ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2005–0534–201113; FRL–9449–8]

Approval and Promulgation of Implementation Plans North Carolina: Prevention of Significant Deterioration and Nonattainment New Source Review Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve revisions to the North Carolina State Implementation Plan (SIP) submitted by the State of North Carolina in three submittals dated November 30, 2005, March 16, 2007, and June 20, 2008. The revisions modify North Carolina's Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) permitting regulations in the SIP to address changes to the federal New Source Review (NSR) regulations, which were promulgated by EPA on December 31, 2002, and reconsidered with minor changes on November 7, 2003 (collectively, these two final actions are referred to as the ''2002 NSR Reform Rules''). In addition, the revisions address an update to the NSR regulations promulgated by EPA on November 29, 2005 (hereafter referred to as the Ozone Implementation NSR Update) relating to the implementation of the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS). EPA proposed to approve these revisions on September 9, 2008, and received adverse comments. In this final action, EPA is also responding to the adverse comments.

DATES: This rule will be effective September 9, 2011.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2005–0534. All documents in the docket are listed on the *http://www.regulations.gov* Web site. 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 *http://www.regulations.gov* 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 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the North Carolina SIP, contact Ms. Twunjala Bradley, 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. Ms. Bradley's telephone number is (404) 562–9352; *e-mail address: bradley.twunjala@epa.gov.* For information regarding NSR Reform, contact Ms. Yolanda Adams, Air Permits Section, at the same address above. Ms. Adam's *telephone number is:* (404) 562–9214; *e-mail address: adams.yolanda@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, references to ''EPA,'' ''we,'' ''us,'' or ''our,'' are intended to mean the Environmental Protection Agency. The supplementary information is arranged as follows:

I. What action is EPA taking?

EPA is taking final action to approve revisions to the North Carolina SIP regarding the State's NSR programs. On November 30, 2005, March 16, 2007, and June 20, 2008, the State of North Carolina, through the North Carolina Department of Environment and Natural Resources (NC DENR), submitted revisions to the North Carolina SIP. The SIP revisions consist of changes to North Carolina Air Quality Rules, Subchapter 2D. Specifically, the November 30, 2005, proposed SIP revision includes changes to Regulation 15A North Carolina Administrative Code (NCAC) 2D .0531, ''Sources in Nonattainment Areas.'' The March 16, 2007, proposed SIP revision includes changes to Regulation 15A NCAC 2D .0530, ''Prevention of Significant Deterioration.'' The June 20, 2008, proposed SIP revision [1] includes additional changes to Regulations 15A NCAC 2D .0530, and .0531. NC DENR submitted these revisions in response to EPA's December 31, 2002, November 7, 2003, and November 29, 2005, revisions to the federal NSR program. Pursuant to section 110 of the Clean Air Act (CAA or Act), EPA is taking final action to approve these SIP revisions.

II. What is the background for EPA's action?

On December 31, 2002 (67 FR 80186), EPA published final rule changes to 40 Code of Federal Regulations (CFR) parts 51 and 52, regarding the CAA's PSD and NNSR programs. On November 7, 2003 (68 FR 63021), EPA published a notice of final action on the reconsideration of the December 31, 2002, final rule changes. The December 31, 2002, and the November 7, 2003, final actions are collectively referred to as the ''2002 NSR Reform Rules.'' [2] For additional information on the 2002 NSR Reform Rules, see 67 FR 80186 (December 31, 2002). For information on the subsequent revisions to these rules, see *http://www.epa.gov/nsr.*

Also relevant to NC DENR's SIP revisions, on November 29, 2005 (70 FR 71612), EPA promulgated implementation provisions for the 1997 8-hour NAAQS which made changes to the NSR regulations. These included, among other changes, a requirement that emissions of nitrogen oxides (NOx) be considered a precursor to ozone. These rules are commonly referred to as the Ozone Implementation NSR Update.

On November 30, 2005, March 16, 2007, and June 20, 2008, NC DENR submitted SIP revisions to EPA for the purpose of revising the State's NSR permitting provisions to adopt EPA's 2002 NSR Reform Rules and the Ozone Implementation NSR Update. These SIP revisions incorporate by reference (IBR) the federal NSR rules at 40 CFR 51.166 and 51.165, as amended on June 13, 2007, with several changes. See EPA's analysis of the State's NSR SIP revisions in the September 9, 2008, proposed rulemaking. *See* 73 FR 52226. Copies of North Carolina's revised NSR rules, as well as the State's Technical Support Document, can be obtained from the docket, as discussed in the **ADDRESSES** section above.

On September 9, 2008 (73 FR 52226), EPA proposed to approve the above-referenced SIP revisions. In response to

[1] The June 20, 2008, SIP revision also included changes to NCAC Subchapter 2D, Section .2400, Clean Air Interstate Rule (CAIR). EPA took final action approving the CAIR portion of the June 20, 2008, SIP revision on November 30, 2009. *See* 74 FR 62496.

[2] For more information on the 2002 NSR Reform Rules, and its supporting technical documents, see, *http://www.epa.gov/nsr/actions.html#2002* (last visited February 16, 2011).

a request for an extension of the public comment period for EPA's September 9, 2008, proposed rulemaking, EPA extended the public comment period through November 10, 2008 (73 FR 58084). EPA received adverse comments from the National Resource Defense Council (NRDC) and the Duke Energy Corporation (DEC) regarding North Carolina's NSR Reform Rule changes. No adverse comments were received for North Carolina's rule changes to adopt the provisions of the Ozone Implementation NSR Update. EPA's response to these comments is below in section III of this final rulemaking. EPA's analysis of the State's NSR SIP revisions is contained in the September 9, 2008, proposed rulemaking, and briefly summarized as follows. *See* 73 FR 52226.

EPA's evaluation of the North Carolina SIP submittals included a line-by-line comparison of the proposed revisions with the federal requirements. As a general matter, state agencies may meet the requirements of 40 CFR part 51, and the 2002 NSR Reform Rules, with different but equivalent regulations. As mentioned above, North Carolina chose to IBR the federal rules with several changes. The definition of ''baseline actual emissions'' at subchapter 2D .0530(b)(1) and .0531(a)(1) was changed to remove the provision allowing emissions units that are not electric utility steam generating units (EUSGUs) to look back 10 years to select the baseline period. North Carolina rules treat EUSGUs and non-EUSGUs the same by allowing a look back of only 5 years. However, North Carolina rules provide the option of allowing a different time period, not to exceed 10 years, if the owner or operator demonstrates that it is more representative of normal source operation. In addition, North Carolina rules require EUSGUs to adjust downward the baseline emissions to account for reductions required under the North Carolina Clean Smokestack Act (CSA) (a state law mandating emission reductions from certain EUSGUs). North Carolina's rules also include some changes from the federal rules regarding recordkeeping and reporting; plant-wide applicability limits; and clarifications regarding the use of emissions reductions from the CSA. One such clarification is that any allowances for emissions reductions achieved under the CSA are not available to the subject facilities, nor any other sources, and may not be used to offset emissions and avoid installation of best available control technology or lowest achievable emissions rate on new natural gas-fired units. A full discussion of the differences between the North Carolina rules and the federal rules is available in the proposal action. *See* 73 FR 52226.

III. Response to Comments

EPA received two sets of adverse comments on the September 9, 2008, proposed rulemaking to approve North Carolina's November 30, 2005, March 16, 2007, and June 20, 2008, SIP revisions. Specifically, adverse comments were received from NRDC and DEC. A complete set of these comments is provided in the docket for today's rulemaking. EPA's response to these adverse comments is provided below.

A. EPA's Response to NRDC Comments

NRDC commented on EPA's proposed rulemaking to approve North Carolina's NSR rule changes. Specifically, NRDC primarily commented on the requirements of the federal NSR rules, not North Carolina's application of the federal requirements in its own rules. Notably, NRDC participated in litigation challenging EPA's 2002 promulgation of the NSR Reform Rules, where similar arguments were made by NRDC and dismissed by the D.C. Circuit Court. *New York* v. *EPA,* 413 F.3d 3 (DC Cir. 2005). NRDC's comments, including exhibits, do not raise any specific concerns with North Carolina's rules, but rather, reiterate arguments made by NRDC to the D.C. Circuit regarding sections 110(l) and 193 of the CAA.[3]

While NRDC's comments provide citations to eleven portions of the North Carolina rules, the comments make no attempt to specifically explain or demonstrate how those identified provisions are inconsistent with either section 110(l) or section 193 of the CAA. Furthermore, NRDC provides no evidence supporting its allegations that approval of the specific provisions would result in a violation of the CAA or otherwise be ''arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law.'' NRDC Comments at 2.

The NRDC comments include a list of 31 exhibits which the comment letter incorporates by reference into the comments. NRDC Comments at 1. The 31 exhibits appear to all be related to the DC Circuit Court case *New York* v. *EPA,* and were either submitted to that Court for review, or are relevant to that adjudication. To the extent that these exhibits were provided to the DC Circuit, those issues were previously resolved by the Court and/or already responded to by EPA in its responsive court papers. Any other documents included in the 31 exhibits that were not provided to the DC Circuit Court do not provide EPA with any comments specific to the North Carolina rules at issue.

Despite the lack of North Carolina-specific discussion in NRDC's letter, EPA has responded to the few comments that appear related to the September 9, 2008, proposed rulemaking to approve North Carolina's SIP revision pertaining to EPA's 2002 NSR Reform Rules.[4]

Comment 1: In summary, NRDC stated that finalizing the EPA September 9, 2008, proposed rulemaking to approve North Carolina's November 30, 2005, March 16, 2007, and June 20, 2008, SIP revisions would violate section 110(l) of the Act. NRDC comments at 1–6. As support for its conclusion, NRDC asserted that ''[t]he 2002 NSR Reform Rule provisions that were not vacated by the DC Circuit in New York v. EPA [citation omitted] allow previously-prohibited emissions-increases to occur.'' NRDC comments at 4. Further, that ''North Carolina nevertheless has made no 'demonstration that the emissions that are allowed by its revised rule but are prohibited by the current SIP would not interfere with attainment or other applicable requirements.' '' As a result, NRDC stated that, ''it cannot be said of North Carolina's plan that it 'will cause no degradation of air quality.' '' NRDC comments at 5. NRDC also stated that EPA has not made any findings that North Carolina's rule will not cause degradation of air quality or interfere with any applicable requirements concerning attainment and reasonable further progress, or any other applicable requirements of the CAA. NRDC comments at 5.

Response 1: EPA's 2002 NSR Reform Rules were upheld by the DC Circuit

[3] NRDC notes that, ''[t]he 2002 rule provisions considered by the D.C. Circuit in *New York* v. *EPA* were EPA regulations, not state ones. The court thus had no occasion to decide whether EPA could approve any state's versions of any of the 2002 rule provisions consistently with section 110(l) of the Act.'' NRDC Comments at 3. The North Carolina rules at issue here track the federally approved rules (upheld by the DC Circuit) (which NRDC admits—NRDC Comments at 4) and NRDC supported all its comments with information related to the challenge of EPA's 2002 NSR Reform Rules. NRDC provided no North Carolina-specific support for its comments.

[4] Similar comments were filed by Sierra Club on the Wisconsin NSR Reform SIP revision. EPA's response to comments in that matter may be reviewed at *http://www.regulations.gov*—document ID EPA–R05–OAR–2006–0609–0009. EPA was successful in defending a challenge to approval of Wisconsin's NSR Reform SIP revision. See *NRDC* v. *Jackson,* Nos. 09–1405 & 10–2123 (7th Cir., Jun. 16, 2011), 2011 US App LEXIS 12116.

Court which reviewed them, with the exception of the pollution control project and clean unit provisions (and the remanded matters). The three significant changes in NSR Reform that were upheld by the DC Circuit were: (1) Plant-wide applicability limits (PALs), (2) the 2-in-10 baseline, and (3) the actual-to-projected actual emission test. The Supplemental Environmental Analysis of the Impact of the 2002 Final NSR Improvement Rules (November 21, 2002) (Supplemental Analysis) discussed each of these three changes individually, and addresses some of the issues raised by NRDC.

With regard to PALs, the Supplemental Analysis explained, ''[t]he EPA expects that the adoption of PAL provisions will result in a net environmental benefit. Our experience to date is that the emissions caps found in PAL-type permits result in real emissions reductions, as well as other benefits.'' Supplemental Analysis at 6. EPA further explained that,

> ''Although it is impossible to predict how many and which sources will take PALs, and what actual reductions those sources will achieve for what pollutants, we believe that, on a nationwide basis, PALs are certain to lead to tens of thousands of tons of reductions of [volatile organic compounds] from source categories where frequent operational changes are made, where these changes are time-sensitive, and where there are opportunities for economical air pollution control measures. These reductions occur because of the incentives that the PAL creates to control existing and new units in order to provide room under the cap to make necessary operational changes over the life of the PAL.''

Supplemental Analysis at 7. The Supplemental Analysis, and particularly Appendix B, provided additional details regarding EPA's analysis of PALs and anticipated associated emission decreases.

With regard to the 2-in-10 baseline, EPA concluded that, ''[t]he EPA believes that the environmental impact from the change in baseline EPA is now finalizing will not result in any significant change in benefits derived from the NSR program.'' Supplemental Analysis at 13. This is mainly because ''the number of sources receiving different baselines likely represents a very small fraction of the overall NSR permit universe, excludes new sources and coal fired power plants, and because the baseline may shift in either direction, we conclude that any overall consequences would be negligible.'' Supplemental Analysis at 14. Additional information regarding the 2-in-10 baseline changes is available in the Supplemental Analysis, Appendix F.

With regard to the actual-to-projected actual test, EPA concluded, ''we believe that the environmental impacts of the switch to the actual-to-projected actual test are likely to be environmentally beneficial. However, as with the change to the baseline, we believe the vast majority of sources, including new sources, new units, electric utility steam generating units, and units that actually increase emissions as a result of a change, will be unaffected by this change. Thus, the overall impacts of the NSR changes are likely to be environmentally beneficial, but only to a small extent.'' Supplemental Analysis at 14 (see also Supplemental Analysis Appendix G).

Section 110(l) of the CAA states, in relevant part, that ''[t]he Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress * * * or any other applicable requirement of this chapter.'' CAA, 42 U.S.C. 7410(l). In ''Approval and Promulgation of Implementation Plans; New Source Review; State of Nevada, Clark County Department of Air Quality and Environmental Management,'' 69 FR 54006 (September 7, 2004), EPA stated that section 110(l) does not preclude SIP relaxations. Rather, EPA stated that section 110(l) only requires that the ''relaxations not interfere with specified requirements of the Act including requirements for attainment and reasonable further progress,'' and that, therefore, a state can relax its SIP provisions if it is able to show that it can attain or maintain the NAAQS and meet any applicable reasonable further progress goals or other specific requirements. *See* 69 FR at 54011–12.

North Carolina's November 30, 2005, March 16, 2007, and June 20, 2008, SIP revisions track the federal NSR Reform Rules, with changes, as described in North Carolina's SIP revisions. EPA evaluated North Carolina's rules consistent with its evaluation of the federal rules, and determined that North Carolina's rules were equivalent to or more stringent than the 2002 NSR Reform Rules. Overall, as summarized above, EPA expects that changes in air quality as a result of implementing North Carolina's rules as updated by the aforementioned SIP revisions is consistent with EPA's position on the federal NSR Reform Rules—that there will be somewhere between neutral and providing modest contribution to reasonable further progress between the NSR Reform and pre-Reform provisions. EPA's analysis for the environmental impacts of the three components of the NSR Reform rules (discussed earlier) is informative of how North Carolina's adoption of NSR Reform (based on the federal rules) will affect emissions. EPA has no reason to believe that the environmental impacts will be different from those discussed in the Supplemental Analysis for the NSR Reform Rules, and thus, approval of the November 30, 2005, March 16, 2007, and June 20, 2008, SIP revisions related to NSR Reform would not be contrary to section 110(l) of the CAA.[5]

Comment 2: NRDC cites to eleven general portions of North Carolina's rules as provisions that would violate section 110(l). These provisions are: Regulation 15A North Carolina Administrative Code (NCAC), Subchapter 2D .0530, subsections (a), (b), (g), (i), (u), and (v) (from North Carolina's PSD rules); and Subchapter 2D .0531, subsections (a), (c), (n), (o), and (p) (from North Carolina's NNSR rules).

Response 2: With regard to the comments, NRDC provides no evidence supporting its contention that these specific provisions violate section 110(l). The first provision noted by NRDC, 15A NCAC 02D .0530(a) states the general purpose of the rule to implement North Carolina's PSD program, which does include some changes per the SIP revisions at issue. Nonetheless, without further specificity, it is not clear why or how NRDC believes this provision is a violation of section 110(l). In addition, NRDC has provided no North Carolina-specific documentation that indicates that EPA's analysis and conclusions regarding the impact of NSR Reform, in the Supplemental Analysis, is not applicable to North Carolina's rules, which are equivalent to or more stringent than the federal rules.

In evaluating North Carolina's November 30, 2005, March 16, 2007, and June 20, 2008, SIP revisions, EPA compared North Carolina's rules with the existing federal rules and determined that North Carolina's rules were equivalent to or more stringent than the NSR Reform (federal) rules. EPA also considered North Carolina's changes to the federal NSR Reform provisions. These changes were discussed in EPA's September 9, 2008, proposed rulemaking to approve North Carolina's three SIP revisions related to NSR Reform, and are discussed in North Carolina's final submittal (including

[5] In reviewing EPA's approval of a Wisconsin SIP amendment that adopted the 2002 NSR Reform rules, a federal appeals court recently held that EPA could rely on the Supplemental Analysis in support of its approval. See *NRDC* v. *Jackson,* Nos. 09–1405 & 10–2123 (7th Cir., Jun. 16, 2011), 2011 US App LEXIS 12116.

North Carolina's response to comments received during the State public process), which are included in the docket for today's final action. As was explained in EPA's September 9, 2008, proposed rulemaking, EPA agrees with North Carolina's conclusion that the changes are at least equivalent to the Federal rules. *See* 73 FR 52228–52229. EPA also considered the Supplemental Analysis in reviewing North Carolinas's three SIP revisions related to NSR Reform, and NRDC's comments. EPA concluded that approval of North Carolina's SIP revisions would not be contrary to section 110(l) of the CAA.

Absent more explicit information demonstrating that North Carolina's plan for implementation of a specific provision of its rules would interfere with any applicable requirement of the CAA and thus should be disapproved under section 110(l), EPA is concluding that North Carolina's Technical Support Document and the Supplemental Analysis supports approval. As a result, there is no basis on which to determine that approval of North Carolina's rules would violate section 110(l).

Comment 3: NRDC states that NSR is a ''control requirement'' and thus the requirements of section 193 apply to the NSR rules at issue in North Carolina's November 30, 2005, March 16, 2007, and June 20, 2008, SIP revisions. NRDC comments at 7. NRDC further alleges that North Carolina's revisions ''ensure that emissions will not be reduced as much as under the pre-existing rules. In fact, the modifications allow emissions to increase in North Carolina's nonattainment areas.'' NRDC comments at 9. Finally, NRDC states that ''because section 193 lies within part D,'' ''if EPA approves North Carolina's revised plan, that action will additionally exceed the agency's authority under section 110(k)(3) and violate section 100(l).'' (Note, the last citation to 100(l) appears to be a typographical error and should read 110(l).) NRDC comments at 10.

Response 3: EPA's response to the section 193 issues raised by NRDC involves many of the same elements of the response above to the section 110(l) comments, which is also incorporated by reference here. Section 193 states (in relevant part), that ''[n]o control requirement in effect, or required to be adopted by an order, settlement agreement, or plan in effect before November 15, 1990, in any area which is a nonattainment area for any air pollutant may be modified after November 15, 1990, in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant.''

Assuming for purposes of this discussion that section 193 does apply to the instant action, as was discussed earlier in this notice, EPA has previously determined and explained in the Supplemental Analysis, that implementation of the 2002 NSR Reform Rule provisions still in effect (that is, those not vacated by the DC Circuit) are expected to have at least a neutral environmental benefit. While North Carolina's rules do include some changes from the Federal rules, in the September 9, 2008, proposed rulemaking, EPA explained the basis for its evaluation that the differences do not make North Carolina's NSR program less stringent than the federal program. EPA has no information indicating that findings associated with EPA's Supplemental Analysis would not apply in North Carolina—that is, that North Carolina's SIP revisions would have at least a neutral environmental benefit. *See e.g., NRDC* v. *Jackson,* Nos. 09–1405 & 10–2123 (7th Cir., Jun. 16, 2011), 2011 US App LEXIS 12116 (upholding EPA's reliance on the Supplemental Analysis where there was no information indicating an alternative outcome or analysis). Therefore, even if section 193 did apply to this action, EPA does not agree with commenter's assertions that the SIP revisions approved in this action raise a section 193 concern.

In addition, the core of NRDC's argument seems to revolve around the DC Circuit Court decision in *South Coast Air Quality Management District* v. *EPA,* 472 F.3d 882 (DC Cir. 2006) (finding that NSR associated with the 1-hour ozone NAAQS included control requirements). At issue in *South Coast* v.*EPA* was EPA's determination regarding the revocation of the entire 1-hour ozone program (and corresponding SIP elements), including all the 1-hour nonattainment NSR elements, and whether such elements would continue to be required as part of SIPs implementing the new (at that time) 8-hour ozone NAAQS. The facts in the *South Coast* v. *EPA* case are distinguishable from the instant matter where the North Carolina SIP is merely being updated to include changes to the Federal NSR program. EPA is not removing the entirety of North Carolina's NNSR program from the SIP as it pertains to a particular NAAQS. Rather, EPA is simply approving North Carolina's SIP revisions that adopt rules equivalent to or more stringent than the federal rules; and as discussed earlier in this notice, EPA developed a Supplemental Analysis to support adoption of the federal rules. The North Carolina SIP will continue to operate with the full suite of NSR related elements, including a comprehensive minor source program.

B. EPA's Response to DEC Comments

DEC also commented on EPA's September 9, 2008, proposed rulemaking to approve North Carolina's NSR rule. DEC primarily commented on the requirements that electric utilities adjust downward the baseline emissions to account for reductions achieved and paid for as a result of the North Carolina CSA. Below summarizes DEC's comment and EPA's response.

Comment 4: DEC indicated that EPA should not approve these provisions into North Carolina's SIP because: (1) They are not required by the CAA and the federal NSR regulations; (2) they have nothing to do with air quality concerns; and (3) the General Assembly of North Carolina adopted legislation which provides specific exceptions from the requirement to adjust baseline emissions downward based on the CSA.

Response 4: As a point of background, on August 21, 2009, North Carolina provided a SIP revision to EPA requesting that EPA incorporate the provisions of the CSA into the SIP. The submittal was necessary to ensure attainment and maintenance of the NAAQS within North Carolina (North Carolina has relied, and continues to rely, on the CSA reductions to demonstrate attainment with more than one NAAQS). As part of redesignation submittals for at least two areas in North Carolina, for the 1997 annual $PM_{2.5}$ NAAQS, North Carolina is relying on the CSA as containing ''permanent and enforceable'' measures that ensure maintenance for that NAAQS. That reliance necessitated that North Carolina submit to EPA the CSA for approval into the SIP. On June 22, 2011, EPA proposed to approve the CSA into the North Carolina SIP. *See* 76 FR 36468.

As was explained in the proposal action, North Carolina's rules include a requirement that EUSGUs adjust downward the baseline emissions to account for reductions required under the North Carolina Clean Smokestack Act. DEC's comments appear to suggest that because the CSA reductions are not required, this provision should not be approved into the SIP. Further, that the North Carolina legislature took action to eliminate this provision for at least a certain period of time. Consistent with the background information provided above, because North Carolina is in fact relying on the CSA reductions for attainment and maintenance of NAAQS for various areas around North Carolina, the provision is actually necessary to

ensure that the reductions remain permanent and enforceable. While there remains some flexibility in how those reductions are achieved per the CSA, once achieved, they must be permanent.

With regard to the action taken by the legislature on July 17, 2006 (the text of which DEC included as part of its comments), the language itself in Senate Bill 1587 only applies between April 21, 2005, and August 1, 2006. Because that time period has lapsed, there is nothing apparent in Senate Bill 1587 that could impact approval of the SIP revisions currently being approved today. The comment letter does not explain why a provision that lapsed on August 1, 2006, would apply to today's rulemaking and PSD applicability going forward from the effective date of today's rule. As a general matter, EPA does not necessarily agree with DEC's legal arguments; however, given that Senate Bill 1587 does not apply currently, these differences need not be resolved at this time. The NSR reform rules being approved today would apply to the facilities at issue under the CSA once today's action is final and effective, per the provisions of the State rules now being incorporated into the SIP.

IV. Final Action

EPA is taking final action to approve revisions to the North Carolina SIP for Regulations 15A NCAC 2D .0530 and .0531, as submitted by the NC DENR on November 30, 2005, March 16, 2007, and June 20, 2008. These SIP revisions address changes to North Carolina's PSD and NNSR programs. EPA is approving these revisions into the North Carolina SIP because they are consistent with section 110 of the CAA and its implementing regulations.

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. 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 Order 12866 (58 FR 51735, October 4, 1993);
- 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).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not 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 11, 2011. 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: July 25, 2011.

A. Stanley Meiburg,

Acting 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(c), Table 1, is amended under Subchapter 2D, Section .0500, by revising the entries for ''Sect .0530'' and ''Sect .0531'' to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

TABLE 1—EPA-APPROVED NORTH CAROLINA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
Subchapter 2D Air Pollution Control Requirements				
* *	*	*	*	* *
Section .0500 Emission Control Standards				
* *	*	*	*	* *
Sect .0530	Prevention of Significant Deterioration.	5/1/2008	8/10/2011 [Insert citation of publication].	15 NCAC .0530 incorporates by reference the regulations found at 40 CFR 51.166, with changes, as of June 13, 2007. This EPA action is approving the incorporation by reference with the exception of the phrase ''except ethanol production facilities producing ethanol by natural fermentation under the North American Industry Classification System (NAICS) codes 325193 or 312140,'' (as amended at 40 CFR 51.166(b)(1)(i)(*a*), (b)(1)(iii)(*f*), and (i)(1)(ii)(*f*).
Sect .0531	Sources in Nonattainment Areas.	5/1/2008	8/10/2011 [Insert citation of publication].	15 NCAC .0531 incorporates by reference the regulations found at 40 CFR 51.165, with changes, as of June 13, 2007. This EPA action is approving the incorporation by reference with the exception of the phrase ''except ethanol production facilities producing ethanol by natural fermentation under the North American Industry Classification System (NAICS) codes 325193 or 312140,'' (as amended at 40 CFR 51.165(a)(1)(iv)(C)(*20*) and (a)(4)(xx).
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[FR Doc. 2011–20167 Filed 8–9–11; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0629; FRL–8882–5]

Import Tolerances; Order Denying ABC's Petition to Revoke Import Tolerances for Various Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Order.

SUMMARY: In this Order, EPA denies a petition requesting that EPA revoke all pesticide ''import'' tolerances for cadusafos, cyproconazole, diazinon, dithianon, diquat, dimethoate, fenamiphos, mevinphos, methomyl, naled, phorate, terbufos, and dichlorvos (DDVP) under section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA). The petition was filed on July 23, 2009, by the American Bird Conservancy (ABC).

DATES: This order is effective August 10, 2011. Objections and requests for hearings must be received on or before October 11, 2011, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0629. To access the electronic docket, go to *http://www.regulations.gov,* select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the *regulations.gov* Web site to view the docket index or access available documents. All documents in the docket are listed in the docket index available in *regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* 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 in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Richard Dumas, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (703) 308–8015; *e-mail address: dumas.richard@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

In this document EPA denies a petition by the American Bird Conservancy (ABC) to revoke pesticide tolerances. This action may also be of interest to agricultural producers, food