

Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because it establishes a security zone.

A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" (CED) are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 165.1190 to read as follows:

§ 165.1190 Security Zone; San Francisco Bay, Oakland Estuary, Alameda, CA.

(a) *Location.* The following area is a security zone: All navigable waters of the Oakland Estuary, California, from the surface to the sea floor, approximately 50 yards into the Oakland Estuary surrounding the Coast Guard Island Pier. The perimeter of the security zone follows the same perimeter as the floating security barrier installed around the Coast Guard Island pier. The perimeter of the security barrier is located along the following coordinates: commencing at a point on land approximately 50 yards northwest of the northwestern end of the Coast Guard Island Pier at latitude 37°46'53.60" N and longitude 122°15'06.10" W; thence to the edge of the navigable channel at latitude 37°46'51.83" N and longitude 122°15'07.47" W; thence to a position approximately 10 yards into the charted navigation channel at latitude 37°46'51.27" N and longitude 122°15'07.22" W; thence closely paralleling the edge of the charted navigation channel to latitude 37°46'46.75" N and longitude 122°15'00.21" W; thence closely paralleling the edge of the charted navigation channel to a point approximately 20 yards into the charted navigation channel at latitude 37°46'42.36" N and longitude 122°14'51.55" W; thence to a point on land approximately 50 yards southeast of the southeastern end of the Coast Guard Island Pier at latitude 37°46'44.80" N and longitude 122°14'48.80" W; thence northwest along the shoreline back to the beginning point.

(b) *Regulations.* (1) Under § 165.33, entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, San Francisco Bay, or his designated representative.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 415–399–3547 or on VHF–FM channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply

with the instructions of the Captain of the Port or his designated representative.

(c) *Enforcement.* The Captain of the Port will enforce this security zone and may be assisted in the patrol and enforcement of this security zone by any Federal, State, county, municipal, or private agency.

Dated: August 3, 2005.

W.J. Uberti,

Captain, U.S. Coast Guard, Captain of the Port, San Francisco Bay, California.

[FR Doc. 05–16515 Filed 8–19–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R04–OAR–2004–NC–0005–200513, FRL–7956–8]

Approval and Promulgation of Air Quality Implementation Plans; North Carolina; Attainment Demonstration of the Mountain, Unifour, Triad and Fayetteville Early Action Compact Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving revisions to the State Implementation Plan (SIP) submitted by the State of North Carolina, through the Department of Environment and Natural Resources (DENR) on December 21, 2004, for the four Early Action Compact (EAC) areas in North Carolina: the Mountain, Unifour, Triad and Fayetteville areas (the North Carolina EAC Areas). The SIP revisions meet the requirements for the North Carolina EAC Areas to attain and maintain the 8-hour ozone national ambient air quality standard (the 8-hour ozone standard) as described in the EAC Protocol and related regulations. EPA is also now approving the photochemical modeling used by North Carolina to support the attainment and maintenance demonstration of the 8-hour ozone standard in the North Carolina EAC Areas.

In this action, EPA is not finalizing its proposed rulemaking to defer the effective date of the nonattainment designations for EAC areas. In a separate action, published on June 8, 2005, EPA proposed to defer the effective date of the nonattainment deferred designation for EAC areas until December 31, 2006 (69 FR 23858). EPA final action on the deferral is expected to be published before September 30, 2005.

DATES: This rule will be effective September 21, 2005.

ADDRESSES: EPA has established a docket for this action under Regional Material in EDocket (RME) ID No. R04-OAR-2004-NC-0005. The EAC Protocol can be found in RME ID No. R04-OAR-2004-NC-0005. The Protocol can also be found at <http://www.epa.gov/air/eac/>. All documents in the docket are listed in the RME index at <http://docket.epa.gov/rmepub/>. Once in the system, select "quick search," then key in the appropriate RME Docket identification number. 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 in RME or in hard copy at the Regulatory Development Section, Air Planning 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: Jane Spann, Regulatory Development Section, Air Planning Branch, 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) 562-9029. Ms. Spann can also be reached via electronic mail at spann.jane@epa.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Background
- II. Today's Action
- III. Response to Comments
- IV. Final Action
- V. Statutory and Executive Order Reviews

I. Background

On May 26, 2005, EPA proposed approval of North Carolina's December 21, 2004, SIP revisions demonstrating attainment and maintenance of the 8-hour ozone standard, 0.08 parts per million (ppm), in the North Carolina EAC Areas by December 31, 2007.¹

Additional information regarding the specific SIP revisions being approved today is available in the proposed rule (70 FR 30389, May 26, 2005) included in this Docket. The submitted revisions were necessary, pursuant to the April 30, 2004, designations of the North Carolina EAC Areas for the 8-hour ozone standard. The SIP revisions are consistent with the requirements established in the EAC Protocol and related regulations. For further information on the designation process and the North Carolina EAC designations, please see 69 FR 23858 (April 30, 2004).² EPA received public comments for thirty days on the SIP revisions being approved today. The comments will be discussed below in Part III., "Response to Comments."

Summary of EAC Process

An EAC is an agreement between a state, local governments, and EPA to implement measures not necessarily required by the Clean Air Act (CAA) in order to achieve cleaner air as soon as possible.³ Communities close to or exceeding the 8-hour ozone standard, that have elected to enter into an EAC, have started reducing air pollution at least two years sooner than required by the CAA. In many cases, these reductions will be achieved by local air pollution control measures not otherwise mandated under the CAA. In accordance with the EAC Protocol, North Carolina submitted an EAC for the Unifour area on December 19, 2002, the Fayetteville area on December 20, 2002, and the Triad and Mountain areas on December 23, 2002. The compacts themselves were signed by state air quality officials, representatives of the local communities, and the Regional Administrator for EPA Region 4. The EAC program was designed for areas that approached or monitored violations of the 8-hour ozone standard, but were in attainment for the 1-hour ozone national ambient air quality standard (the 1-hour ozone standard). The 1-hour ozone standard will be revoked for counties in EAC areas one year after the effective dates of their respective 8-hour ozone designations. 40 CFR 50.9(b).

As part of the EAC program, EPA deferred the effective date of the

nonattainment designations for EAC areas that were violating the 8-hour ozone standard, but continue to meet the milestones described in the EAC Protocol. Details of this deferral were published in the **Federal Register** on April 30, 2004 (69 FR 23858). On June 8, 2005, EPA proposed to extend the deferred effective date of the nonattainment designation through December 31, 2006 (70 FR 33409), for EAC areas that have met their obligations. A subsequent action will continue the deferral until December 31, 2007, when attainment evaluations will begin. Pursuant to the EAC Protocol, the designation process is scheduled to be completed by April 15, 2008. To date, the North Carolina EAC Areas have met all EAC milestones. In April, 2008, it is anticipated that EAC areas with air quality monitoring data showing attainment for the years 2005-2007, that have also met all the compact milestones, will be designated attainment for the 8-hour ozone standard. EPA believes that early planning and implementation of control measures that improve air quality will likely accelerate protection of public health. The EAC program allows participating state and local entities to make decisions that will accelerate meeting the new 8-hour ozone standard using a mix of local, State, and Federal measures. All of the measures being adopted today as part of the SIP revisions will be mandatory and federally enforceable.

Brief Summary of Control Measures and Modeling

The details of the SIP revisions being approved today are available for review under RME ID No. R04-OAR-2004-NC-0005. In addition, the measures discussed in this paragraph are applied differently to different areas depending on the specific area's designation (*i.e.*, unclassifiable/attainment or nonattainment-deferred). Generally, the SIP revisions include emissions inventory, modeling, control strategies, and maintenance for growth elements as required by the EAC Protocol. With regard to control measures, North Carolina's SIP revisions include Federal, State, and local control measures. The Federal control measures include, among others, Tier 2 vehicle standards and low sulfur fuel. The State of North Carolina's Clean Smokestack's Act (a recently enacted state law) is an example of a statewide control measure being approved as part of the SIP revisions. Other state control measures, such as expansion of the statewide vehicle inspection and maintenance program, and the NO_x SIP Call Rule, are

¹ The 8-hour ozone standard was promulgated on July 18, 1997 (62 FR 38856).

² As discussed in the April 30, 2004 designations and the May 26, 2005 proposal for the North Carolina SIP revisions, the North Carolina EAC Areas include counties designated as unclassifiable/attainment and nonattainment-deferred. The specific measures included in the SIP revisions may be different depending on the specific county's designation.

³ Further information about the EAC program is available in the EAC Protocol and prior **Federal Register** notices available at <http://www.epa.gov/air/eac/>.

already part of the SIP. Implementation of the state measures will occur at a local level through county involvement in both implementation and enforcement. The local control measures include, among others, eliminating the use of coal-fired boilers during the ozone season at an RJ Reynolds facility in the Triad EAC area, truck stop electrification, and local ordinances regarding landscaping. All of these measures, including the local measures, will be enforceable once they are incorporated into the SIP.

In addition to control measures, the North Carolina SIP revisions also include a maintenance for growth plan that meets and exceeds the minimum requirements of the EAC Protocol for such a plan. The EAC Protocol requires that maintenance be demonstrated through 2012. In summary, the North Carolina plan demonstrates attainment until 2017, commits to a mid-point evaluation in 2012, and commits to develop a second 10-year maintenance plan from 2017–2027, among other elements.

The State of North Carolina used a process known as photochemical modeling to evaluate attainment and maintenance of the 8-hour ozone standard. Photochemical modeling performed by North Carolina used control measures to model attainment and maintenance of the 8-hour ozone standard through 2017, passing the attainment test for 2007, 2012, and 2017. Photochemical modeling is consistent with the EAC Protocol and the EPA Draft modeling guidance that was provided to EAC areas.⁴ In summary, the North Carolina modeling was based upon base year emissions data from specific days in 1995, 1996, and 1997, with a “current” year of 2000. For further information on North Carolina’s modeling, see RME ID No. R04–OAR–2004–NC–0005.

II. Today’s Action

Today we are taking final action to approve revisions to the North Carolina SIP under sections 110 and 116 of the CAA, 42 U.S.C. 7410 and 7416. The SIP revisions are consistent with the EAC Protocol and related regulations. These revisions demonstrate attainment of the 8-hour ozone standard within the North Carolina EAC Areas by 2007, maintain it for five or more years beyond 2007, and incorporate the control measures developed by these EAC Areas into the North Carolina SIP.

III. Response to Comments

EPA Region 4 received a number of comments in response to the May 26, 2005, proposal to approve the North Carolina EAC Area SIP revisions. The majority of the comments expressed support for the EAC process and the goal of clean air sooner. Several commenters further noted that the measures included in the SIP revisions demonstrate attainment of the ozone standard by December 31, 2007. These commenters supported EPA’s proposal to approve the North Carolina EAC Area SIP revisions. EPA received one comment that raised concerns about EPA’s proposal to approve the North Carolina EAC Area SIP revisions, although the issues raised by this commenter were not directly relevant to the May 26, 2005, proposal.

In the only unsupportive comment received, the commenter commended North Carolina for the steps it has taken to improve air quality, but noted opposition to today’s action for two reasons. First, the SIP revisions provide for the deferment of a nonattainment designation until a future date potentially as late as December 31, 2007; second, the revisions relieve the area of obligations under Title I, Subpart D of the CAA. These two issues are directly related to the proposed deferral of the nonattainment designations for the North Carolina EAC Areas, published on June 8, 2005 (70 FR 33409), and not to today’s approval of the actual SIP revisions. In addition, these issues were raised by the same commenter to EPA in response to the June 8, 2005, deferral proposal. Because this comment relates to deferral issues, and was also submitted in response to the proposed deferral, it will be responded to by EPA in our subsequent rulemaking addressing the deferred effective date for nonattainment designations for EAC areas. When published, this final deferral rule will be available on the EAC Web site <http://www.epa.gov/air/eac/>. Notably, contrary to the comment, today’s action neither provides for deferral of the nonattainment designation nor relieves an area from obligations under Title I, Subpart D of the CAA.

IV. Final Action

EPA is approving the revisions to the North Carolina SIP submitted on December 21, 2004, pursuant to the EAC Protocol and resulting in emission reductions needed to attain and maintain the 8-hour ozone standard in the Mountain, Unifour, Triad and Fayetteville EAC Areas.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus

⁴ This guidance can be found at <http://www.epa.gov/ttn/naaqs/ozone/eac/index.htm#Guidance>.

standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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 rule 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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 21, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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 CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide,

Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 15, 2005.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 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(e) is amended by adding a new entry at the end of the table for "North Carolina Attainment Demonstration of the Mountain, Unifour, Triad and Fayetteville Early Action Compact Areas" to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(e) * * *

EPA APPROVED NORTH CAROLINA NON-REGULATORY PROVISIONS

Provision	State effective date	EPA approval date	Federal Register citation
* * *	* * *	* * *	* * *
Attainment Demonstration of the Mountain, Unifour, Triad and Fayetteville Early Action Compact Areas.	December 21, 2004	September 21, 2005	[Insert first page number of publication].

[FR Doc. 05-16596 Filed 8-19-05; 8:45 am]
BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R06-OAR-2005-TX-0010; FRL-7955-8]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Attainment Demonstration of the San Antonio Early Action Compact Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving revisions to the State Implementation Plan (SIP) submitted by the Chairman of the Texas Commission on Environmental Quality (TCEQ) on December 6, 2004. The revisions demonstrate attainment of the 8-hour ozone standard and incorporate the San Antonio Early Action Compact (EAC) Clean Air Plan into the Texas SIP. EPA is approving the photochemical

modeling in support of the attainment demonstration of the 8-hour ozone standard within the San Antonio EAC area and is approving the associated control measures. These actions strengthen the SIP in accordance with the requirements of sections 110 and 116 of the Federal Clean Air Act (the Act), and will result in emission reductions needed to achieve attainment of and maintain the 8-hour National Ambient Air Quality Standard (NAAQS) for ozone.

DATES: This final rule is effective on September 21, 2005.

ADDRESSES: EPA has established a docket for this action under Regional Materials in EDocket (RME) ID No. R06-OAR-2005-TX-0010. All documents in the docket are listed in the RME index at <http://docket.epa.gov/rnepub/>; once in the system, select "quick search," then type in the appropriate RME docket identification number. Although listed in the index, some information is not publicly available, *i.e.*, confidential business information or other information the disclosure of which 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 in RME or in hard copy at the Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below, or Mr. Bill Deese at 214-665-7253, to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cents per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment: