

on or after January 5, 2021, and the State home requests that VA consider them for a waiver under § 51.51(b)(2);

(2) With respect to the veterans on the written list under paragraph (c)(1), VA denied the State's request for per diem for the veterans when their forms were originally submitted and the denial was solely because the veteran did not meet the requirements under 38 CFR 51.51(b) (2021);

(3) Upon VA review, the veteran would have received a waiver under § 51.51(b)(2) if that paragraph had been in effect when the request for per diem was originally submitted; and

(4) The State home submits to VA a completed VA Form 10–5588, State Home Report and Statement of Federal Aid Claimed, for each month that the State home provided domiciliary care to a veteran for whom the home is requesting a waiver. The form would only cover the veterans not originally included on the form when submitted previously for that month.

■ 7. Amend § 51.51 by revising paragraphs (a)(2) and (b) to read as follows:

§ 51.51 Eligible veterans—domiciliary care.

(a) * * *

(1) * * *

(2) A veteran who VA determines has no adequate means of support. When an applicant's annual income exceeds the rate of pension described in paragraph (a)(1) of this section, VA will determine if the applicant has no adequate means of support. This determination will be made through an assessment of the veteran's deficits in health or functional status that may render the veteran incapable of achieving or sustaining independence in the community as determined by the Chief of Staff of the VA medical center of jurisdiction, or designee. Assessment of whether the veteran has no adequate means of support will be based on objective evidence that considers factors that are inclusive of but not limited to:

(i) the impact of the severity of the veteran's medical condition, disabilities, and symptoms on the veteran's safety in the community;

(ii) the impact of the severity of the veteran's medical condition, disabilities, and symptoms on the veteran's ability to provide self-care;

(iii) the availability of community or family support systems;

(iv) the impact of the severity of the veteran's medical condition, disabilities, and symptoms on the veteran's ability to access and utilize community support systems;

(v) the risk of loss of housing in the community;

(vi) the risk of loss of the veteran's income;

(vii) access to outpatient mental health and substance use disorder care; and

(viii) the current effectiveness of any outpatient mental health and substance use disorder care provided to the veteran.

(b) (1) For purposes of this section, the eligible veteran must be able to perform the following:

(i) Daily ablutions, such as brushing teeth, bathing, combing hair, and body eliminations, without assistance.

(ii) Dress himself or herself with a minimum of assistance.

(iii) Proceed to and return from the dining hall without aid.

(iv) Feed himself or herself.

(v) Secure medical attention on an ambulatory basis or by use of a personally propelled wheelchair.

(vi) Have voluntary control over body eliminations or have control by use of an appropriate prosthesis.

(vii) Make rational and competent decisions as to the veteran's desire to remain in or leave the State home; or, if the veteran lacks the general capacity to make this residential care placement decision, as defined by State law, then the veteran's legal representative designated in accordance with State law, is authorized to make this decision on behalf of the veteran.

(2) The Chief of Staff of the VA medical center of jurisdiction, or designee, may waive the requirements in paragraph (b)(1) of this section for purposes of payment of per diem for domiciliary care in a State home on or after January 5, 2021, if the veteran is able to perform not fewer than four of the requirements set forth in such paragraph; or such waiver would be, based on a clinical determination, in the best interest of the veteran because receipt of domiciliary care in the particular State home would likely be beneficial to the veteran. This clinical determination must consider whether receiving domiciliary care in the State home would significantly enhance the veteran's ability to live safely, would support the veteran's potential progress in rehabilitation, if such potential exists, and would create an environment that supports the health and well-being of the veteran. In granting a waiver of paragraph (b)(1) of this section, the Chief of Staff of the VA medical center of jurisdiction, or designee, must make a finding that the State home has the capability to provide the domiciliary care that the veteran needs.

§ 51.300 [Amended]

■ 8. Amend § 51.300 by removing and reserving paragraph (b).

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2022–0391; FRL–11368–01–R4]

Air Plan Approval; North Carolina; Revisions to Miscellaneous Particulate Matter Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of North Carolina through the North Carolina Division of Air Quality (NCDAQ) via a letter dated April 13, 2021. The SIP revision seeks to modify the State's emission control standards by amending several air quality rules and removing a redundant rule for electric utility boilers. EPA is proposing to approve these changes pursuant to the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before October 2, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2022–0391, at 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 www.epa.gov/dockets/commenting-epa-dockets.

FOR FURTHER INFORMATION CONTACT: Pearlene Williams-Miles, Multi-Air Pollutant Coordination Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, GA 30303-8960. The telephone number is (404) 562-9144. Ms. Williams-Miles can also be reached via electronic mail at WilliamsMiles.Pearlene@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Overview

EPA is proposing to approve a SIP revision submitted by North Carolina on April 14, 2021,¹ seeking to amend various air quality rules and to remove one rule from the North Carolina SIP.² Specifically, the SIP revision addresses State regulations amended in 15A North Carolina Administrative Code (NCAC) Subchapter 02D. The submission includes changes to multiple rules in Sections .0400 and .0500 of Subchapter 02D and the removal of Rule 02D .0536, *Particulate Emissions from Electric Utility Boilers*.³ To support the request to remove Rule 02D .0536 from the SIP, the submission includes technical support materials to demonstrate that the removal of the rule would not interfere with any applicable requirement concerning attainment and reasonable further progress (RFP) or any other applicable requirement of the CAA.⁴

EPA's analysis of North Carolina's April 13, 2021, SIP revision is organized into two parts under Section II. Section II.A provides information and analysis relevant to the amended rules, and Section II.B provides the background and analysis for the removal of Rule 02D .0536.

II. Analysis of North Carolina's April 14, 2021, SIP Revision

A. Amended Rules

North Carolina submitted changes to several rules within Subchapter 2D Sections .0400 and .0500 which do not alter the meaning of or make significant changes to those rules. Specifically, the

following rules were submitted with changes to reformat equations and regulatory citations, make minor language edits, correct typographical errors, amend punctuation, and make clarifying edits: Rule 02D .0403, *Total Suspended Particulates*; Rule 02D .0501, *Compliance with Emission Control Standards*; Rule 02D .0504, *Particulates from Wood Burning Indirect Heat Exchangers*; Rule 02D .0506, *Particulates from Hot Mix Asphalt Plants*; Rule 02D .0507, *Particulates from Chemical Fertilizer Manufacturing Plants*; Rule 02D .0508, *Particulates from Pulp and Paper Mills*; Rule 02D .0509, *Particulates from Mica and Feldspar Processing Plants*; Rule 02D .0510, *Particulates from Sand, Gravel, or Crushed Stone Processes*; Rule 02D .0511, *Particulates from Lightweight Aggregate Processes*; 02D .0512, *Particulates from Wood Products Finishing Plants*; Rule 02D .0513, *Particulates from Portland Cement Plants*; Rule 02D .0514, *Particulates from Ferrous Jobbing Foundries*; and Rule 02D .0515, *Particulates from Miscellaneous Industrial Processes*. Certain changes to these rules are described below.

1. Rule 02D .0501, Compliance With Emission Control Standards

Rule 02D .0501, *Compliance with Emission Control Standards*, is revised in paragraph (d)(1)(D) to clarify that the review of an application for the proposed mix of alternative controls and the enforcement of a resulting permit will not require expenditures on the part of the State more than five times that which would otherwise be required for review and enforcement of other permits. Additionally, in paragraph (d)(2), a weblink is added to allow access to the SIP on the DAQ website. Paragraph (e) is revised to clarify that any changes made to the permit of a facility invoking paragraph (d) will be submitted to EPA to consider the changes' approvability.

2. Rule 02D .0504, Particulates From Wood Burning Indirect Heat Exchangers

Rule 02D .0504, *Particulates from Wood Burning Indirect Heat Exchangers*, is revised at paragraph (a) to clarify that Rule 02D .0504 applies only to equipment that burns 100 percent wood and to address text deleted from paragraph (f) by stating that equipment that burns wood and other fuels in combination is subject to Rule 02D .0503, *Particulates from Fuel Burning Indirect Heat Exchangers*.

Rule 02D .0504 is also revised at paragraph (e) to prohibit a change in the allowable emission limit for wood

burning indirect heat exchangers with previously established allowable emission limits due to the removal of a wood burning indirect heat exchanger. This change means that the emission limit will remain more stringent in this scenario (*i.e.*, where a wood burning indirect heat exchanger has been removed but not replaced) because whereas a lower heat input (resulting from such removal) would otherwise result in a higher emission limit according to the equation in paragraph (c), the limit is not to be adjusted with such removal. Next, language is added to specify that for indirect heat exchangers constructed after, or in conjunction with, the removal of an existing unit, the maximum heat input of the removed wood burning indirect heat exchanger shall no longer be considered in the determination of the allowable emission limit for any wood burning indirect heat exchanger constructed after or in conjunction with the removal. In this scenario (*i.e.*, where a new unit is constructed either contemporaneously with the removal of an existing unit or after the existing unit has been removed), the emission limit is to be updated in accordance with the equation in paragraph (c). This change clarifies the applicability of the change regarding removed indirect heat exchangers and maintains the stringency of the existing rule with respect to newly constructed indirect heat exchangers.

Paragraph (e) is also revised to add language pertaining to facilities or institutions for which the indirect heat exchanger is utilized primarily for "comfort heat." Specifically, the new language states that for those facilities and institutions, only those wood burning indirect heat exchangers "located in the same power plant or building or otherwise physically interconnected, such as common flues, steam, or power distribution line" are used to determine the total heat input to calculate the corresponding PM emission limit. This change aligns Rule 02D .0504 with existing language in Rule 02D .0503(e) (addressing PM emissions from fuel burning indirect heat exchangers), which has always treated units purposed for comfort heat differently. This change is meant to make paragraph (e) consistent with the definition of "plant site" at subparagraph .0504(a)(3) for units whose primary wood burning capacity is for comfort heat, such that only those units in the same power plant or building or otherwise physically interconnected are treated as units at the same "plant site." North Carolina

¹ EPA notes that the April 14, 2021, submission was received under a cover letter dated April 13, 2021. For clarity, throughout this document EPA will refer to the April 14, 2021, submission by its cover letter date of April 13, 2021.

² The April 13, 2021, submittal contains revisions to other North Carolina SIP-approved rules that are not addressed in this document. EPA will act on those rule changes in separate rulemakings.

³ EPA will not act on Rule 02D .0503, *Particulates from Fuel Burning Indirect Heat Exchangers*, since this section was withdrawn from EPA consideration in a letter dated January 17, 2023, which is in the docket of this notice of proposed rulemaking (NPRM).

⁴ See CAA section 110(l).

explained in a clarification letter dated January 17, 2023, which is in the docket for this NPRM, that it added the text to “clarify instances of when such units whose primary wood burning capacity is for providing comfort heat would be considered ‘functionally dependent’ in their operations under the definition of plant site in 02D .0504(a)(3)(C).” NCDAQ notes that units which are otherwise “interconnected” would satisfy the criterion of being “functionally dependent” at .0504(a)(3)(C). This treatment of these indirect heat exchangers reflects the fact that units primarily used for comfort heat have a more limited purpose and should be treated collectively to the extent they are located together or otherwise interconnected, but not if they are on adjacent properties and are not heating the same buildings or connected to the same power distribution line. Therefore, as explained by NCDAQ,⁵ the addition of the text does not change the emission limits set forth in paragraph (c).

3. Rule 02D .0506, Particulates From Hot Mix Asphalt Plants

Rule 02D .0506, *Particulates from Hot Mix Asphalt Plants*, is revised at paragraph (a) to specify that the allowable emissions rates apply to emissions originating from the stack or chimney of hot mix asphalt batch plants regulated by this rule.⁶ This is a clarifying amendment meant to recognize that there could be fugitive emissions, which, by definition, would not pass through the stack or chimney. Paragraph (c) in the SIP-approved version of the rule states that any non-process fugitive emissions are covered by Rule 02D .0540, *Particulates from Fugitive Non-Process Dust Emission Sources*, which covers “particulate matter that is not collected by a capture system and is generated from areas such as pit areas, process areas, haul roads, stockpiles, and plant roads,” as defined in Rule 02D .0540.

The revision to Rule 02D .0506 also reorders some of the paragraphs. Paragraph (b) is reordered as paragraph (c). A new paragraph (b) is added to establish a 20 percent opacity limit for all hot mix asphalt plants. The requirement that fugitive process dust control systems (for their drying,

conveying, classifying, and mixing equipment) be controlled in accordance with the opacity provisions in Rules 02D .0521, *Control of Visible Emissions*, and 02D .0524, *New Source Performance Standards*, is removed from paragraph (c), as reordered, and sources are instead required to be equipped with scavenger process dust control systems that must exhaust through a stack or vent and be operated in a manner to comply with requirements established in paragraphs (a) and (b). Under the SIP, fugitive process dust emissions from hot mix asphalt plants are regulated by Rule 02D .0521, with some sources subject to a 20 percent opacity standard and others a 40 percent opacity standard depending on their date of manufacture, or Rule 02D .0524 which references Federal new source performance standards. The purpose of adding paragraph (b) is to require all hot mix asphalt plants, which are now required to have scavenger process dust control systems for their fugitive process emissions, to comply with an opacity standard of 20 percent, regardless of when they were constructed. The current SIP-approved paragraph (c), which states that fugitive non-process dust emissions are controlled by Rule 02D .0540, *Particulates from Fugitive Dust Emission Sources*, is also reordered as paragraph (d).

In paragraph (c), as reordered, there are changes to the language concerning the process dust control system. First, the SIP-approved version of the paragraph describes the control as a “fugitive process dust control system,” and the updated term in the revised version—“scavenger process dust control system”—simply reflects that the dust control system is designed to collect, control, and vent the process dust emissions. Next, the SIP-approved language stating that these systems “shall be operated and maintained in such a manner as to reduce to a minimum the emission of particulate matter from any point other than the stack outlet” is updated to say the dust control system “shall exhaust through a stack or vent and shall be operated and maintained in such a manner as to comply with Paragraphs (a) and (b)” of 02D .0506. The paragraph, as revised, no longer mentions reducing emissions from any point other than the stack because the dust control system is designed to collect and process these emissions through the stack or vent, thereby specifically reducing any such fugitive emissions. The new requirement that the system be operated to comply with paragraphs (a) and (b)

means that the system must meet both the particulate matter (PM) emission limit and visibility requirements of the rule.

The revised version of Rule 02D .0506 also includes a new paragraph (e), which provides that any fugitive emissions not otherwise covered by 02D .0506 are not to exceed 20 percent opacity. EPA is not acting on the removal of the word “elsewhere,” in paragraph (e), however, the Agency is acting on the remaining text in the paragraph.⁷

4. Rule 02D .0510, Particulates From Sand, Gravel or Crushed Stone Processes

Rule 02D .0510, *Particulates from Sand, Gravel or Crushed Stone Processes*, is revised to provide examples of measures that owners or operators of sand, gravel, or crushed stone operations could make to “reduce to a minimum any PM becoming airborne.” Specifically, paragraph (a) is revised to include examples of possible control measures: “such as application of a dust or wet suppressant, soil stabilizers, covers, or add-on particulate control devices.” This is a noncomprehensive, illustrative list of possible controls to meet the requirement to minimize PM emissions. As such, this additional language clarifies but does not change the meaning of the rule.

5. Rule 02D .0511, Particulates From Lightweight Aggregate Processes

Rule 02D .0511, *Particulates From Lightweight Aggregate Processes*, is revised at paragraph (a) to provide one example of a measure—wet suppression—that owners or operators of a lightweight aggregate process could take to “reduce to a minimum any PM becoming airborne.” As such, this additional language clarifies but does not change the meaning of the rule. Paragraph (d) is also revised to remove the statement that “[t]he 95 percent reduction shall be by air pollution control devices.” This paragraph requires that PM from any stack serving lightweight aggregate kilns or dryers “shall be reduced by at least 95 percent by weight before being discharged to the atmosphere.” This reduction requirement remains in place; only the specification as to the means of reduction, not the control requirement itself, is changing.

⁵ See the January 17, 2023, clarification letter from NCDAQ, which is included in the docket for this NPRM.

⁶ In addition to the changes outlined in this Section II.A.3, the State also removed paragraph (f) in the November 1, 2020, state-effective rule amendments at Rule 02D .0506. EPA never approved paragraph (f) into the North Carolina SIP, therefore, there is no EPA action requested with respect to this paragraph.

⁷ EPA will not act on the removal of the term “elsewhere,” in Rule 02D .0506(e) since the removal of this word was withdrawn from EPA consideration in a letter dated January 17, 2023, which is in the docket for this NPRM.

6. Rule 02D .0512, Particulates From Wood Products Finishing Plants

Rule 02D .0512, *Particulates from Wood Products Finishing Plants*, is revised to clarify that collectors and duct work must be properly designed and adequate to collect PM to the maximum extent practicable and that Commission approval of other devices proposed for meeting the requirements of Rule 02D .0512 shall occur on a case-by-case basis. The SIP-approved language states that “such other devices as approved by the Commission” can be utilized to collect and vent PM. Therefore, this additional language regarding other devices clarifies, but does not change, the meaning of the rule.

7. Rule 02D .0513, Particulates From Portland Cement Plants

Rule 02D .0513, *Particulates from Portland Cement Plants*, is revised at paragraph (a)(1) to remove the statement that “the 99.7 percent reduction shall be by air pollution control devices.” This paragraph requires that PM from any Portland cement kiln “shall be reduced by at least 99.7 percent by weight before being discharged to the atmosphere.” This reduction requirement remains in place; only the specification as to the means of reduction, not the control requirement itself, is changing.

For the reasons discussed above, the changes described in this Section II.A

would not interfere with any applicable requirement concerning attainment and RFP or any other applicable CAA requirement, consistent with section 110(l) of the CAA.

B. Removal of 02D .0536, Particulate Emissions From Electric Utility Boilers

On January 24, 1983, and February 21, 1983, North Carolina submitted Rule 02D .0536, *Particulate Emissions from Electric Utility Boilers*, to EPA for incorporation into the SIP. Subsequently, North Carolina supplemented the submissions on December 17, 1985, and June 19, 1987. The regulation prescribes PM emission limits for thirteen electric utility power plants in the State belonging to Duke Power Company (Duke) and Carolina Power and Light (CP&L) relative to Rule 02D .0503, *Particulates from Fuel-Burning Indirect Heat Exchangers*. EPA approved portions of and disapproved other portions of Rule 02D .0536 in 1988.⁸ See 53 FR 11068 (April 5, 1988). The approved portions of the regulation set new: relaxed short-term emission limits for eight of the plants, retaining, although recodifying, the emission limit for one additional plant; stack testing requirements; and requirements for submittal of malfunction abatement plans.⁹

On July 9, 2020, North Carolina repealed Rule 02D .0536 to remove from its rules requirements that had become

obsolete. EPA is proposing to approve NCDAQ’s request in the April 14, 2021, submission to remove the Rule from the North Carolina SIP. Further analysis is provided below.

1. EPA’s Analysis of North Carolina’s Non-Interference Demonstration

i. Particulate Matter

In North Carolina’s April 14, 2021, SIP revision, the State concluded that the removal of the Rule 02D .0536, *Particulate Emissions from Electric Utility Boilers*, would not interfere with any applicable requirement concerning attainment of the National Ambient Air Quality Standards. Rule 02D .0536 contains requirements less stringent than other sections of the North Carolina SIP. Specifically, paragraph (c) of Rule 02D .0503 contains PM emission limitations that are at least as stringent as those of Rule 02D .0536. NCDAQ confirms in its submittal that many units subject to Rule 02D .0536 have been permanently shut down, which include five units at the Buck facility, four units at the Cliffside facility, three units at the Dan Rivers facility, four units at the Riverbend facility, and two units at the Cape Fear facility.¹⁰ The remaining units are subject to the more or equally stringent PM emission limits of Rule 02D .0503(c), as described in North Carolina’s April 13, 2021, SIP submittal and shown in the table below.

Unit identification	PM emission limits in Rule 02D .0536 (lb/MMBtu)	PM emission limits in Rule 02D .0503 (lb/MMBtu)
Allen 1	0.25	0.15
Allen 2	0.25	0.15
Allen 3	0.25	0.13
Allen 4	0.25	0.13
Allen 5	0.25	0.13
Belews Creek 1	0.15	0.10
Belews Creek 2	0.15	0.10
Cliffside 5	0.25	0.11
Marshall 1	0.20	0.12
Marshall 2	0.20	0.12
Marshall 3	0.18	0.11
Marshall 4	0.18	0.11
Roxboro 1	0.25	0.12
Roxboro 2	0.16	0.11
Roxboro 3	0.10	0.10

EPA has evaluated the State’s analysis and proposes to agree with North Carolina’s conclusion that removal of

Rule 02D .0536, *Particulate Emissions from Electric Utility Boilers*, from the SIP would not interfere with any

applicable requirement concerning attainment and RFP or any other applicable CAA requirement.

⁸ EPA approved changes to Rule 02D .0536 in 1996 and 2019. See 61 FR 5689 (February 14, 1996) and 84 FR 14019 (April 9, 2019).

⁹ The portions not approved in the 1988 action included emission and opacity limits for four plants—CP&L’s Asheville, Lee, Sutton, and Weatherspoon facilities—which were to be acted

upon in a separate rulemaking, and the annual opacity limits for all plants, which were disapproved.

¹⁰ EPA notes that the removal of the Rule 02D .0536 emission limits for CP&L’s Asheville, Lee, Sutton, and Weatherspoon facilities is not before EPA for consideration because these emission limits

were disapproved by EPA on June 16, 1988, and are therefore not part of the North Carolina SIP. See 53 FR 22486 and 40 CFR 52.1781(c). EPA also notes that each of these units has since shut down, as reflected in the April 13, 2021, submittal.

ii. Quality Assurance Measures

Rule 02D .0536 also addresses measures required for development and implementation of a quality assurance program. The program covers the requirements for opacity monitoring systems and measuring opacity. In North Carolina's April 14, 2021, SIP revision, the State notes that the removal of Rule 02D .0536 does not constitute a relaxation of requirements for electric generating units since the affected units are still regulated by Rule 02D .0613, *Quality Assurance Program*, which is also SIP-approved. Like Rule 02D .0536, Rule 02D .0613 establishes that the Director may require the submission of a quality assurance program under certain conditions. The quality assurance program must consist of procedures and frequencies for calibration, standards, traceability, operational checks, maintenance, auditing, data validation, and a schedule for implementing the quality assurance program. Accordingly, EPA proposes that removal of the Rule 02D .0536 does not alter the requirements of the SIP in this regard.

iii. Malfunction Abatement Plans

North Carolina's repeal of Rule 02D .0536 removes requirements at paragraph (h) for malfunctions or equipment failures. Because the associated PM limits of Rule 02D .0536 are proposed for removal from the SIP, as described above, these malfunction abatement plan provisions would no longer serve their original intended purpose and are not necessary. Therefore, EPA agrees with North Carolina's analysis that removal of paragraph (h) would not interfere with any applicable requirement concerning attainment, RFP, or any other applicable CAA requirement.

iv. Stack Testing Requirements

NCDAQ explains that the stack testing provision in Rule 02D .0536(d) provided the most practicable approach to demonstrating compliance when it was adopted on March 1, 1983, based on factors such as cost and time. However, to meet State and Federal requirements,¹¹ the emitting units affected by the repeal of Rule 02D .0536 have since undergone updates to more advanced monitoring systems that provide real-time emissions data; NCDAQ confirms in its SIP revision that

all subject units have installed PM continuous emission monitoring systems. Furthermore, as noted above, because the PM limits of Rule 02D .0536 are proposed for removal from the SIP, these associated stack testing requirements would no longer serve their original intended purpose and are not necessary. Therefore, EPA is proposing to agree with the State's analysis that the removal of the stack testing provision with the repeal of Rule 02D .0536 will not interfere with any applicable requirement concerning attainment, RFP, or any other CAA requirement.

III. Incorporation by Reference

In this document, EPA is proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, and as discussed in Section II of this preamble, EPA is proposing to incorporate by reference the following air quality rules under 15A NCAC 02D, Air Pollution Control Requirements, state effective on November 1, 2020: Rules 02D .0403, *Total Suspended Particulates*; 02D .0501, *Compliance with Emission Control Standards*; 02D .0504, *Particulates from Wood Burning Indirect Heat Exchangers*; 02D .0506, *Particulates from Hot Mix Asphalt Plants*;¹² 02D .0507, *Particulates from Chemical Fertilizer Manufacturing Plants*; 02D .0508, *Particulates from Pulp and Paper Mills*; 02D .0509, *Particulates from Mica and Feldspar Processing Plants*; 02D .0510, *Particulates from Sand, Gravel or Crushed Stone Processes*; 02D .0511, *Particulates from Lightweight Aggregate Processes*; 02D .0513, *Particulates from Portland Cement Plants*; 02D .0514, *Particulates from Ferrous Jobbing Foundries*; and 02D .0515, *Particulates from Miscellaneous Industrial Processes*. Also in this document, EPA is proposing to remove Rule 02D .0536, *Particulate Emissions from Electric Utility Boilers*, from the North Carolina SIP, which is incorporated by reference in accordance with the requirements of 1 CFR part 51. EPA has made, and will continue to make, the SIP 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).

¹¹ See 15A NCAC 02D .0530, Prevention of Significant Deterioration, and 40 Code of Federal Regulations Part 63, Subpart UUUUU—National Emission Standards for Hazardous Air pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units identified in the SIP revision at Attachment 2—Supplemental Information.

¹² EPA is not proposing to act on the removal of the term "elsewhere," in Rule 02D .0506(e) since the removal of this word was withdrawn from EPA consideration in a letter dated January 17, 2023, which is in the docket for this NPRM.

IV. Proposed Action

For the reasons explained above, EPA is proposing to approve North Carolina's April 14, 2021, SIP revision seeking to amend various air quality rules and to remove Rule 02D .0536 from North Carolina's SIP.

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 CAA 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 proposed action merely proposes to approve State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed 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); and
- 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.

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).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation,

and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The NCDAQ did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this proposed action. Due to the nature of the action being proposed here, this proposed action is expected to have a neutral to positive impact on the air quality of the

affected area. Consideration of EJ is not required as part of this proposed action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving EJ for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: August 25, 2023.

Carol Kemker,

Acting Regional Administrator, Region 4.

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