

TABLE 1 TO PARAGRAPH(a)(1)

Environmental statute and U.S. code citation	Statutory civil monetary penalty amount for violations that occurred after November 2, 2015, and are assessed on or after October 18, 2022
Clean Water Act (CWA), Section 309(g)(2)(A), 33 U.S.C. 1319(g)(2)(A) CWA, Section 404(s)(4), 33 U.S.C. 1344(s)(4) ..... National Fishing Enhancement Act, Section 205(e), 33 U.S.C. 2104(e)	\$23,990 per violation, with a maximum of \$59,974. Maximum of \$59,974 per day for each violation. Maximum of \$26,269 per violation.

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[FR Doc. 2022-22480 Filed 10-17-22; 8:45 am]  
BILLING CODE 3720-58-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R04-OAR-2020-0187; FRL-10244-01-R4]

**Air Plan Approval; North Carolina; Revisions to Exclusionary Rules and Permit Exemptions**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving portions of revisions to the State Implementation Plan (SIP) submitted by the State of North Carolina, through the North Carolina Department of Environmental Quality, Division of Air Quality (DAQ), on September 18, 2009, and July 10, 2019. These revisions modify two different sections of the North Carolina SIP which (1) exclude certain categories of facilities from title V permitting requirements by imposing limitations on their potential emissions (Section 2Q .0800, “Exclusionary Rules”), and (2) exclude certain categories of facilities from the SIP’s permitting requirements by imposing limitations on their potential emissions (Section 2Q .0900, “Permit Exemptions”). EPA is approving these revisions pursuant to the Clean Air Act (CAA or Act).

**DATES:** This rule is effective November 17, 2022.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2020-0187. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) website. 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 can either be retrieved electronically via [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation 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:** Pearlene Williams, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303-8960. Ms. Williams can be reached via telephone at (404) 562-9144 or via electronic mail at [williams.pearlene@epa.gov](mailto:williams.pearlene@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In a notice of proposed rulemaking (NPRM) published on January 19, 2021 (86 FR 5091), EPA proposed to approve changes to several provisions under 15A North Carolina Administrative Code (NCAC) Subchapter 2Q, Air Quality Permit Procedures,<sup>1</sup> of the North Carolina SIP. EPA proposed revisions to the following rules under Section 2Q .0800 (“Exclusionary Rules”), which defines the categories of facilities that are not subject to title V permitting requirements due to limitations on their potential emissions: 2Q .0801, *Purpose and Scope*; 2Q .0802, *Gasoline Service Stations and Dispensing Facilities*;<sup>2</sup> 2Q .0803, *Coating, Solvent Cleaning, Graphic Arts Operations*; 2Q .0804, *Dry Cleaning Facilities*; 2Q .0805, *Grain*

<sup>1</sup> In the table of North Carolina regulations federally approved into the SIP at 40 CFR 52.1770(c), 15A NCAC 2Q is referred to as “Subchapter 2Q Air Quality Permits.”

<sup>2</sup> This amendment changes the title of Rule 2Q .0802 in 40 CFR 52.1770(c) from “Gasoline Servicing Stations and Dispensing Facilities” to “Gasoline Service Stations and Dispensing Facilities.”

*Elevators*; 2Q .0806, *Cotton Gins*; and 2Q .0807, *Emergency Generators*. In addition, EPA proposed to remove from the SIP Rule 2Q .0809, *Concrete Batch Plants*.

EPA also proposed revisions to the following rules under Section 2Q .0900 (“Permit Exemptions”), which defines the categories of facilities that are exempt from the State’s SIP permitting requirements for non-title V facilities by limiting their potential emissions: 2Q .0901, *Purpose and Scope*, and 2Q .0902, *Temporary Crushers*.<sup>3,4</sup> The January 19, 2021, NPRM provides additional detail regarding the background and rationale for EPA’s action. Comments were due on or before February 18, 2021.

**II. Response to Comments**

EPA received comments on the January 19, 2021, NPRM, which are included in the docket for this rulemaking. The comments arrived in a letter dated February 18, 2021, and originate from one commentor, Air Law for All. The Commenter also provided supplemental documentation to support its comments. The comments are generally opposed to the revisions to the permit exemption provisions of Rule 2Q .0902, *Temporary Crushers*, which exempts temporary rock crushers that meet certain criteria from the requirement to obtain stationary source construction and operating permits under Section 2Q .0300 of the SIP. EPA received no comments on the changes to rules under Section 2Q .0800 or other rule revisions proposed for approval in the NPRM. Below, EPA summarizes and responds to the comments received and briefly describes the temporary crushers covered by Rule 2Q .0902.

A crusher is a machine designed to crush rocks into sand, gravel, or smaller crushed rocks. The term “temporary crusher” means a crusher that will be operated at any one site or facility for

<sup>3</sup> In the September 18, 2009, submittal, North Carolina changes the title of Rule 2Q .0902 from “Portable Crushers” to “Temporary Crushers.”

<sup>4</sup> DAQ supplemented the September 18, 2009, submittal in a letter dated June 7, 2019, which includes the correct redline/strikeout of the regulatory changes and final regulations that became state effective on January 1, 2009. This letter is available in the docket for this rulemaking.

no more than 12 months. *See* provision 2Q .0902(a). To operate, a crusher is attached to either a diesel engine, which powers the crusher, or to a diesel-fired generator, which provides electrical power to the crusher and can either be mounted on the crusher or separated from it on a trailer. These diesel engines are mobile sources that meet the definition of “nonroad engine” in the CAA and its general compliance provisions for highway, stationary, and nonroad programs. *See* 72 U.S.C. 7550(10); 40 CFR 1068.30 (definition of “nonroad engine”).<sup>5</sup> The existing SIP-approved version of Rule 2Q .0902 exempts temporary crushers from permitting if, among other specific criteria, any diesel-fired generator or a diesel engine that powers the crusher burns no more than 17,000 gallons of diesel fuel at any one facility or site.

*Comment 1:* The Commenter states that diesel engines used at a temporary source are considered nonroad engines and that the State has the authority to regulate the “use and operation” of nonroad engines under a permissible interpretation of section 209(e) of the CAA. The Commenter quotes 40 CFR part 1074, subpart A, Appendix A, which states, in part, “EPA believes that states are not precluded under 42 U.S.C. 7543 [CAA section 209] from regulating the use and operation of nonroad engines, such as regulations on hours of usage, daily mass emission limits, or sulfur limits on fuel; nor are permits regulating such operations precluded, once the engine is no longer new.”<sup>6</sup> The Commenter then asserts that regulation of total fuel consumption pursuant to Rule 2Q .0902 at a temporary crusher facility is a regulation of “the use and operation” of the diesel engines.

*Response 1:* EPA disagrees that the existing SIP-approved version of Rule 2Q .0902 imposes any restriction or limitation on the “the use and operation” of diesel engines. Paragraph (b) of the SIP-approved version states that the Rule applies to any temporary crusher that:

(1) crushes no more than 300,000 tons at any one facility or site;

(2) burns no more than 17,000 gallons of diesel fuel at any one facility or site if uses:

(A) a diesel-fired generator, or

(B) a diesel engine to drive the crusher;

(3) does not operate at a quarry that has an air permit issued under this subchapter;

(4) continuously uses water spray to control emissions from the crushers; and

(5) does not operate at a facility that is required to have a mining permit issued by the Division of Energy, Mineral, and Land Resources.

These five criteria are not regulating the use and operation of the crushers or the diesel engines that run them; they are the criteria that a temporary crusher must meet under the existing North Carolina SIP to qualify for an exemption from the State’s construction and operation permit provisions at Section 2Q .0300. North Carolina’s July 10, 2019, SIP revision removes only one of these five criteria—the second one regarding the burning of diesel fuel, which places no restriction on the combustion of diesel fuel by an engine or generator and no limitation on the emissions from such combustion. The other four criteria remain for determining whether a temporary crusher qualifies for the permit exemption.

EPA agrees with the Commenter that diesel engines used at a temporary source, such as these temporary crushers, are considered nonroad engines and that states are not precluded from regulating the use and operation of these engines. However, North Carolina’s SIP explicitly exempts title II nonroad engines from its permitting requirements.<sup>7</sup> Further, the Commenter provides no evidence that the fuel combustion threshold being removed from the permitting exemption criteria of Rule 2Q .0902 was originally adopted as an in-use restriction. The fuel combustion criterion was only one of five criteria North Carolina originally chose to adopt in this rule for the purpose of deciding whether a temporary crusher qualifies for a stationary source permit exemption, as explained further below. The State did not create this criterion to regulate emissions from the diesel engines. Under the existing rule, for example, if a temporary crusher that opted for coverage under Rule 2Q .0902 were to combust more than 17,000 gallons of

diesel fuel at any one facility or site, it would not be in violation of any fuel combustion limitation (because none exists). Instead, such facility would be in violation of the requirement to obtain a permit in accordance with 15A NCAC 2Q .0300.

North Carolina submitted the temporary crusher permitting exemption to EPA as a SIP revision on December 14, 2004, and EPA approved the revision on September 29, 2017.<sup>8</sup> In that original submittal, the State estimated that crushers processing 300,000 tons of material would emit approximately 1,775 pounds of particulate matter (PM),<sup>9</sup> the only pollutant emitted by temporary crushers subject to Rule 2Q .0902. The State also observed that many of these crushers, in combination with their associated diesel-powered engines or generators, emit less than 5 tons per year of each pollutant per site.<sup>10</sup> The State noted that the subject crushers are used on a temporary basis at construction sites to crush concrete, asphalt, and stone, are moved from site to site with little notice, and are generally at one location for only a few days to a few months at a time.<sup>11</sup> The State asserted that “[b]ecause of the mobile nature of these crushers, requiring them to obtain an air permit before moving to a new location is cumbersome and creates compliance problems for the crushers and the Division of Air Quality.”<sup>12</sup> Thus, the purpose of Rule 2Q .0902 is not to regulate the “use and operation” of these nonroad engines, but to identify the “temporary crushers” that are exempt from the State’s construction and operation permits program at Section 2Q .0300 due to the temporary nature of their operating location and their low level of air pollutant emissions.

*Comment 2:* The Commenter states that the diesel engine requirement was a valid regulation, and its removal is not merely a clarification.

*Response 2:* In its July 10, 2019, submittal, North Carolina states that language related to engines throughout Rule 2Q .0902 was deleted because DAQ does not regulate engines under CAA title II, *Emission Standards For Moving Sources* (title II).<sup>13</sup> In other words,

<sup>8</sup> *See* December 14, 2004, SIP revision, included in the docket (Docket Identification No. EPA-R04-OAR-2016-0362) for EPA’s September 29, 2017, rulemaking (82 FR 45473).

<sup>9</sup> *Id.* at Attachment 10, Memorandum, Paul Grable to Mr. Thomas Allen, June 9, 2003.

<sup>10</sup> *Id.* at Attachment 9, Economic Assessment.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *See* July 10, 2019, SIP revision, Attachment 2, p. HR-1-202.

<sup>5</sup> *See also* 40 CFR 1068.30, *General Compliance Provisions for Highway, Stationary, and Nonroad Programs*, which defines “nonroad engines,” in part, as any internal combustion engine that, by itself or in or on a piece of equipment, is portable or transportable, and does not remain at a location for more than 12 consecutive months.

<sup>6</sup> The Commenter quotes 40 CFR part 89, subpart A, Appendix A, which EPA moved to 40 CFR part 1074 in 2021. *See* 86 FR 34308 (July 29, 2021).

<sup>7</sup> *See* provision 2Q .0102(c)(1)(L)(ii), which states “[t]he following activities do not need a permit or permit modification under this Section .0300 of this Subchapter; however, the Director may require the owner or operator of these activities to register them under 15A NCAC 2D .0200: . . . non self-propelled non-road engines, except generators, regulated by rules adopted under Title II of the federal Clean Air Act. . . .”

because emissions from nonroad engines are mobile source emissions and not stationary source emissions, those emissions are not subject to any requirement of the North Carolina SIP. Indeed, the SIP specifically exempts title II nonroad engines from its permitting requirements, and the quantity of diesel fuel combusted by a nonroad engine or generator driving a crusher has no relevance to stationary source emissions. Therefore, removal of the diesel combustion threshold helps to clarify that mobile source emissions are not regulated under the current North Carolina SIP.<sup>14</sup>

*Comment 3:* The Commenter states that the removal of the diesel fuel combustion threshold on engines at temporary crushers is a relaxation of the SIP. According to the Commenter, it is possible that a permit for a temporary crusher with engines that burn more than 17,000 gallons of diesel will not contain any restrictions on the engines themselves but impose restrictions on other emissions from the crusher, and that more temporary crushers will qualify for the permit exemption as result of the change. The Commenter adds that this exemption is from the State's general construction and operating permit program, which is intended to protect air quality standards. The Commenter concludes that EPA must disapprove the revision for temporary crushers because the State has not demonstrated, as required under section 110(l) of the Act, that the revisions to the eligibility criteria for the permit exemption for temporary crushers will not interfere with requirements regarding attainment, reasonable further progress, and other requirements of the Act.

*Response 3:* EPA disagrees that the requirements of CAA section 110(l) have not been satisfied. Section 110(l) states 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 (as defined in section 171), or any other applicable requirement of this Act." As discussed below, EPA has concluded that the changes to Rule 2Q .0902 will not interfere with any applicable requirement concerning attainment or any other applicable CAA requirement because there are no potential emission increases associated with these changes.

<sup>14</sup> While Rule 2Q .0902 relates only to North Carolina's SIP permitting requirements at Section 2Q .0300, EPA notes that the State's title V permitting rules likewise exempt mobile source emissions from permitting requirements under that program. See Rules 02Q .0502(d) and 0503(7)(a).

As discussed above, North Carolina does not regulate nonroad engines, which are instead regulated by EPA under title II of the CAA.<sup>15</sup> EPA agrees with the State that nonroad diesel emissions are mobile source emissions regulated by EPA under title II and are not part of the stationary source emissions from temporary crushers. Therefore, removing the diesel engine combustion criterion will not cause engine emissions to increase because (1) North Carolina does not regulate these engines to begin with, (2) this criterion never served to limit either the quantity of diesel fuel that an engine or generator was allowed to combust or the quantity of emissions allowed from such combustion, and (3) title II requirements continue to limit emissions from nonroad engines and generators and this action will not change title II requirements.

With regard to permitting the stationary source, even if a temporary crusher with a nonroad engine that combusts more than 17,000 gallons at any one facility or site were to become exempt from the State's construction and operation permits program following removal of the fuel combustion criterion, EPA expects no appreciable impact on air quality. First, provision 2Q .0902(c) protects the fine and coarse PM NAAQS by requiring the owner or operator of a temporary crusher to reduce to a minimum any particulate matter from becoming airborne to prevent exceeding the ambient air quality standards for particulate matter beyond the property line.<sup>16</sup> Second, EPA does not expect that any permit issued by North Carolina to a material crusher prior to becoming exempt would have included any emission limitations beyond what is already required under state and federal rules and this action does not change those requirements. Requirements from 40 CFR part 60, subpart OOO, *Standards of Performance for*

<sup>15</sup> Section 213 of the CAA requires the EPA Administrator to promulgate (and periodically revise) regulations containing standards applicable to emissions from those classes or categories of new nonroad engines and new nonroad vehicles (other than locomotives or engines used in locomotives) which in the Administrator's judgment cause, or contribute to, air pollution. Those regulations are codified under 40 CFR part 1039, *Control of Emissions from New and In-Use Nonroad Compression-Ignition Engines*.

<sup>16</sup> The SIP-approved version of Rule 2Q .0902 states "The owner or operator of a portable crusher shall not cause or allow any material to be produced, handled, transported, or stockpiled without taking measures to reduce to a minimum any particulate matter from becoming airborne to prevent exceeding the ambient air quality standards beyond the property line for particulate matter (PM<sub>2.5</sub>, PM<sub>10</sub>, and total suspended particulates)."

*Nonmetallic Mineral Processing Plants*,<sup>17</sup> and from North Carolina rules 2D .0510, *Particulates from Sand, Gravel, Or Crushed Stone Operations*, and 2D .0540, *Particulates from Fugitive Non-Process Dust Emission Sources* continue to apply to these material crushers, in accordance with the terms of such rules. These rules contain limitations for particulate matter emissions, fugitive emissions, and opacity only. Third, the 300,000-ton material processing criterion remains in place, and as noted above, temporary crushers that emit more than approximately 1,775 pounds of PM at a site per 12-month period would continue to be subject to permitting.

For the reasons discussed above, EPA has concluded that the revisions to Rule 2Q .0902 will not interfere with any applicable requirement concerning attainment, reasonable further progress, or any other applicable CAA requirement.

*Comment 4:* The Commenter states that North Carolina's SIP revision must include a CAA section 110(l) noninterference demonstration, consisting of an air quality analysis or substitute equivalent emissions reductions, and that the revision contains no such demonstration. Therefore, the Commenter claims that the SIP revision does not meet the completeness requirements of Appendix V to 40 CFR part 51, and in turn, does not contain the information necessary to enable EPA to determine whether the plan submission complies with the provisions of the Act, as required by CAA section 110(k)(1)(A). The Commenter also states that in the absence of any information from the State to support the SIP revision, EPA cannot supplement it with technical information about temporary crushers and air quality to approve the submittal because to do so would violate the notice requirements of the Administrative Procedure Act (APA) (citing *Ober v. U.S. EPA*, 84 F.3d 304, 312 (9th Cir. 1996)). If the State or EPA has information that supports approval of the SIP revision, the Commenter argues that EPA must re-propose its action and allow for comment on the information.

*Response 4:* EPA disagrees with the Commenter. Pursuant to CAA section 110(k)(1)(B), the SIP submissions being acted on were deemed complete by operation of law on March 18, 2010, and

<sup>17</sup> 40 CFR part 60, subpart OOO, which applies to temporary crushers in North Carolina that meet certain applicability criteria (see 40 CFR 60.670(a)(1) and (c)(2)), does not include any provision regulating the engines or generators that power such equipment.

January 10, 2020, respectively (*i.e.*, six months after the dates of submission), because EPA did not make an affirmative finding that the submissions were complete or incomplete before those dates. Furthermore, given the nature of the revisions to Rule 2Q .0902, the SIP submittals did not need a technical air quality analysis or equivalent emissions reductions to demonstrate compliance with the CAA. Removal of the diesel fuel combustion criterion from Rule 2Q .0902 is appropriate because, among other things, mobile source emissions are not part of the stationary source (*i.e.*, the temporary crusher) emissions, nonroad engines are not regulated by North Carolina, and the criterion did not require any air pollutant emission reductions from the nonroad engines.<sup>18</sup> EPA's evaluation of North Carolina's revisions to Rule 2Q .0902 is based entirely on the State's December 14, 2004, SIP submittal (original request for approval of Rule 2Q .0902); the State's September 18, 2009, and July 10, 2019, SIP submittals; the State's June 7, 2019, and June 1, 2020, letters included in the docket for this rulemaking; the SIP; and on the CAA. EPA has not relied on any new technical information in approving this rule revision. Under these circumstances, re-proposal of this action is not required by the APA.

### III. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, and as discussed in Section I and II of this preamble, EPA is finalizing the incorporation by reference of the following rules under Subchapter 2Q Air Quality Permits with a state-effective date of April 1, 2018: 2Q .0801, *Purpose and Scope*; 2Q .0802, *Gasoline Service Stations and Dispensing Facilities*; 2Q .0803, *Coating, Solvent Cleaning, Graphic Arts Operations*; 2Q .0804, *Dry Cleaning Facilities*; 2Q .0805, *Grain Elevators*; 2Q .0806, *Cotton Gins*; 2Q .0807, *Emergency Generators*; 2Q .0901, *Purpose and Scope*; and 2Q .0902, *Temporary Crushers* (with the exception of .0902(d)).<sup>19</sup> Also in this document, EPA is finalizing the removal

of Rule 2Q .0809, *Concrete Batch Plants*, from the North Carolina SIP, which was previously incorporated by reference in accordance with the requirements of 1 CFR part 51. These changes to the North Carolina SIP revise the recordkeeping and reporting requirements of the permitting exclusionary rules, revise language, reformat the regulatory citations contained in these regulations, remove the "Concrete Batch Plants", and remove provision 2Q .0902(b)(2). EPA has made, and will continue to make, the State Implementation Plan generally available at the EPA Region 4 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, the revised materials as stated above, have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.

### IV. Final Action

EPA is approving the changes described above to the North Carolina SIP submitted by the State of North Carolina on September 18, 2009, and July 10, 2019. The changes to 2Q .0801, *Purpose and Scope*; 2Q .0802, *Gasoline Service Stations and Dispensing Facilities*; 2Q .0803, *Coating, Solvent Cleaning, Graphic Arts Operations*; 2Q .0804, *Dry Cleaning Facilities*; 2Q .0805, *Grain Elevators*; 2Q .0806, *Cotton Gins*; 2Q .0807, *Emergency Generators*; 2Q .0901, *Purpose and Scope*; and 2Q .0902, *Temporary Crushers*, revise the recordkeeping and reporting requirements of the permitting exclusionary rules, revise language, reformat the regulatory citations contained in these regulations, remove 2Q .0809, *Concrete Batch Plants*, and remove provision 2Q .0902(b)(2). The changes are consistent with 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. *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. 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,

<sup>18</sup> See prior comment responses in this notice for additional rationale.

<sup>19</sup> The changes to paragraph .0902(d) in the July 10, 2019, and September 18, 2009, SIP revisions were withdrawn from EPA consideration in a letter from DAQ dated June 1, 2020. Additionally, the withdrawal of paragraph (d) from Rule 2Q .0902 leaves the rule with two paragraphs (c), one state-effective on January 1, 2005, and one state-effective on April 1, 2018. DAQ plans to submit revisions to address the two paragraphs (c) in a future submission.

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 December 19, 2022. 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 dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 30, 2022.

**Daniel Blackman,**  
*Regional Administrator, Region 4.*

For the reasons stated in the preamble, EPA amends 40 CFR part 52 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(c) amend Table (1) under “Subchapter 2Q Air Quality Permits” by:
  - a. Removing the entries for “Section .0801”, “Section .0802”, “Section .0803”, “Section .0804”, “Section .0805”, “Section .0806”, “Section .0807”, and adding in their place entries for “Rule .0801”, “Rule .0802”, “Rule .0803”, “Rule .0804”, “Rule .0805”, “Rule .0806”, “Rule .0807”;
  - b. Removing the entry for “Section .0809”; and
  - c. Removing the entries for “Section .0901” and “Section .0902” and adding in their place entries for “Rule .0901” and “Rule .0902”.

The amendment reads as follows:

**§ 52.1770 Identification of plan.**

\* \* \* \* \*  
(c) \* \* \*

(1) EPA APPROVED NORTH CAROLINA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
* * * * *				
<b>Subchapter 2Q Air Quality Permits</b>				
* * * * *				
Rule .0801 ...	Purpose and Scope .....	4/1/2018	10/18/2022, [Insert citation of publication].	
Rule .0802 ...	Gasoline Service Stations and Dispensing Facilities.	4/1/2018	10/18/2022, [Insert citation of publication].	
Rule .0803 ...	Coating, Solvent Cleaning, Graphic Arts Operations.	4/1/2018	10/18/2022, [Insert citation of publication].	
Rule .0804 ...	Dry Cleaning Facilities .....	4/1/2018	10/18/2022, [Insert citation of publication].	
Rule .0805 ...	Grain Elevators .....	4/1/2018	10/18/2022, [Insert citation of publication].	
Rule .0806 ...	Cotton Gins .....	4/1/2018	10/18/2022, [Insert citation of publication].	
Rule .0807 ...	Emergency Generators ....	4/1/2018	10/18/2022, [Insert citation of publication].	
* * * * *				
Rule .0901 ...	Purpose and Scope .....	4/1/2018	10/18/2022, [Insert citation of publication].	
Rule .0902 ...	Temporary Crushers .....	4/1/2018	10/18/2022, [Insert citation of publication].	With the exception of .0902(d). This rule contains two paragraph “(c)”s. One has an effective date of 1/1/2001. The other has a state effective date of 4/1/2018.

\* \* \* \* \*