

Dated: August 1, 2019.

**Thomas P. Smith, P.E.,**

Chief, Operations and Regulatory Division,  
Directorate of Civil Works.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2018-0257; FRL-9997-84-Region 4]

### Air Plan Approval; North Carolina: PSD Requirements for GHGs

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is finalizing approval of two State Implementation Plan (SIP) revisions dated July 30, 2012, and January 12, 2018, submitted by the State of North Carolina through the North Carolina Department of Environmental Quality (NCDEQ). These SIP revisions are related to the State's Prevention of Significant Deterioration (PSD) permitting program requirements for greenhouse gases (GHGs). EPA has determined that the July 30, 2012, and January 12, 2018, SIP revisions are consistent with the Clean Air Act (CAA or Act).

**DATES:** This rule will be effective September 9, 2019.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2018-0257. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) website. Although listed in the index, some information may not be publicly available, *i.e.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [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, 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, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street SW, Atlanta, Georgia 30303-8960. Mr. Febres can be reached by telephone at (404) 562-8966 or via electronic mail at [febres-martinez.andres@epa.gov](mailto:febres-martinez.andres@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. What is the EPA finalizing today?

EPA received two SIP revisions from NCDEQ, dated July 30, 2012, and January 12, 2018, that include changes to North Carolina's SIP-approved air quality rule at 15 North Carolina Administrative Code (NCAC) 02D .0544—*Prevention of Significant Deterioration Requirements for Greenhouse Gases*.<sup>1 2 3</sup> The 2012 and 2018 revisions include several administrative and typographical changes to the rule, as well as a modification to the date associated with the incorporation by reference (IBR) of 40 CFR 51.166 that was initially meant to capture EPA's final action entitled "Deferral for CO<sub>2</sub> Emissions From Bioenergy and Other Biogenic Sources Under the Prevention of Significant Deterioration (PSD) and Title V Programs" (hereinafter referred to as the "Biomass Deferral Rule").<sup>4</sup> In a March 4, 2019, letter, North Carolina asked EPA to approve changes to the IBR-related paragraph in Section .0544, including the date modification, but to exclude the

<sup>1</sup> EPA notes that the Agency received the SIP revisions on August 3, 2012, and February 2, 2018, respectively.

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

<sup>3</sup> The PSD permitting program is established in part C of title I of the CAA and applies in areas that meet the National Ambient Air Quality Standards (NAAQS)—"attainment areas"—as well as areas where there is insufficient information to determine if the area meets the NAAQS—"unclassifiable areas." EPA's regulations governing PSD implementation are located at 40 CFR 51.166 and 52.21.

<sup>4</sup> On July 20, 2011, EPA finalized the Biomass Deferral Rule, which deferred for a period of three years, the application of PSD and Title V permitting requirements to carbon dioxide (CO<sub>2</sub>) emissions from bioenergy and other biogenic stationary sources. See 76 FR 43490. Although the United States Court of Appeals for the District of Columbia Circuit vacated the Biomass Deferral Rule in 2013, EPA has not taken formal action to remove the Rule from the CFR at 40 CFR 51.166(b)(48)(ii)(a), 52.21(b)(49)(ii)(a), 70.2(2), and 71.2(2). For more information see the notice of proposed rulemaking associated with this final rulemaking on North Carolina's July 30, 2012, and January 12, 2018 SIP revisions at 84 FR 23750 (May 23, 2019).

adoption of the Biomass Deferral Rule from the IBR.<sup>5</sup>

The 2018 submittal also seeks to remove the PSD requirements for major stationary sources based solely on their GHG emissions; add a new paragraph—paragraph (d)—regarding the global warming potential for GHGs; and re-letter several paragraphs in the rule due to the addition of the new paragraph (*e.g.*, changing paragraph (d) in the existing SIP-approved rule to paragraph (e)).<sup>6</sup> The revisions removing PSD requirements based solely on GHG emissions are in response to court decisions invalidating and vacating the Federal regulations that applied PSD permitting requirements to major sources based solely on their GHG emissions.<sup>7</sup>

The changes to the North Carolina SIP that are the subject of this final rulemaking, as well as EPA's analysis of the changes and rationale for approving them, are described in further detail in a notice of proposed rulemaking (NPRM) published on May 23, 2019 (84 FR 23750). Comments on the NPRM were due on or before June 24, 2019. EPA received no comments on the proposed action and is now taking final action to approve these revisions.

##### II. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference, under Subchapter 2D, *Air Pollution Control Requirements*, of the North Carolina SIP, Section .0544—*Prevention of Significant Deterioration Requirements for Greenhouse Gases*, state-effective September 1, 2015.<sup>8</sup> EPA

<sup>5</sup> The March 4, 2019, supplemental letter is located in the docket for this rulemaking.

<sup>6</sup> In North Carolina's January 12, 2018, SIP revision cover letter, the State also mentions changes to rule 15 NCAC 02D Section .0502—*Applicability*, which relates to title V permitting requirements for GHGs. This rule is mentioned because it was approved, together with Section .0544, by the North Carolina Rules Review Commission, but the redline strikeout changes were not included as part of the January 12, 2018 SIP package. Additionally, North Carolina explains in its letter that they do not wish for EPA to review these changes because they are not part of the SIP but rather part of the State's title V operating permit program.

<sup>7</sup> See *Utility Air Regulatory Group (UARG) v. EPA*, 134 S. Ct. 2427 (2014); *Coalition for Responsible Regulation, Inc. v. EPA*, 606 Fed. Appx. 6, 7 (D.C. Cir. 2015).

<sup>8</sup> As discussed above and in the NPRM, EPA is excluding the Biomass Deferral Rule from the July 20, 2011 IBR of 40 CFR 51.166, found in Section .0544(o). The rule text is found at 40 CFR 51.166(b)(48)(ii)(a) and reads as follows: "For purposes of this paragraph (b)(48)(ii)(a), prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide

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>9</sup>

### III. Final Action

EPA is finalizing approval of North Carolina's July 30, 2012, and January 12, 2018, SIP revisions that revise the PSD requirements for GHGs under 15 NCAC 02D .0544—*Prevention of Significant Deterioration Requirements for Greenhouse Gases* as described above and in the NPRM. Specifically, EPA is approving language under paragraph (a) that will prevent the regulation of GHG-only sources; the adoption of new paragraph (d), regarding the definition of global warming potential for GHGs, and the re-lettering of Section .0544 following the new paragraph (d); the deletion of the term "immediately" from paragraph (b)(1); the adoption of paragraph (o), excluding incorporation of the Biomass Deferral Rule into the July 20, 2011 IBR of 40 CFR 51.166; and adoption of various administrative edits such as the addition of acronyms and typographical corrections throughout the rule. EPA believes that these changes are consistent with the requirements of the CAA and therefore is approving the aforementioned changes into the SIP.

### 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 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 October 7, 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, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 29, 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. Section 52.1770(c), Table (1) is amended under "Subchapter 2D Air Pollution Control Requirements" by revising the entry for "Section .0544" to read as follows:

#### § 52.1770 Identification of plan.

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

recovered from the decomposition of non-fossilized and biodegradable organic material)."'

<sup>9</sup> 62 FR 27968 (May 22, 1997).

emissions resulting from the combustion or decomposition of non-fossilized and biodegradable organic material originating from plants, animals, or micro-organisms (including products, by-products,

residues and waste from agriculture, forestry and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids

(1) EPA APPROVED NORTH CAROLINA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
<b>Subchapter 2D Air Pollution Control Requirements</b>				
<b>Section .0500 Emission Control Standards</b>				
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
Section .0544 .....	Prevention of Significant Deterioration Requirements for Greenhouse Gases.	9/1/2015	8/8/2019, [Insert citation of publication].	The July 20, 2011 incorporation by reference date of 40 CFR 51.166 found in paragraph (o) does not incorporate the text of the federal Biomass Deferral Rule at 51.166(b)(48)(ii)(a).
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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R02-OAR-2019-0157; FRL-9997-59-Region 2]

**Approval of Air Quality Implementation Plans; New York; Cross-State Air Pollution Rule; NO<sub>x</sub> Ozone Season Group 2, NO<sub>x</sub> Annual, and SO<sub>2</sub> Group 1 Trading Programs**

**AGENCY:** Environmental Protection Agency (EPA).  
**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve revisions to the New York State Implementation Plan (SIP) addressing requirements of the Cross-State Air Pollution Rule (CSAPR). Under the CSAPR, large electricity generating units in New York are subject to Federal Implementation Plans (FIPs) requiring the units to participate in CSAPR federal trading programs for ozone season emissions of nitrogen oxides (NO<sub>x</sub>), annual emissions of NO<sub>x</sub>, and annual emissions of sulfur dioxide (SO<sub>2</sub>). This action approves into New York's SIP the State's regulations that replace the default allowance allocation provisions of the CSAPR federal trading programs for ozone season NO<sub>x</sub>, annual NO<sub>x</sub>, and annual SO<sub>2</sub> emissions.

**DATES:** This final rule is effective on August 8, 2019.

**ADDRESSES:** EPA has established a docket for this action under Docket ID number EPA-R02-OAR-2019-0157. 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, 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 form. Publicly available docket materials are available through [www.regulations.gov](http://www.regulations.gov), or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.  
**FOR FURTHER INFORMATION CONTACT:** Kenneth Fradkin, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-3702, or by email at [fradkin.kenneth@epa.gov](mailto:fradkin.kenneth@epa.gov).

**SUPPLEMENTARY INFORMATION**

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**I. Background**

On May 21, 2019 (84 FR 22995 and 84 FR 22972), EPA simultaneously published a proposed rule and a direct final rule to approve New York's November 30, 2018 SIP submittal concerning CSAPR<sup>1</sup> trading programs for ozone-season emissions of NO<sub>x</sub>, annual emissions of NO<sub>x</sub>, and annual emissions of SO<sub>2</sub>. The proposed rule and direct final rule also acted to approve New York's revised list of

<sup>1</sup> Federal Implementation Plans; Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals, 76 FR 48208 (August 8, 2011) (codified as amended at 40 CFR 52.38 and 52.39 and 40 CFR part 97).

definitions that was submitted to the EPA on July 23, 2015.

The EPA received a public comment on the proposed rule and intended to withdraw the direct final rule prior to the effective date of June 20, 2019. However, the EPA inadvertently did not withdraw the direct final rule prior to that date and the rule prematurely became effective on June 20, 2019, revising the New York SIP to include revised versions of Title 6 of the New York Codes, Rules and Regulations (6 NYCRR), Part 200, Subpart 200.1; 6 NYCRR Part 200, Subpart 200.9; 6 NYCRR Part 243; 6 NYCRR Part 244; and 6 NYCRR 245 on that date. In this action, as described in more detail below, the EPA is responding to the public comment submitted on the proposed revisions to New York's SIP, approves the revised versions of these regulations in New York's SIP, and is amending the effective date of the regulations' inclusion into the SIP to correct our failure to withdraw the direct final rule prior to June 20, 2019.

Large Electric Generating Units (EGUs) in New York are subject to CSAPR FIPs that require the units to participate in the federal CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program, the federal CSAPR NO<sub>x</sub> Annual Trading Program, and the federal CSAPR SO<sub>2</sub> Group 1 Trading Program. CSAPR provides a process for the submission and approval of SIP revisions to replace certain provisions of the CSAPR FIPs while the remaining FIP provisions continue to apply. This type of CSAPR SIP is termed an abbreviated SIP.

The New York State Department of Environmental Conservation (DEC) amended portions of Title 6 of the New York Codes, Rules and Regulations to incorporate CSAPR requirements into