

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2013-0772; FRL-9922-42-Region 4]

**Approval and Promulgation of Implementation Plans; North Carolina;
Inspection and Maintenance Program Updates**

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve State Implementation Plan (SIP) revisions submitted by the State of North Carolina, through the North Carolina Department of Environment and Natural Resources (NC DENR) on January 31, 2008, May 24, 2010, October 11, 2013, and February 11, 2014, pertaining to state rule changes to the North Carolina Inspection and Maintenance (I/M) program. Specifically, these SIP revisions update the North Carolina I/M program as well as repeal one rule that is included in the federally-approved SIP. In this final rulemaking, EPA is also responding to comments received on the proposed approval.

DATES: This rule will be effective [insert 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2013-0772. 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, (formerly the Regulatory Development Section), Air Planning and Implementation Branch, (formerly the 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: Nacosta 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 by telephone at (404) 562-9140 and via electronic mail at ward.nacosta@epa.gov.

SUPPLEMENTARY INFORMATION:

I. This Action

EPA is taking final action to approve SIP revisions submitted on January 31, 2008, May 24, 2010, October 11, 2013, and February 11, 2014, related to changes to

North Carolina's I/M regulations. On November 20, 2014, EPA published a direct final rulemaking to approve these changes into the SIP and published an accompanying proposed approval to the direct final rule in the event that EPA received adverse comment and withdrew the direct final rulemaking. *See* 79 FR 69051. In the direct final rule, EPA stated that if adverse comments were received by December 22, 2014, the rule would be withdrawn and not take effect, the proposed rule would remain in effect, and an additional public comment period would not be instituted.

On December 17, 2014, and December 19, 2014, EPA received comments identified with the docket number for the aforementioned rulemaking actions. EPA withdrew the direct final rule on January 20, 2015 (80 FR 2612) and is now taking final action to approve the SIP revisions identified above. EPA has reviewed the changes included in these revisions and has determined that they are consistent with federal regulations and the Clean Air Act (CAA or Act).

II. Background

The North Carolina I/M program began in 1982 in Mecklenburg County utilizing a "tail-pipe" emissions test. From 1986 through 1991 the program expanded to include eight additional counties (Wake, Forsyth, Guilford, Durham, Gaston, Cabarrus, Orange and Union County). In 1999, the North Carolina General Assembly passed legislation to expand the coverage area for the I/M program in order to gain additional emission reductions to achieve the 1997 8-hour ozone national ambient air quality standards in the State. This legislation expanded the I/M program from nine counties to 48 counties by adding several counties approximately every six months from July 1, 2003, to July 1,

2006. The I/M program in the expanded coverage area used on-board diagnostic (OBD) rather than tail-pipe testing. On August 7, 2002, North Carolina submitted a SIP revision to amend the I/M regulations included in the SIP at that time to, among other things, expand the counties subject to the I/M program as discussed above, require OBD in the subject counties for all model year (MY) 1996 and newer light duty gasoline vehicles, and terminate the tail-pipe testing program on January 1, 2006, for the nine counties subject to continued tail-pipe testing of MY 1995 and older vehicles.

EPA approved these changes to North Carolina's I/M program into the SIP on October 30, 2002. *See* 67 FR 66056. Since that time, North Carolina has submitted additional changes to its program, which EPA is now acting upon. Specifically, North Carolina submitted SIP revisions related to the State's I/M program on January 31, 2008, May 24, 2010, October 11, 2013, and February 11, 2014. EPA's response to comments received on EPA's November 20, 2014, rulemaking is provided in Section III of this rulemaking. EPA's detailed analysis of these SIP revisions is provided in EPA's direct final rulemaking published on November 20, 2014, and incorporated herein by reference. *See* 79 FR 69051.

III. Response to Comments

On December 19, 2014, EPA received comments on the proposed SIP revisions from an anonymous commenter and withdrew the direct final rule. EPA also received comments from the United States Department of Defense (DOD) on December 17, 2014. These comments are addressed below.

Comment: EPA received a comment from DOD expressing concern regarding the language in 15A North Carolina Administrative Code (NCAC) 02D.1002(a)(3) applying the I/M program to federal facilities. DOD believes that EPA should rescind its prior approval of section .1002(a)(3) into the SIP, disapprove North Carolina’s “proposed revisions thereto,” and identify section .1002(a)(3) “as no longer approved as part of the SIP.”

Response: These comments are not relevant to this rulemaking because EPA approved 15A NCAC 02D.1002(a)(3) into the SIP in 1995 (60 FR 28720 (June 2, 1995)) and North Carolina did not propose any substantive changes to section .1002(a)(3) as part of its January 31, 2008, May 24, 2010, October 11, 2013, and February 11, 2014 SIP submissions. The changes to 15A NCAC 02D.1002(a)(3) are merely typographical due to a reorganization of section .1002 and do not impact its scope or effect any substantive change in the regulations.

Comment: EPA received a comment from an anonymous commenter who does not believe that EPA can approve the state implementation plan (SIP) revisions because “North Carolina used the wrong modeling approach when determining whether the proposed revisions to the inspection program negatively affect the attainment and maintenance of the NAAQS.” The Commenter contends that North Carolina used MOVES modeling inputs that did not consider the removal of the State’s tailpipe emissions testing program and that the modeling approach is therefore inconsistent with EPA’s guidance on performance standard modeling and the use of MOVES to model

changes to states' I/M programs. According to the Commenter, proper modeling would show that "simply expanding the required model years that are subject to inspection would not have gained the necessary emission reductions required to offset the loss of reductions from dropping tailpipe testing." The Commenter also believes that "expanding the [I/M] program to the rest of the state cannot be included as a way to offset the reductions from the tailpipe testing" and that North Carolina "must show that for each nonattainment/maintenance area, (1) dropping the tailpipe test still meets the applicable performance standard, and (2) the emission reductions provided in the past by the tailpipe test are offset by some other way since expanding the model years of new vehicles has typically not provided the requisite emissions reductions as tailpipe testing for older (more polluting) vehicles has done."

Response: EPA disagrees with the Commenter. North Carolina's January 31, 2008 SIP submission asks EPA to remove the State's regulation governing tailpipe testing, 15A NCAC 02D.1004, from the SIP. As the State noted in its 2008 submission, 15A NCAC 02D.1004 is obsolete because the tailpipe testing requirements of that rule expired on January 1, 2006, pursuant to subsection .1004(e). EPA approved the addition of 15A NCAC 02D.1004(e) into the SIP in 2002. *See* 67 FR 66056 (Oct. 30, 2002). Therefore, the SIP revision only eliminates inoperative regulatory text and does not "drop" tailpipe testing. The tailpipe testing requirement expired in 2006 pursuant to the terms of the regulation which EPA approved in 2002. Therefore, this comment is not relevant to the SIP revisions EPA is acting on today.

The removal of 15A NCAC 02D.1004 from the SIP will not interfere with any applicable requirement concerning attainment or any other applicable requirement of the CAA because its removal has no impact on emissions. Tailpipe testing ended in North Carolina on January 1, 2006, and 15 NCAC 02D.1004(e) had already been approved into the SIP at the time of the State's 2008 submission. Therefore, no modeling or other technical analysis is required to satisfy CAA Section 110(l). Moreover, the Commenter's claim that North Carolina used an inappropriate application of MOVES to demonstrate that the revisions to the I/M program will not interfere with any applicable requirement concerning attainment is based solely on the fact that the modeling did not consider removal of the tailpipe emissions testing provision. As explained above, the tailpipe emissions testing program expired pursuant to a previously-approved SIP revision, and therefore is not at issue in today's action.

IV. Final Action

EPA is approving North Carolina's January 31, 2008, May 24, 2010, October 11, 2013, and February 11, 2014, SIP revisions pertaining to state rule changes to the State's I/M program. EPA has determined that these SIP revisions are approvable because they are consistent with section 110 of the CAA.

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 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 (Public Law 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, 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 and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. section 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 [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this

document in the Federal Register]. 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, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: January 26, 2015.

V. Anne Heard

Acting 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:

a. Table 1, in paragraph (c) is amended by revising the entries for “Sect .1002,” “Sect .1003,” “Sect .1004,” and “Sect .1005”; and

b. In paragraph (e), the table is amended by adding a new entry “Non-Interference Demonstration for the North Carolina Inspection and Maintenance Program” at the end of the table.

The revisions and addition read as follows:

§52.1770 Identification of plan.

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(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 .1000 Motor Vehicle Emissions Control Standard				
**	**	*	*	*
Sect .1002	Applicability	1/1/2014	[Insert date of publication in <u>Federal Register</u>] [Insert <u>Federal Register</u> citation]	

Sect .1003	Definitions	2/1/2014	[Insert date of publication in <u>Federal Register</u>] [Insert Federal Register citation]	
Sect .1004	Tailpipe Emission Standards for CO and HC	7/11/2007	[Insert date of publication in <u>Federal Register</u>] [Insert Federal Register citation]	Repealed.
Sect .1005	On-Board Diagnostic Standards	1/1/2014	[Insert date of publication in <u>Federal Register</u>] [Insert Federal Register citation]	
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EPA APPROVED NORTH CAROLINA NON-REGULATORY PROVISIONS

Provision	State effective date	EPA approval date	Federal Register citation	Explanation
**	**	*	*	*
Non-Interference Demonstration for the North Carolina Inspection and Maintenance Program	10/11/2013	[Insert date of publication in <u>Federal Register</u>]	[Insert Federal Register citation]	

[FR Doc. 2015-02071 Filed 02/04/2015 at 8:45 am; Publication Date: 02/05/2015]