a notice of proposed rulemaking (NPRM) published on March 28, 2019 (84 FR 11695), EPA proposed to approve the aforementioned changes to 15 NCAC 02Q.0308 in the North Carolina SIP, which make typographical/administrative edits to the rule. The NPRM provides additional details regarding EPA's action. Comments on the NPRM were due on or before April 29, 2019. EPA received no comments on the proposed action and is now taking final action to approve the above-referenced revision.

**II. Incorporation by Reference**

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR

<sup>1</sup> EPA notes that the Agency received the SIP revision on February 2, 2018.

<sup>2</sup> In the table of North Carolina regulations federally approved into the SIP at 40 CFR 52.1770(c), 15A NCAC 02Q is referred to as "Subchapter 2Q Air Quality Permits."

51.5, EPA is finalizing the incorporation by reference under Subchapter 2Q, *Air Quality Permits* of the North Carolina SIP, Section .0308, entitled *Final Action on Permit Applications*, state effective January 1, 2015. 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 State implementation plan, 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>3</sup>

**III. Final Action**

EPA is taking final action to approve changes to the North Carolina SIP that were provided to EPA through a letter dated January 12, 2018. Specifically, EPA is approving 15 NCAC 02Q.0308 to modify the permit term for non-title V combined construction and operating permits and make other typographical/administrative edits. These rule changes are consistent with the CAA and its implementing regulations, and will not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 7501 of the Act). See 42 U.S.C. 7410(l).

**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. This action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory

<sup>3</sup> See 62 FR 27968 (May 22, 1997).

action because SIP approvals are exempted under Executive Order 12866;

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (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 September 3, 2019. 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 7, 2019.

**Mary S. Walker,**  
*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. In § 52.1770, the table in paragraph (c)(1) is amended under Subchapter 2Q Air Quality Permits, Section .0300 Construction and Operating Permits by revising the entry for “Section .0308” to read as follows:

**§ 52.1770 Identification of plan.**

\* \* \* \* \*  
(c) \* \* \*

(1) EPA APPROVED NORTH CAROLINA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
<b>Subchapter 2Q Air Quality Permits</b>				
*	*	*	*	*
<b>Section .0300 Construction and Operating Permits</b>				
*	*	*	*	*
Section .0308 .....	Final Action on Permit Applications	1/1/2015	07/3/2019, [Insert citation of publication]	
*	*	*	*	*

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[FR Doc. 2019-14136 Filed 7-2-19; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52****[EPA-R04-OAR-2017-0371; FRL-9995-84-Region 4]****Air Plan Approval; Alabama: PSD Replacement Units****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is finalizing approval of revisions to the Alabama State Implementation Plan (SIP), submitted by the State of Alabama, through the Alabama Department of Environmental Management (ADEM), via two letters dated May 7, 2012, and August 27, 2018. The SIP revisions relate to the State's Prevention of Significant Deterioration (PSD) permitting regulations. In particular, the revisions add a definition of "replacement unit" and provide that a replacement unit is a type of existing emissions unit under the definition of "emissions unit." This action is being taken pursuant to the Clean Air Act (CAA or Act).

**DATES:** This rule is effective August 2, 2019.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2017-0371. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) website. 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 and Radiation Division (formerly the 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:**

Andres Febres, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division (formerly the Air, Pesticides and Toxics Management Division), Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-8966. Mr. Febres can also be reached via electronic mail at [febres-martinez.andres@epa.gov](mailto:febres-martinez.andres@epa.gov).

**SUPPLEMENTARY INFORMATION:****I. Background**

On May 7, 2012, Alabama submitted for EPA approval amendments to its PSD permitting regulations as part of the State's New Source Review (NSR) permitting program, found in ADEM Administrative Code Rule 335-3-14-.04—*Air Permits Authorizing Construction in Clean Air Areas [Prevention of Significant Deterioration Permitting (PSD)]*.<sup>1,2</sup> Subsequently, Alabama submitted a May 5, 2017, withdrawal letter clarifying the May 7, 2012, submittal. EPA issued a direct final rule—with a concurrent Notice of Proposed Rulemaking (NPRM)—on August 24, 2017, approving those changes. See 82 FR 40072 and 82 FR 40085, respectively. However, EPA received an adverse comment on that action, and subsequently withdrew its direct final rule approval of the May 7, 2012, submittal. See 82 FR 47397 (October 12, 2017). EPA is not finalizing the August 24, 2017, proposed rule.

Alabama later submitted a second revision to Rule 335-3-14-.04 on August 27, 2018.<sup>3</sup> Together, the May 7, 2012, and August 27, 2018, submittals, along with the State's May 5, 2017, withdrawal letter, include revisions to

<sup>1</sup> EPA's regulations governing the implementation of the NSR permitting programs are contained in 40 CFR 51.160 through 51.166; 52.21, 52.24; and part 51, Appendix S. The CAA NSR program is composed of three separate programs: PSD, Nonattainment (NNSR), and Minor NSR. PSD is established in part C of title I of the CAA and applies in areas that meet the NAAQS—or "attainment areas"—as well as areas where there is insufficient information to determine if the area meets the NAAQS—or "unclassifiable areas." The NNSR program is established in part D of title I of the CAA and applies in areas that are not in attainment of the NAAQS—or "nonattainment areas." The Minor NSR program addresses construction or modification activities that do not qualify as "major" and applies regardless of the designation of the area in which a source is located. Together, these programs are referred to as the NSR programs.

<sup>2</sup> EPA notes that it received this SIP revision on May 16, 2012.

<sup>3</sup> EPA notes that it received this SIP revision on September 4, 2018.

Alabama's PSD permitting regulations by adding a definition of "replacement unit" at Alabama Rule 335-3-14-.04(2)(bbb), and by modifying the definition of "emissions unit" to expressly include replacement units as existing emissions units at Alabama Rule 335-3-14-.04(2)(g).<sup>4</sup> In addition, Alabama's August 27, 2018, SIP revision adds a fifth condition to the new definition of a "Replacement Unit" requiring any source qualifying as a replacement unit to use the actual-to-projected-actual test for PSD applicability at Alabama Rule 335-3-14-.04(1)(f). Alabama's definition of "replacement unit," and its provision defining a replacement unit as an "existing emissions unit" for purposes of PSD applicability, are consistent with Federal PSD regulations at 40 CFR 51.166.

In a NPRM published on March 29, 2019 (84 FR 11914), EPA proposed to approve the revisions to Alabama Rule 335-3-14-.04 included in the State's May 7, 2012, submittal, as amended by the May 5, 2017, withdrawal letter, and the August 27, 2018, submittal. Comments on the NPRM were due on or before April 29, 2019. EPA received one adverse comment during the comment period for this action and offers a response below.

**II. Response to Comments**

The Commenter generally supports EPA's proposed approval of revisions to Alabama Rule 335-3-14-.04(2)(bbb) and Rule 335-3-14-.04(2)(g). However, the Commenter states that EPA must require revision of Alabama's SIP to remove a separate definition—the definition of "actual emissions" at Alabama Rule 335-3-14-.04(2)(u)—because that definition is "unlawful and arbitrary." The Commenter further states that EPA constructively reopened its approval of the "actual emissions" definition when it proposed approval of the May 7, 2012, version of Alabama Rule 335-3-14-.04(2)(bbb) on August 24, 2017 (82 FR 40072).

EPA approved Alabama's definition of "actual emissions" on May 1, 2008 (73 FR 23957), and that approval is outside the scope of this action. Additionally, EPA disagrees that it constructively reopened its prior approval of the

<sup>4</sup> EPA is not taking action on the portions of Alabama's May 7, 2012, and August 27, 2018, submittals regarding ADEM Administrative Code Chapter 335-3-10—*Standards of Performance for New Stationary Sources*, and Chapter 335-3-11—*National Emission Standards for Hazardous Air Pollutants*. In the cover letter for these SIP revisions, Alabama acknowledges that these regulations are not part of Alabama's SIP and states that these regulations are not to be incorporated into the SIP.