

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, Particulate matter, Reporting and recordkeeping requirements.

Dated: September 12, 2024.
Martha Guzman Aceves,
Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations 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 DD—Nevada

■ 2. In § 52.1470, in paragraph (c), table 7 is amended by revising the entry for “040.051” to read as follows:

§ 52.1470 Identification of plan.

* * * * *
 (c) * * *

TABLE 7—EPA-APPROVED WASHOE COUNTY REGULATIONS

District citation	Title/subject	District effective date	EPA approval date	Additional explanation
040.051	Wood-Burning Devices	7/1/2022	[INSERT FIRST PAGE OF FEDERAL REGISTER CITATION], 9/19/2024.	Submitted on 10/4/2022.

* * * * *
 [FR Doc. 2024–21218 Filed 9–18–24; 8:45 am]
 BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2017–0454; EPA–R04–OAR–2019–0638; EPA–R04–OAR–2020–0186; FRL–11971–02–R4]

Air Plan Approval; North Carolina; Permitting Provisions Revisions

AGENCY: Environmental Protection Agency (EPA).
ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is correcting the erroneous incorporation of cross-references into the North Carolina State Implementation Plan (SIP) using the Clean Air Act (CAA or Act) error correction provision. EPA has determined that portions of its May 23, 2019, July 17, 2020, and March 1, 2021, final SIP rulemaking actions were in error and that it is appropriate to correct those actions by removing specific cross-references in the permitting rules from the SIP.

DATES: This rule is effective October 21, 2024.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2017–0454. Additional supporting materials associated with this final action are included in Docket Nos.

EPA–R04–OAR–2019–0638 and EPA–R04–OAR–2020–0186. All documents in the docket are listed on the *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 are available either electronically through *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: Steve Scofield, Multi-Air Pollutant Coordination Section, Air Planning and Implementation Branch, Air and Radiation Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9034. Mr. Scofield can also be reached via electronic mail at *scofield.steve@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On May 23, 2019, July 17, 2020, and March 1, 2021,¹ EPA approved revisions to 15A North Carolina Administrative Code (NCAC) 02Q .0101, 02Q .0103, and 02Q .0301 into the North Carolina SIP.² These revisions included cross-references to North Carolina General Statutes (G.S.) 143–215.108 and 143–215.108A; however, these cross-referenced provisions were not incorporated into the SIP. EPA has determined these prior approvals of the cross-referenced provisions were in error and is finalizing removal of these cross-references from 15A NCAC 02Q.0101, 02Q.0103 and 02Q.0301 of the SIP. Because the cross-referenced provisions are not incorporated into the SIP, changes to those provisions could change the SIP without the submission of a SIP revision and subsequent EPA action to approve such a change, which is inconsistent with the CAA. Specifically, CAA section 110(l) requires each SIP revision submitted by a State to undergo reasonable public notice and hearing and prevents EPA from approving a SIP revision that would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA.³

¹ See 84 FR 23725, 85 FR 43461, and 86 FR 11875.

² The revisions were submitted by the North Carolina Division of Air Quality in submissions dated March 24, 2006, and July 10, 2019.

³ CAA sections 110(a)(1) and (2) also require each SIP submitted by a State to undergo reasonable public notice and hearing.

Changes to the statutory provisions cross-referenced in the SIP could change the SIP without fulfilling public notice and hearing requirements and without EPA evaluation of the revision pursuant to the requirements of section 7410(l) and any other CAA requirements applicable to the specific SIP provision at issue.

Section 110(k)(6) of the CAA authorizes EPA to revise a State's SIP when it "determines that [its] action approving, disapproving, or promulgating any plan or plan revision (or part thereof) . . . was in error." Once EPA has made the determination that it erred, it "may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State." *Ala. Env'tl. Council v. EPA*, 711 F.3d 1277, 1286 (11th Cir. 2013). This determination and the basis for it must be provided to the State and the public. Section 110(k)(6) of the CAA has been interpreted by courts as a "broad provision [that] was enacted to provide the EPA with an avenue to correct its own erroneous actions and grant the EPA the discretion to decide when to act pursuant to the provision." *Miss. Comm'n on Env'tl. Quality v. EPA*, 790 F.3d 138, 150 (D.C. Cir. 2015). EPA can take action under section 110(k)(6) to correct an error only if the error existed at the time the SIP was originally approved. *See Texas v. EPA*, 726 F.3d 180, 204 (D.C. Cir. 2013) (Kavanaugh, J., dissenting).

Through a notice of proposed rulemaking (NPRM) published on May 28, 2024 (89 FR 46049), EPA proposed to correct the erroneous incorporation of certain cross-references into 15A NCAC 02Q Section .0101, *Required Air Quality Permits*; .0103, *Definitions*; and .0301, *Applicability* of the North Carolina SIP. EPA's rationale for removing the cross references is described in the May 28, 2024, NPRM. Comments on the May 28, 2024, NPRM were due on or before June 27, 2024. One comment was received on the NPRM and is addressed below.

II. Response to Comments

EPA received one comment from the North Carolina Department of Environmental Quality (NCDEQ)'s Division of Air Quality (DAQ), regarding the May 28, 2024, NPRM. The comment is provided in the docket for this final action. EPA has summarized and responded to the comment below.

Comment: North Carolina DAQ (NC DAQ) supports EPA's proposal and "recommends that the EPA proceed with its error correction regarding its prior approvals of the phrases

referencing the North Carolina General Statutes." The commenter further suggests that EPA also correct the first line of 15A NCAC 02Q .0103 by removing references to G.S. 143–212 and G.S. 143–213.

Response: EPA acknowledges NC DAQ's suggestion and will consider future action(s) to address the first line of 15A NCAC 02Q .0103 and other instances where there are cross references to statutory or regulatory provisions that are outside the SIP.

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 of this preamble, EPA is finalizing the incorporation by reference of 15A NCAC Section 02Q Rule .0101, *Required Air Quality Permits*, except for the phrase "With the exception allowed by G.S. 143–215.108A" in paragraph (b); Rule .0103, *Definitions*, except for the phrase "pursuant to G.S. 143–215.108" in subparagraph (9)(d); and Rule .0301, *Applicability*, except for the phrase "or as allowed pursuant G.S. 143–215.108A" in paragraph (a), all state-effective April 1, 2018. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and 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, these materials 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.⁴

IV. Final Action

Pursuant to the error correction provision of section 110(k)(6) of the CAA, EPA is finalizing the removal of portions of 15A NCAC Section 02Q .0101, *Required Air Quality Permits*, Section 02Q .0103, *Definitions*, and Section 02Q .0301, *Applicability*, with the cross-references to North Carolina General Statutes as discussed above because the inclusion of these cross-references in the SIP is inconsistent 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 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 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 14094 (88 FR 21879, April 11, 2023);
- 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 subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;
- 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 rulemaking 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

⁴ *See* 62 FR 27968 (May 22, 1997).

agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on communities with environmental justice (EJ) concerns to the greatest extent practicable and permitted by law. EPA defines 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.”

EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of

achieving EJ for communities with EJ concerns.

This action is subject to the Congressional Review Act, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 18, 2024. 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, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: September 11, 2024.

Jeananne Gettle,
Acting 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, amend table in paragraph (c)(1) by revising the entries for “Rule .0101”, “Rule .0103”, and “Rule .0301” to read 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
* * * * *				
Subchapter 02Q Air Quality Permits Section .0100 General Provisions				
Rule .0101	Required Air Quality Permits.	4/1/2018	9/19/2024, [Insert first page of Federal Register citation].	Except for the phrase “With the exception allowed by G.S. 143–215.108A” in paragraph (b).
* * * * *				
Rule .0103	Definitions	4/1/2018	9/19/2024, [Insert first page of Federal Register citation].	Except for the phrase “pursuant to G.S. 143–215.108” in subparagraph (9)(d).
* * * * *				
Section .0300 Construction and Operating Permits				
Rule .0301	Applicability	4/1/2018	9/19/2024, [Insert first page of Federal Register citation].	Except for the phrase “or as allowed pursuant to G.S. 143–215.108A” in paragraph (a).
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