

(2) Sources subject to the jurisdiction of local air authorities (except Benton Clean Air Agency and Southwest Clean Air Agency);

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2013-0772; FRL-9960-94-Region 4]

#### Air Plan Approval; North Carolina; Motor Vehicle Emissions Control Program; Correcting Amendment

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** This direct final action, taken under the authority of the Clean Air Act (CAA or Act), corrects an error in previously promulgated rules approving certain elements of the North Carolina state implementation plan (SIP). The error relates to the North Carolina SIP's Motor Vehicle Emissions Control Standard rules and the correction removes a provision of the State's otherwise federally-enforceable regulations that could result in infringement upon the sovereign immunity of Federal facilities. The intended effect is to ensure that the North Carolina SIP is correctly identified in the applicable part of the Code of Federal Regulations and to eliminate the possibility of such infringement.

**DATES:** This direct final rule is effective June 9, 2017 without further notice, unless EPA receives adverse comment by May 10, 2017. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the *Federal Register* and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2013-0772 at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. 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, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

#### FOR FURTHER INFORMATION CONTACT:

Kelly Sheckler, 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. Mrs. Sheckler can be reached via phone at (404) 562-9992 or electronic mail at [sheckler.kelly@epa.gov](mailto:sheckler.kelly@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Section 182(b)(4) of the CAA requires areas that are designated as moderate, serious, or severe ozone nonattainment to establish a motor vehicle inspection and maintenance (I/M) program to ensure that specified gasoline-fueled motor vehicles do not exceed prescribed emissions thresholds by requiring that vehicles undergo periodic emissions testing, including mandatory repairs for vehicles found to exceed these thresholds. This emissions testing ensures that vehicles are well maintained and operating as designed.

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. North Carolina submitted additional 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 approved 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 on February 5, 2015. *See* 80 FR 6455.

##### II. Error Correction

The CAA sets forth requirements for Federal facilities which are located in I/M program areas. These requirements in section 118(c) and (d) apply to both Federal fleet and Federal employee vehicles. Congress intended in that section that Federal facilities located in I/M program areas demonstrate compliance with certain local and State I/M requirements. When EPA published the I/M rule in 1992, *see* 57 FR 52950, the Agency interpreted CAA section 118(c) and (d) as a partial waiver of the Federal government's sovereign immunity, thereby allowing States to regulate Federal facilities in their I/M programs.<sup>1</sup> Accordingly, EPA established certain SIP requirements for Federal facilities in the I/M rule. Since that time, the Department of Justice (DOJ) has found that sections 118(c) and (d) do not waive sovereign immunity for the Federal government and thus states are without authority to enforce the section 118(c) and (d) requirements for Federal facilities.<sup>2</sup> Further, DOJ found that the express waiver of sovereign immunity in section 118(a) extends only to nondiscriminatory requirements (*i.e.*, each agency and employee of the Federal government "shall be subject to, and comply with, all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of air pollution in the same

<sup>1</sup> *See* letter from Gay MacGregor, Director, Regional and State Programs Division, EPA Office of Air and Radiation, to Mary Jo Leugers, Virginia Office of the Attorney General (August 28, 1998) (MacGregor Letter).

<sup>2</sup> *See* letter from Lois J. Schiffer, Assistant Attorney General, Department of Justice Environment and Natural Resources Division, to Scott Fulton, Acting General Counsel, EPA (July 29, 1998) (Schiffer Letter).

manner, and to the same extent as any nongovernmental entity.”). As explained below, section 118(a)’s immunity waiver does not extend to State I/M requirements that, like the North Carolina provision at issue here, are imposed upon Federal entities in a different manner or to a different extent than nongovernmental entities.

North Carolina’s regulation 15A NCAC 02D.1002(a)(3) identifies vehicles that are operated on a Federal installation and that meet the requirements of 40 CFR 51.356(a)(4) as subject to the State motor vehicle emission standard. This North Carolina regulation thus subjects certain vehicles operated on Federal installations to State I/M requirements that do not apply in the same manner and to the same extent to nongovernmental entities, and it is inconsistent with the waiver of immunity in section 118(a). As noted in the MacGregor Letter addressing the issue, removing Federal facility I/M requirements from SIPs will in no way impact the emissions reductions credits the States earn for their I/M programs; pursuant to section 118(a), Federal agencies are required to comply with air pollution control programs to the same extent as nongovernmental entities and thus will continue to be subject to programs of general applicability. EPA is therefore removing from the federally-approved North Carolina SIP regulation 15A NCAC 02D.1002(a)(3) because that regulation does not apply to vehicles operated on Federal installations in the same manner and to the same extent as vehicles owned or operated by nongovernmental entities.

### III. Final Action

Pursuant to CAA section 110(k)(6), EPA rescinds its previous approval of NCAC 02D.1002(a)(3), a provision that sets forth additional requirements under the vehicle I/M program for motor vehicles operated on Federal installations that do not apply to nongovernmental entities and thus is inconsistent with CAA section 118(a). This action will not result in increases in emissions that would interfere with attainment or maintenance of any NAAQS or with any other applicable requirement of the CAA.

### IV. 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 corrects North Carolina’s EPA-approved SIP by removing the State’s regulation 15A NCAC 02D.1002 (a)(3), which listed Federal facilities as applicable to the state motor vehicle emission standard and 40 CFR 51.356(a)(4), by removing it from the federally-approved portion of the North Carolina SIP to be consistent with CAA 118. It 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.*). Furthermore, this action 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 rule 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 rule merely removes North Carolina regulation 15A NCAC 02D.1002 (a)(3) from the federally approved portion of the North Carolina SIP to be consistent with CAA 118; it also 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 addition, this rule does not involve technical standards, 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 also 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *June 9, 2017*. 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, Incorporation by Reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 15, 2017.

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. Section 52.1770(c) is amended by revising the entry for “Sect .1002” to 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
<b>Subchapter 2D Air Pollution Control Requirements</b>				
<b>Section .1000 Motor Vehicle Emissions Control Standards</b>				
Sect .1002	Applicability	1/1/2014	4/10/2017 [Insert <b>Federal Register</b> citation].	Paragraph (a)(3) of Section .1002 is hereby rescinded as this paragraph is inconsistent with the limits on the waiver of sovereign immunity established in section 118(a) of the CAA.

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[EPA-HQ-OPP-2017-0005; FRL-9959-90]

**Acetamidrid; Pesticide Tolerances for Emergency Exemption**

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes time-limited tolerances for residues of acetamidrid in or on sugarcane, cane and sugarcane, molasses. This action is associated with the issuance of a crisis exemption under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on sugarcane. This regulation establishes maximum permissible levels for residues of acetamidrid in or on sugarcane, cane and sugarcane, molasses. The time-limited tolerances expire on December 31, 2019.

**DATES:** This regulation is effective April 10, 2017. Objections and requests for hearings must be received on or before June 9, 2017, 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:** The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2017-0005, is available at <http://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket)

in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460-0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPP Docket is (703) 305-5805. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:** Michael L. Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001; main telephone number: (703) 305-7090; email address: [RDfRNNotices@epa.gov](mailto:RDfRNNotices@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this action apply to me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

*B. How can I get electronic access to other related information?*

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at [http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl).

*C. How can I file an objection or hearing request?*

Under section 408(g) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2017-0005 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before June 9, 2017. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA-HQ-OPP-