

§ 52.2620 Identification of plan (c) \* \* \*

Rule no.	Rule title	State effective date	EPA effective date	Final rule citation/date	Comments
<b>Chapter 08. Non-attainment Area Regulations</b>					
Section 05	Ozone nonattainment emission inventory rule.	11/22/2013	10/24/2016.	[Insert <b>Federal Register</b> citation]. 8/25/2016.	
Section 10	Incorporation by reference	11/22/2013	10/24/2016.	[Insert <b>Federal Register</b> citation]. 8/25/2016.	

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[FR Doc. 2016-20315 Filed 8-24-16; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R04-OAR-2015-0449; FRL-9951-25-Region 4]

**Air Plan Approval; North Carolina; Regional Haze Progress Report**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of North Carolina through the North Carolina Division of Air Quality (NC DAQ) on May 31, 2013. North Carolina's May 31, 2013, SIP revision (Progress Report) addresses requirements of the Clean Air Act (CAA or Act) and EPA's rules that require each state to submit periodic reports describing progress towards reasonable progress goals (RPGs) established for regional haze and a determination of the adequacy of the state's existing SIP addressing regional haze (regional haze plan). EPA is approving North Carolina's Progress Report on the basis that it addresses the progress report and adequacy determination requirements for the first implementation period for regional haze.

**DATES:** This rule will be effective September 26, 2016.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2015-0449. All documents in the docket are listed on the [www.regulations.gov](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 [www.regulations.gov](http://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:** Sean Lakeman, 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. Mr. Lakeman can be reached by phone at (404) 562-9043 and via electronic mail at [lakeman.sean@epa.gov](mailto:lakeman.sean@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Under the Regional Haze Rule,<sup>1</sup> each state was required to submit its first implementation plan addressing regional haze visibility impairment to EPA no later than December 17, 2007. See 40 CFR 51.308(b). North Carolina submitted its regional haze plan on that date, and like many other states subject

to the Clean Air Interstate Rule (CAIR), relied on CAIR to satisfy best available retrofit technology (BART) requirements for emissions of sulfur dioxide (SO<sub>2</sub>) and nitrogen oxides (NO<sub>x</sub>) from electric generating units (EGUs) in the State. On June 7, 2012, EPA finalized a limited disapproval of North Carolina's December 17, 2007, regional haze plan submission because of deficiencies arising from the State's reliance on CAIR to satisfy certain regional haze requirements. See 77 FR 33642. In a separate action taken on June 27, 2012, EPA finalized a limited approval of North Carolina's December 17, 2007, regional haze plan submission, as meeting some of the applicable regional haze requirements as set forth in sections 169A and 169B of the CAA and in 40 CFR 51.300-308. See 77 FR 38185. On October 31, 2014, the State submitted a regional haze plan revision to correct the deficiencies identified in the June 27, 2012, limited disapproval by replacing reliance on CAIR with reliance on the State's Clean Smokestacks Act (CSA) as an alternative to NO<sub>x</sub> and SO<sub>2</sub> BART for BART-eligible EGUs formerly subject to CAIR. EPA approved that SIP revision on May 24, 2016, resulting in a full approval of North Carolina's regional haze plan. See 81 FR 32652.

Each state is also required to submit a progress report in the form of a SIP revision every five years that evaluates progress towards the RPGs for each mandatory Class I Federal area within the state and for each mandatory Class I Federal area outside the state which may be affected by emissions from within the state. See 40 CFR 51.308(g). Each state is also required to submit, at the same time as the progress report, a determination of the adequacy of its existing regional haze plan. See 40 CFR 51.308(h). The first progress report was

<sup>1</sup> Located in 40 CFR part 51, subpart P.

due five years after submittal of the initial regional haze plan.

On May 31, 2013, as required by 40 CFR 51.308(g), NC DAQ submitted to EPA, in the form of a revision to North Carolina's SIP, a report on progress made towards the RPGs for Class I areas in the State and for Class I areas outside the State that are affected by emissions from sources within the State. This submission also includes a negative declaration pursuant to 40 CFR 51.308(h)(1) that the State's regional haze plan is sufficient in meeting the requirements of the Regional Haze Rule and revised RPGs for the five Class I areas within the State based on updated modeling. In a notice of proposed rulemaking (NPRM) published on June 15, 2016 (81 FR 38986), EPA proposed to approve North Carolina's Progress Report on the basis that it satisfies the requirements of 40 CFR 51.308(g) and 51.308(h) now that EPA has fully approved the State's regional haze plan. No comments were received on the June 15, 2016, proposed rulemaking. The details of North Carolina's submittal and the rationale for EPA's actions are further explained in the NPRM. *See* 81 FR 38986 (June 15, 2016).

## II. Final Action

EPA is finalizing approval of North Carolina's Regional Haze Progress Report SIP revision, submitted by the State on May 31, 2013, as meeting the applicable regional haze requirements set forth in 40 CFR 51.308(g) and 51.308(h). EPA also is finalizing approval of the updated RPGs for North Carolina's Class I areas.

## III. 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 October 24, 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. 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 oxides, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Dated: August 15, 2016.

**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. Section 52.1770(e), is amended by adding an entry for "May 2013 Regional Haze Progress Report" 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
May 2013 Regional Haze Progress Report .....	5/31/2013	8/25/2016	[Insert citation of publication].	Includes updated reasonable progress goals for North Carolina's Class I areas.

[FR Doc. 2016-20309 Filed 8-24-16; 8:45 am]  
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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R05-OAR-2016-0169; FRL-9951-29-Region 5]

**Air Plan Approval; Indiana; RACM Determination for Indiana Portion of the Cincinnati-Hamilton 1997 Annual PM<sub>2.5</sub> Nonattainment Area**

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

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving the reasonably available control measures (RACM) and reasonably available control technology (RACT) analysis that Indiana submitted as part of its attainment plan for the 1997 fine particulate matter (PM<sub>2.5</sub>) standard, in accordance with Indiana's request dated February 11, 2016. The RACM/RACT analysis addresses RACM and RACT for the Indiana portion of the Cincinnati-Hamilton nonattainment area for the 1997 PM<sub>2.5</sub> standard. EPA is not acting on the portions of the State Implementation Plan (SIP) submission that are unrelated to RACM/RACT. Other portions of the attainment plan have either been addressed or will be addressed in future rulemaking actions.

**DATES:** This direct final rule will be effective October 24, 2016, unless EPA receives adverse comments by September 26, 2016. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2016-0169 at <http://www.regulations.gov> or via email to [aburano.douglas@epa.gov](mailto:aburano.douglas@epa.gov). For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted,

comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Joseph Ko, Environmental Engineer, Attainment, Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-7947, [ko.joseph@epa.gov](mailto:ko.joseph@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. Background
- II. What are EPA's actions?
- III. What is EPA's analysis of the State's RACM submittal?
- IV. What action is EPA taking?
- V. Statutory and Executive Order Reviews

**I. Background**

On July 18, 1997, EPA promulgated the first national ambient air quality standards (NAAQS) for PM<sub>2.5</sub>. EPA promulgated an annual standard of 15 micrograms per cubic meter (µg/m<sup>3</sup>) (based on a 3-year average of annual mean PM<sub>2.5</sub> concentrations) and a 24-

hour standard of 65 µg/m<sup>3</sup> (based on a 3-year average of the 98th percentile of 24-hour concentrations). See 62 FR 38652. On December 17, 2004, based on 2001-2003 monitoring data, EPA designated the Cincinnati-Hamilton OH-KY-IN area (the Cincinnati-Hamilton area) as nonattainment for the annual standard for fine particles, and these designations became effective on April 5, 2005. See 70 FR 944. On July 3, 2008, Indiana requested that EPA redesignate as attainment its portion of the Cincinnati-Hamilton area, showing that existing permanent and enforceable controls would provide for timely attainment of the 1997 PM<sub>2.5</sub> standard by the attainment deadline of April 5, 2010. On September 29, 2011, based on 2007-2009 monitoring data, EPA made a "clean data determination" and determination of attainment, indicating that the entire area was attaining the 1997 PM<sub>2.5</sub> NAAQS by its applicable attainment date. See 76 FR 60373. The clean data determination suspended all further planning SIP revision requirements.

As part of its action approving the redesignation of the Indiana and Ohio portions of the Cincinnati-Hamilton area to attainment, published on December 23, 2011, EPA found that the states of Ohio and Indiana had satisfied the remaining applicable requirements, including the requirement to submit an emission inventory in accordance with section 172(c)(3). See 76 FR 80253. The redesignation to attainment was based, in part, on EPA's longstanding interpretation that Subpart 1 nonattainment planning requirements, including RACM, are not "applicable" for purposes of Clean Air Act section 107(d)(3)(E)(ii) and (v) when an area is attaining the NAAQS and, therefore, need not be approved into the SIP before EPA can redesignate the area. See 76 FR 80258.

On July 14, 2015, the United States Court of Appeals for the Sixth Circuit (Sixth Circuit) issued an opinion in *Sierra Club v. EPA*, 793 F.3d 656 (6th Cir. 2015), vacating EPA's redesignation of the Indiana and Ohio portions of the