

EPA APPROVED LOUISIANA REGULATIONS IN THE LOUISIANA SIP—Continued

State citation	Title/subject	State approval date	EPA Approval date	Comments
Section 509	Prevention of Significant Deterioration.	12/20/2012	11/5/2015 [Insert Federal Register citation].	SIP does not include provisions for permitting of GHGs as effective on 04/20/2011 at LAC 33:III.509(B) definition of "carbon dioxide equivalent emissions", "greenhouse gases", "major stationary source", and "significant". SIP does not include the PM _{2.5} SMC at LAC 33:III.509(I)(5)(a) from the 12/20/2012 adoption. LAC 33:III.509(I)(5)(a) is SIP-approved as of 10/20/2007 adoption.
Chapter 6—Regulations on Control of Emissions Reduction Credits Banking				
Section 603	Applicability	10/20/2007	11/5/2015 [Insert Federal Register citation].	
Section 605	Definitions	10/20/2007	11/5/2015 [Insert Federal Register citation].	
Section 607	Determination of Creditable Emission Reductions.	10/20/2007	11/5/2015 [Insert Federal Register citation].	
Section 613	ERC Balance Sheet	10/20/2007	11/5/2015 [Insert Federal Register citation].	
Section 615	Schedule for Submitting Applications.	10/20/2007	11/5/2015 [Insert Federal Register citation].	

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[FR Doc. 2015-28097 Filed 11-4-15; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2014-0795; FRL-9936-60-Region 4]

Approval and Promulgation of Implementation Plans; North Carolina Infrastructure Requirements for the 2008 8-Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve portions of the November 2, 2012, State Implementation Plan (SIP) submission, provided by the North Carolina Department of Environment and Natural Resources (NC DENR), Division of Air Quality (NCDAQ) for inclusion into the North Carolina SIP.

This final action pertains to the Clean Air Act (CAA or the Act) infrastructure requirements for the 2008 8-hour ozone national ambient air quality standards (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an "infrastructure" SIP. NCDAQ certified that the North Carolina SIP contains provisions that ensure the 2008 8-hour ozone NAAQS is implemented, enforced, and maintained in North Carolina. With the exception of provisions pertaining to prevention of significant deterioration (PSD) permitting, interstate transport requirements, and state boards requirements, EPA is taking final action to approve North Carolina's infrastructure SIP submission provided to EPA on November 2, 2012, as satisfying the required infrastructure elements for the 2008 8-hour ozone NAAQS.

DATES: This rule is effective December 7, 2015.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2014-0795. 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:

Nacosta C. Ward, 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. Ms. Ward can be reached via telephone at (404) 562–9140 or via electronic mail at ward.nacosta@epa.gov.

SUPPLEMENTARY INFORMATION:**I. Background**

Upon promulgation of a new or revised NAAQS, sections 110(a)(1) and (2) of the CAA require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance for that new NAAQS. Section 110(a) of the CAA generally requires states to make a SIP submission to meet applicable requirements in order to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. For additional information on the infrastructure SIP requirements, see the proposed rulemaking published on March 13, 2015. (80 FR 13312)

On March 13, 2015, EPA proposed to approve portions of North Carolina's November 2, 2012, 2008 8-hour ozone NAAQS infrastructure SIP submission with the exception of the PSD permitting requirements for major sources of section 110(a)(2)(C) and (J), the interstate transport requirements of section 110(a)(2)(D)(i)(I) and (II) (prongs 1 through 4), and the state board requirements of 110(E)(ii). *See* 80 FR 13312.

II. Response to Comments

EPA received one set of comments on the March 13, 2015, proposed rulemaking to approve portions of North Carolina's infrastructure SIP submission intended to meet the CAA requirements for the 2008 8-hour ozone NAAQS. A summary of the comments and EPA's responses are provided below.

As an initial matter, the Commenter included interpretations of section 110(a)(2)(A) of the CAA in a background section, but this section did not include comments specific to EPA's March 13, 2015 proposed action on the North Carolina infrastructure SIP submittal. EPA provided an analysis of these same interpretations of section 110(a)(2)(A) in an October 16, 2014, rulemaking regarding the infrastructure SIP of Maryland for 2008 8-hour ozone NAAQS. (*See* 79 FR 62010) and we are

incorporating those responses by reference. Specifically, please see EPA's Response 2, which addresses the Commenter's interpretation regarding CAA plain language; Response 3, which addresses the Commenter's interpretation of the legislative history of the CAA; Response 5, which addresses the Commenter's interpretation of EPA regulations (40 CFR 51.112); Response 6, which addresses the Commenter's interpretation of EPA interpretations of section 110 in infrastructure SIP rulemakings; and Response 4, which addresses the Commenter's interpretation of Supreme Court and appellate court decisions.

Comment 1: The Commenter contends that North Carolina's infrastructure submission "fails to include stringent enough emission limits and other restrictions on sources of ozone precursors, like nitrogen oxides ("NO_x"), to ensure that areas not designated nonattainment will attain and maintain the 2008 eight-hour ozone NAAQS." Based on this contention, the Commenter then asserts that "North Carolina's I–SIP does not meet the basic infrastructure requirements under section 110(a)(2) and must be disapproved."

Response 1: EPA disagrees with the Commenter's contention that NC DAQ's 2008 8-hour ozone infrastructure SIP submission is not approvable with respect to section 110(a)(2)(A) because it fails to include enforceable emission limitations sufficient to ensure attainment and maintenance of the 2008 8-hour ozone NAAQS in attainment areas. In light of the structure of the CAA, EPA's long-standing position regarding infrastructure SIPs is that they are general planning SIPs to ensure that the state has adequate resources and authority to implement a NAAQS in general throughout the state and not detailed attainment and maintenance plans for each individual area of the state.

EPA's interpretation that infrastructure SIPs are more general planning SIPs is consistent with the statute as understood in light of its history and structure. When Congress enacted the CAA in 1970, it did not include provisions requiring states and EPA to label areas as attainment or nonattainment. Rather, states were required to include all areas of the state in "air quality control regions" (AQCRs) and section 110 set forth the core substantive planning provisions for these AQCRs. At that time, Congress anticipated that states would be able to address air pollution quickly pursuant to the very general planning provisions

in section 110 and could bring all areas into compliance with the NAAQS within five years. Moreover, at that time, section 110(a)(2)(A)(i) specified that the section 110 plan provide for "attainment" of the NAAQS and section 110(a)(2)(B) specified that the plan must include "emission limitations, schedules, and timetables for compliance with such limitations, and such other measures as may be necessary to insure attainment and maintenance [of the NAAQS]." In 1977, Congress recognized that the existing structure was not sufficient and many areas were still violating the NAAQS. At that time, Congress for the first time added provisions requiring states and EPA to identify whether areas of the state were violating the NAAQS (*i.e.*, were nonattainment) or were meeting the NAAQS (*i.e.*, were attainment) and established specific planning requirements in section 172 for areas not meeting the NAAQS. In 1990, many areas still had air quality not meeting the NAAQS and Congress again amended the CAA and added yet another layer of more prescriptive planning requirements for each of the NAAQS, with the primary provisions for ozone in section 182. At that same time, Congress modified section 110 to remove references to the section 110 SIP providing for attainment, including removing pre-existing section 110(a)(2)(A) in its entirety and renumbering subparagraph (B) as section 110(a)(2)(A). Additionally, Congress replaced the clause "as may be necessary to insure attainment and maintenance [of the NAAQS]" with "as may be necessary or appropriate to meet the applicable requirements of this chapter." Thus, the CAA has significantly evolved in the more than 40 years since it was originally enacted. While at one time section 110 did provide the only detailed SIP planning provisions for states and specified that such plans must provide for attainment of the NAAQS, under the structure of the current CAA, section 110 is only the initial stepping-stone in the planning process for a specific NAAQS. And, more detailed, later-enacted provisions govern the substantive planning process, including planning for attainment of the NAAQS. EPA believes that section 110(a)(2)(A) is reasonably interpreted to require states to submit SIPs that reflect the first step in their planning for attaining and maintaining a new or revised NAAQS and that they contain enforceable control measures and a demonstration that the state has the available tools and authority to

develop and implement plans to attain and maintain the NAAQS.

As stated in EPA's proposed approval for this rule, to meet section 110(a)(2)(A), North Carolina submitted a list of existing emission reduction and other control measures in the SIP that control emissions of volatile organic compounds (VOCs) and NO_x. The submission also identifies North Carolina's statutory authority to adopt emission control standards to meet established air quality standards such as the 2008 ozone NAAQS. Therefore, EPA believes North Carolina's submission appropriately reflects the first step in the State's planning process for attaining and maintaining the 2008 ozone NAAQS and meets the requirements of section 110(a)(2)(A) because the SIP contains enforceable control measures for ozone precursors and the submission provides that North Carolina has the tools to develop and implement measures as may be needed to attain and maintain the 2008 8-hour ozone standard.

Comment 2: The Commenter contends that recent monitoring of the 2008 ozone NAAQS in areas not designated nonattainment confirms that North Carolina's existing emission limitations are insufficient to attain and maintain the NAAQS. The Commenter specifically contends that the exceedances of the ozone NAAQS with 2010–2012 data, in areas [Forsyth and Guilford counties] not designated nonattainment under the standard demonstrate that North Carolina's existing emissions limitations cannot ensure attainment and maintenance of the eight-hour ozone standard.

Response 2: EPA disagrees with the Commenter's contention that NCDAQ's 2008 8-hour ozone infrastructure SIP submission is not approvable with respect to section 110(a)(2)(A) because of the monitor design values noted by the Commenter. While EPA shares the Commenter's concern regarding any county monitoring violations of the NAAQS, such concerns are outside the scope of what is germane to an evaluation of section 110(a)(2)(A) for an infrastructure SIP submission. With regard to the 2010–2012 design values for Forsyth and Guilford Counties as mentioned by the Commenter, Forsyth and Guilford Counties attained the 2008 8-hour ozone NAAQS with 2011–2013 data and continue to attain with preliminary 2013–2015 data.

Regardless, EPA does not believe that this 2010–2012 monitoring data referenced by the Commenter provides an appropriate basis upon which to disapprove North Carolina's infrastructure SIP as it relates to section

110(a)(2)(A) requirements. Pursuant to section 110(a)(2)(A), an infrastructure SIP submission must include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the Act. The Commenter, however, seems to believe that in the context of an infrastructure SIP submission, section 110(a)(2)(A) requires the state to submit control measures sufficient to demonstrate attainment in an area designated attainment but that has a recent monitored violation of the NAAQS. EPA does not believe that this is a reasonable interpretation of the provision with respect to infrastructure SIP submissions. Rather, EPA believes that the proper inquiry at this juncture is whether the state has met the basic structural SIP requirements appropriate at the point in time EPA is acting upon it. The CAA provides states with three years to develop infrastructure SIPs and states cannot reasonably be expected to address the annual change in an area's design value for each year over that period, nor to predict the air quality data in periods after development and submission of the SIPs.

Further, the Act provides states and EPA with other tools to address concerns that arise with respect to violations of the NAAQS in a designated attainment area, such as the authority to redesignate areas pursuant to section 107(d)(3), the authority to issue a "SIP Call" pursuant to section 110(k)(5), or the general authority to approve SIP revisions that can address such violations of the NAAQS through other appropriate measures. As described above, EPA believes that North Carolina's infrastructure submission is sufficient because it appropriately addresses the structural SIP requirements of section 110(a)(2)(A) by including enforceable emission control measures and the authority to adopt and implement additional measures, if needed.

Comment 3: The Commenter contends that North Carolina's infrastructure SIP must ensure that proper mass limitations and short term averaging periods are imposed on certain specific large sources of NO_x such as power plants. Moreover, the Commenter contends that emission limits must apply at all times, including during periods of start-up, shutdown, and malfunction (SSM), to ensure that all areas of North Carolina attain and

maintain the 2008 eight-hour ozone NAAQS. Absent such limits, the Commenter contends that an I-SIP submission may not be approved. Specifically the Commenter contends that enforceable emission limitations for the State's coal fired EGUs [electric generating units] should be set on a pounds per hour ("lb/hr") basis, based on, at most, a corresponding 0.07 lb/MMBtu limit. The Commenter further contends that setting a lb/hr limit will ensure consistent protection of the ambient air quality regardless of whether the nominal maximum heat input capacity for the unit is accurate or changes in the future and addresses the issue of variations in mass emissions during startup and shutdown so that even if the NO_x emission rate in lb/MMBtu is higher during startup and shutdown (for instance when selective catalytic reduction technology is not being engaged), hourly emissions of NO_x would not cause or contribute to violations of the NAAQS.

Response 3: EPA appreciates the commenter's support of North Carolina's pursuit of additional NO_x emission limitations at coal-fired power plants in North Carolina. However, EPA does not believe that approval of the infrastructure SIP is contingent on the State adopting additional controls for the State's coal fired EGUs. Congress established the CAA such that each state has primary responsibility for assuring air quality within the state and determining an emission reduction program for its areas subject to EPA approval, with such approval dependent upon whether the SIP as a whole meets the applicable requirements of the CAA. See *Commonwealth of Virginia, et al., v. EPA*, 108 F.3d 1397, 1410 (D.C. Cir. 1997) (citing *Natural Resources Defense Council, Inc. v. Browner*, 57 F.3d 1122, 1123 (D.C. Cir. 1995)). EPA cannot condition approval of the North Carolina infrastructure SIP upon inclusion of a particular emission reduction program as long as the SIP otherwise meets the requirements of the CAA. As explained in the proposal and in this final action, North Carolina does not need to adopt additional emission control requirements in order to meet the requirements in section 110(a)(2)(A).

Furthermore, we disagree with the commenter's contention that EPA cannot approve an infrastructure SIP submission without ensuring that it contains emission limits applicable at all times, including during periods of SSM. For the reasons stated in the proposal, EPA does not believe that an action on a state's infrastructure SIP is necessarily the appropriate type of action to address this type of deficiency.

See 80 FR at 13315–17. Rather, as described in the proposal, EPA believes that the authority Congress provided to EPA under section 110(k)(5), for example, allows EPA to take appropriately tailored action. Indeed, EPA recognizes that a number of states have existing SSM provisions contrary to the CAA and EPA guidance and, in the time since the proposal for this action, has finalized a separate action addressing those state regulations. See “State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA’s SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction,” 80 FR 33840 (June 12, 2015) (SSM SIP Action of 2015). In the SSM SIP Action of 2015, EPA concluded that certain SIP provisions in 36 states (applicable in 45 statewide and local jurisdictions) are substantially inadequate to meet CAA requirements and thus issued a “SIP call” for each of those 36 states pursuant to CAA section 110(k)(5).¹ North Carolina’s unlawful SSM provisions are covered by that action. See, e.g., *id.* at 33964. EPA continues to believe that existing, unlawful provisions related to excess emissions during SSM events should be addressed through more appropriate authorities provided by Congress; not in piecemeal fashion, in the context of reviewing a state’s infrastructure SIP submission.

Comment 4: The Commenter contends that, to comply with section 110(a) and avoid additional nonattainment designations for areas impacted by ozone levels above the standard, “EPA must disapprove North Carolina’s infrastructure SIP to ensure that large sources of NO_x and VOCs cannot cause or contribute to exceedances of the 8-hour ozone NAAQS and, thereby prohibit implementation, attainment, and maintenance of the NAAQS throughout all areas of the State, in violation of CAA section 110(a)(1) and (2)(A).” The commenter states that the inadequacies of the SIP are highlighted by recent monitoring data.

Response 4: EPA disagrees that it must disapprove North Carolina’s submittal to ensure that large sources of

NO_x and VOC do not contribute to exceedances of the 8-hour ozone NAAQS such that additional areas would need to be designated nonattainment in the future. In essence, this comment suggests that as part of the 110(a)(2)(A) SIP, the state must demonstrate that all areas of the state will maintain the standard in the future. As explained previously, we disagree that the language and structure of the CAA mandate such a result. The CAA recognizes that air quality may change over time, such as an area slipping from attainment to nonattainment or changing from nonattainment to attainment and has provisions addressing such changes. These include provisions providing for redesignation in section 107(d) and provisions in section 110(k)(5) allowing EPA to call on the state to revise its SIP, as appropriate.

Under CAA section 110(a)(2)(H), the State must demonstrate in its infrastructure SIP submission that it has the authority to revise of its SIP, including as needed to address any finding by EPA that the SIP is substantially inadequate to attain the NAAQS. To satisfy CAA section 110(a)(2)(H), North Carolina’s submittal cites to statutory authority that allows the state to adopt standards and plans to implement the requirements of the CAA and Federal implementing regulations, and to specifically establish lower emissions limits if needed to attain or maintain the ozone NAAQS. Therefore, the CAA provides appropriate tools to address changes in air quality over time and North Carolina’s submittal also appropriately addresses the elements needed to address any changes in air quality over time.

Comment 5: The Commenter contends that ozone concentrations will be exacerbated by ongoing climate change and that North Carolina’s existing emission limits are not stringent enough to adequately protect the public from the dangers posed by exposure to elevated ozone concentrations. The Commenter contends that this underscores the need for North Carolina to impose tighter emission limits if it hopes to attain and maintain the current NAAQS for ozone in areas not currently designated nonattainment.

Response 5: EPA agrees that climate change is a serious environmental issue; however, for the reasons provided in the previous responses, we disagree that states are required to anticipate and plan for possible future nonattainment within each area of the state as part of the infrastructure SIP.

We note that given the potential wide-ranging impacts of climate change on air quality planning, EPA is developing climate adaptation implementation plans to assess the key vulnerabilities to our programs (including how climate change might affect attainment of national ambient air quality standards) and to identify priority actions to minimize these vulnerabilities. With respect to climate impacts on future ozone levels, EPA’s Office of Air and Radiation has identified as a priority action the need to adjust air quality modeling tools and guidance as necessary to account for climate-driven changes in meteorological conditions and meteorologically-dependent emissions. These efforts are just beginning.

Additionally, as previously stated regarding tighter emission limits, EPA believes that section 110(a)(2)(A) is reasonably interpreted to require states to submit SIPs that reflect the first step in their planning for attaining and maintaining a new or revised NAAQS and that they contain enforceable control measures and a demonstration that the state has the available tools and authority to develop and implement plans to attain and maintain the NAAQS. As explained above, to the extent that climate change or any other factor exacerbates air quality in the future, the CAA provides the appropriate tools to assess and address these conditions.

III. Today’s Action

In this rulemaking, EPA is taking final action to approve the portions of North Carolina’s infrastructure submission as demonstrating that the State meets the applicable requirements of sections 110(a)(1) and (2) of the CAA for the 2008 8-hour ozone NAAQS, with the exception of the PSD permitting provisions in sections 110(a)(2)(C), prong 3 of D(i) and (J), the interstate transport requirements of section 110(a)(2)(D)(i)(I) and (II) (prongs 1 through 4), and the state board requirements of section 110(E)(ii).

IV. Final Action

With the exceptions described above, EPA is taking final action to approve North Carolina’s November 2, 2012, infrastructure SIP submission because it addresses the required infrastructure elements for the 2008 8-hour ozone NAAQS. NCDAQ has addressed the elements of the CAA 110(a)(1) and (2) SIP requirements pursuant to section 110 of the CAA to ensure that the 2008 8-hour ozone NAAQS is implemented, enforced, and maintained in North Carolina.

¹ The SSM SIP Action of 2015 also embodies EPA’s updated SSM Policy as it applies to SIP provisions and provides guidance to states for compliance with CAA requirements for SIP provisions applicable to excess emissions during SSM events. EPA has encouraged any state with deficient SSM provisions to correct those provisions as soon as possible (as some states already have), but in no case longer than the 18-month timeframe provided in the SSM SIP Action of 2015.

V. 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. Accordingly, 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);

- 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 January 4, 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. 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: October 22, 2015.

Heather McTeer Toney,
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 (e) is amended by adding an entry for "110(a)(1) and (2) Infrastructure Requirements for the 2008 8-Hour Ozone National Ambient Air Quality Standards" at the end of the table to read as follows:

§ 52.1770 Identification of plan.

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(e) * * *

EPA-APPROVED NORTH CAROLINA NON-REGULATORY PROVISIONS

Provision	State effective date	EPA Approval date	Federal Register citation	Explanation
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
110(a)(1) and (2) Infrastructure Requirements for the 2008 8-Hour Ozone National Ambient Air Quality Standards.	11/2/2012	11/5/2015 [Insert Federal Register citation].	With the exception of sections: 110(a)(2)(C) and (J) concerning PSD permitting requirements; 110(a)(2)(D)(i)(I) and (II) (prongs 1 through 4) concerning interstate transport requirements; 110(a)(2)(E)(ii) concerning state board requirements.

[FR Doc. 2015-28098 Filed 11-4-15; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52****[EPA-R05-OAR-2009-0807; FRL-9936-54-Region 5]****Air Plan Approval; Ohio; Test Methods; Error Correction****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is determining that a portion of an October 26, 2010, action was in error and is making a correction pursuant to section 110(k)(6) of the Clean Air Act. The October 26, 2010, EPA action approved various revisions to Ohio regulations in the EPA approved state implementation plan (SIP). The revisions were intended to consolidate air quality standards into a new chapter of rules and to adjust the cross references accordingly in various related Ohio rules. These changes included a specific revision to the cross reference in the Ohio rule pertaining to methods for measurements for comparison with the particulate matter air quality standards. This final correction action removes any misperception that EPA approved any revision to the pertinent rule other than the revised cross reference. This action will therefore assure that the codification of the October 26, 2010, action is in accord with the actual substance of the action.

DATES: This final rule is effective on December 7, 2015.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2009-0807. 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 (CBI) 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 Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We

recommend that you telephone John Summerhays, Environmental Scientist, at (312) 886-6067 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6067, summerhays.john@epa.gov.

SUPPLEMENTARY INFORMATION: This supplementary information section is arranged as follows:

- I. Summary of EPA's Proposed Rulemaking
- II. Comments and EPA's Responses
- III. What action is EPA taking?
- IV. Statutory and Executive Order Reviews

I. Summary of EPA's Proposed Rulemaking

On June 4, 2003, Ohio submitted a variety of revisions to the EPA approved version of Ohio Administrative Code (OAC) 3745-17 in the state's SIP, which regulates particulate matter and opacity from affected sources. While EPA subsequently approved many of these revisions, EPA published action on June 27, 2005, proposing to disapprove specific submitted revisions in OAC 3745-17-03(B) that in EPA's view relaxed existing SIP opacity limitations without an adequate analysis under section 110(l) or section 193 of the Clean Air Act.¹ Consistent with this proposed disapproval, the version of OAC 3745-17-03(B) submitted by the state on June 4, 2003, was not, and is not, an approved provision of the Ohio SIP.

On September 10, 2009, for purposes of consolidating its existing SIP rules identifying applicable air quality standards, and to adjust the cross references between rules accordingly, Ohio submitted additional revisions to several of its existing rules to EPA for approval into the SIP. Most notably, these rule revisions included a modification to the existing cross reference in OAC 3745-17-03(A), which was necessary because the ambient particulate matter measurement method identified in this paragraph was for purposes of assessing attainment with the ambient air quality standards now located in OAC 3745-25-02, rather than in OAC 3745-17-02.

On October 26, 2010, at 75 FR 65572, EPA published a direct final action approving the relevant revisions in the September 10, 2009, submission. In the preamble and in the codification of the October 26, 2010, action, EPA

erroneously listed the approved SIP revisions as including the entirety of OAC 3745-17-03, rather than specifying more precisely that the approval as it pertained to OAC 3745-17-03 applied only to the revised cross reference in OAC 3745-17-03(A). This error left the misimpression that EPA had approved other significant substantive revisions in OAC 3745-17-03, including those in OAC 3745-17-03(B) that EPA had previously proposed to disapprove. The codification in the October 26, 2010, action with respect to OAC 3745-17-03 should have been explicitly limited to OAC 3745-17-03(A), to reflect the EPA approval of only the revised cross reference.

EPA subsequently recognized that the codification erroneously left the misimpression that it had approved more of OAC 3745-17-03 than the revision of the cross reference in OAC 3745-17-03(A). On April 3, 2013, at 78 FR 19990, EPA published action to correct the error. EPA took this action pursuant to its general rulemaking authority under Administrative Procedures Act section 553. Two parties challenged EPA's April 3, 2013, action, and one of these parties also filed a petition for reconsideration of that action, objecting that EPA failed to correct the error in the October 26, 2010, action in accordance with the procedures of section 110(k)(6) of the Clean Air Act.

EPA responded to the petition for reconsideration by agreeing to take this action pursuant to section 110(k)(6), as requested by the petitioner. Accordingly, EPA published proposed rulemaking on February 7, 2014, using its authority under section 110(k)(6) to correct errors in its rulemaking of October 26, 2010.² Given the petitioners' expressed interest in commenting on EPA's action, EPA elected to use its authority under section 110(k)(6) for this action because, under these circumstances, it would provide the best mechanism to correct the apparent misunderstandings concerning the error in the October 26, 2010, action.

EPA's February 7, 2014, proposal provides an extensive description of the error in its October 26, 2010, rulemaking, provided in subsections entitled, "What was the error in description and codification?", "What precipitated this error?", and "Why was it evident that this was an error?" It is not necessary to repeat that detailed explanation here. EPA proposed to correct the error to remove any misimpression in its October 26, 2010,

¹ See 70 FR 36901 (June 27, 2005).² See 79 FR 7412 (Feb. 7, 2014).