(*2*) Rule 333, ''Control of Emissions from Reciprocating Internal Combustion Engines,'' adopted on June 19, 2008.

* * * * *

[FR Doc. 2011–13273 Filed 5–27–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–R04–OAR–2010–0504–201052; FRL–9312–9]

Approval and Promulgation of Implementation Plans; Extension of Attainment Date for the Charlotte-Gastonia-Rock Hill, North Carolina-South Carolina 1997 8-Hour Ozone Moderate Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve requests from the State of North Carolina, through the North Carolina Department of Environment and Natural Resources (NC DENR), and the State of South Carolina, through the South Carolina Department of Health and Environmental Control (SC DHEC), to grant a one-year extension of the attainment date for the 1997 8-hour ozone national ambient air quality standards (NAAQS) for the Charlotte-Gastonia-Rock Hill, North Carolina-South Carolina Area (hereafter referred to as the ''bi-state Charlotte Area'' or ''Metrolina Area''). These requests were sent to EPA via letter from NC DENR on April 28, 2010, and from SC DHEC on May 6, 2010. The bi-state Charlotte Area consists of Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, Union and a portion of Iredell County (Davidson and Coddle Creek Townships), North Carolina; and a portion of York County, South Carolina. EPA is finalizing a determination that North Carolina and South Carolina have met the Clean Air Act (CAA or Act) requirements to obtain a one-year extension to their attainment date for the 1997 8-hour ozone NAAQS for the bi-state Charlotte Area. As a result, EPA is approving a one-year extension of the 1997 8-hour ozone moderate attainment date for the bi-state Charlotte Area. Specifically, EPA (through this final action) is extending the bi-state Charlotte Area's attainment date from June 15, 2010, to June 15, 2011. EPA is also addressing adverse comments received on EPA's proposal to grant the one-year extension for the bi-state Charlotte 1997 8-hour ozone nonattainment area.

DATES: *Effective Date:* This rule will be effective June 30, 2011.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2010–0504. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not 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 *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the 1997 8-hour ozone NAAQS, contact Ms. Jane Spann, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number for Ms. Spann is (404) 562–9029. Ms. Spann can also be reached via electronic mail at *spann.jane@epa.gov.* For information regarding the North Carolina or South Carolina SIPs, contact Mr. Zuri Farngalo, Regulatory Development Section, at the same address above. The telephone number for Mr. Farngalo is (404) 562–9152. Mr. Farngalo can also be reached via electronic mail at *farngalo.zuri@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

Detailed background information and rationale for this final action can be found in EPA's proposed rule entitled ''Approval and Promulgation of Implementation Plans; Extension of Attainment Date for the Charlotte-Gastonia-Rock Hill, North Carolina-South Carolina 1997 8-Hour Ozone Moderate Nonattainment Area,'' 75 FR 46881 (August 4, 2010). The comment period for EPA's proposed action closed on September 3, 2010. EPA received three sets of comments on the August 4, 2010, proposed rulemaking which are discussed later in this rulemaking. This section includes a brief summary of the information and rationale for EPA's proposed approval of the bi-state Charlotte Area's one-year extension.

Section 181(b)(2)(A) requires the Administrator, within six months of the attainment date, to determine whether an ozone nonattainment area attained the NAAQS. CAA section 181(b)(2)(A) states that, for areas classified as marginal, moderate, or serious, if the Administrator determines that the area did not attain the standard by its attainment date, the area must be reclassified to the next classification. However, CAA section 181(a)(5) provides an exemption from these reclassification requirements. Under this provision, EPA may grant up to two one-year extensions of the attainment date under specified conditions. Specifically, in relevant part, section 181(a)(5) states:

Upon application by any State, the Administrator may extend for 1 additional year (hereinafter referred to as the ''Extension Year'') the date specified in table 1 of paragraph (1) of this subsection if—

(A) The State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan, and

(B) no more than 1 exceedance of the national ambient air quality standard level for ozone has occurred in the area in the year preceding the Extension Year.

With regard to the first element, ''applicable implementation plan'' is defined in section 302(q) of the CAA as, the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under section 110, or promulgated under section 110(c), or promulgated or approved pursuant to regulations promulgated under section 301(d) and which implements the relevant requirements of the CAA.

The language in section 181(a)(5)(B) reflects the form of the 1-hour ozone NAAQS, which is exceedance based and does not reflect the 1997 8-hour ozone NAAQS, which is concentration based. Because section 181(a)(5)(B) does not reflect the form of the 8-hour NAAQS,

EPA promulgated a regulation interpreting this provision in a manner consistent with Congressional intent but reflecting the form of the 1997 8-hour NAAQS. *See* 40 CFR 51.907. This regulation provides that an area will be eligible for the first of the one-year extensions under the 1997 8-hour NAAQS if, for the attainment year, the area's 4th highest daily 8-hour average is 0.084 parts per million (ppm) or less. The area will be eligible for the second extension if the area's 4th highest daily 8-hour value averaged over both the original attainment year and the first extension year is 0.084 ppm or less. No more than two one-year extensions may be issued for a single nonattainment area.

In summary, EPA interprets the CAA and implementing regulations to allow the granting of a one-year extension under the following minimum conditions: (1) The State requests a one-year extension; (2) all requirements and commitments in the EPA-approved SIP for the area have been complied with; and (3) the area has a 4th highest daily 8-hour average of 0.084 ppm or less for the attainment year (or an area's 4th highest daily 8-hour value averaged over both the original attainment year and the first extension year is 0.084 ppm or less, if a second one-year extension is requested). Because the bi-state Charlotte Area's attainment date was June 15, 2010, the ''attainment year'' used for this purpose is the 2009 ozone season. *See* 40 CFR 51.900(g). The North Carolina and South Carolina ozone seasons run from April 1 to October 31 of any given year.

II. This Action

EPA has determined that North Carolina and South Carolina have met the CAA requirements to obtain a one-year extension of the June 2010 attainment date for the 1997 8-hour ozone NAAQS for the bi-state Charlotte Area. As a result, EPA is taking final action to extend the bi-state Charlotte Area's attainment date from June 15, 2010, to June 15, 2011, for the 1997 8-hour ozone NAAQS. Specifically, EPA has determined that North Carolina and South Carolina are in compliance with the requirements and commitments associated with the EPA-approved implementation plans, and that the 4th highest daily concentration for 2009 for the bi-state Charlotte Area is below the 1997 8-hour ozone NAAQS. EPA has reviewed the 1997 8-hour ozone NAAQS ambient air quality monitoring data for the bi-state Charlotte Area, and has determined that these data are consistent with the ozone monitoring requirements contained in 40 CFR part 50, Appendix I. These data are recorded in the EPA Air Quality System database. These data are complete, quality-assured, quality-controlled, and certified ambient air monitoring data for 2009. On the basis of that review, EPA has concluded that for the attainment year ozone season of 2009, the bi-state Charlotte Area's 4th highest daily 8-hour average concentration was 0.071 ppm, which is below 0.084 ppm. As provided in CAA section 181(a)(5) and 40 CFR 51.907, this final action extends, by one year, the deadline by which the bi-state Charlotte Area must attain the 1997 8-hour ozone NAAQS. It also extends the timeframe by which EPA must make an attainment determination for the bi-state Charlotte Area.

As described in section 181(a)(5) of the CAA, areas may qualify for up to two one-year extensions. EPA notes that this final action only relates to the initial one-year extension. The bi-state Charlotte Area will be eligible for the second extension if the bi-state Charlotte Area's 4th highest daily 8-hour value averaged over both the original attainment year and the first extension year is 0.084 ppm or less and the continues to comply with all requirements and commitments pertaining to the bi-state Charlotte Area in the applicable implementation plan. Any analysis of whether the bi-state Charlotte Area qualifies for the second extension would be based on data from both the 2009 and 2010 ozone seasons. If requested at a future date, EPA will make a determination of the appropriateness of a second one-year extension for the bi-state Charlotte Area for the 1997 8-hour ozone NAAQS in a separate rulemaking.

III. Comments and Responses

EPA received one set of adverse comments [1] and two requests for additional information for its proposal to approve the requests from North Carolina and South Carolina to extend the attainment date for the bi-state Charlotte Area for the 1997 8-hour ozone NAAQS from June 15, 2010, to June 15, 2011. The comments, received by September 3, 2010, were from the Southern Environmental Law Center (SELC) on behalf of Clean Air Carolina and from two citizens (hereinafter referred to as ''the Commenter''). Below is a summary of the comments and EPA's response.

Comment 1: The Commenter requests clarification on why the attainment date for the bi-state Charlotte Area needs an extension and on what grounds is the extension being granted.

Response 1: Effective June 15, 2004, EPA designated the bi-state Charlotte Area as nonattainment for the 1997 8-hour ozone NAAQS. Along with this nonattainment designation, EPA classified the bi-state Charlotte Area as a ''moderate'' ozone nonattainment area based on the level of the three year design value for the area at the time of EPA's designations. In accordance with the section 181 of the CAA, ''moderate'' areas are required to attain the ozone NAAQS ''as expeditiously as practicable,'' but no later than 6 years after EPA's nonattainment designation. This means that the bi-state Charlotte Area was required to attain the 1997 8-hour ozone NAAQS by June 15, 2010 (based on monitoring data from the 2007 through 2009 ozone seasons). In section 181(a)(5) of the CAA, Congress allows EPA to consider extension of the attainment dates for ozone areas provided the area meets the requirements for such extensions. See EPA's August 4, 2010, proposed rulemaking at 75 FR 46881 for the detailed rationale for approval of the bi-state Charlotte Area's attainment date extension, and the ''Background'' section of this rulemaking for more detail on the section 181(a)(5) requirements. EPA has made the determination that both North Carolina and South Carolina meet the requirements of section 181(a)(5) (as interpreted in 40 CFR 51.907) for the bi-state Charlotte Area for the 1997 8-hour ozone NAAQS, and as such EPA is granting an extension of the 1997 8-hour ozone attainment date from June 15, 2010, to June 15, 2011.

Comment 2: The Commenter requests that EPA incorporate by reference comments previously provided for the attainment demonstrations for the bi-state Charlotte Area. Specifically, the Commenter states ''[t]hese comments incorporate by reference SELC's June 10, 2010 and May 19, 2010 comments to the agency on the North Carolina and South Carolina 8-hour ozone attainment demonstration plan submission, and SELC's March 29, 2010, March 22, 2010, December 17, 2009, November 13, 2003, and October 26, 2009, submissions to the North Carolina Division of Air Quality ('NCDAQ') and the South Carolina Bureau of Air Quality, all of which have been previously submitted to EPA.''

[1] The full text of the comments is available in the Docket for this action. Electronic docket information can be found in the ''Addresses'' portion of this notice. The comments are summarized in this **Federal Register** document; however, EPA considered all the comments expressed in the letters.

Response 2: EPA's August 4, 2010, proposed action relates to the States' requests for a one-year extension of the attainment date for the 1997 8-hour ozone NAAQS for the bi-state Charlotte Area, and does not relate to the approvability of the attainment demonstrations submitted by North Carolina and South Carolina for the bi-state Charlotte Area. There are separate requirements regarding requests for attainment date extensions (relevant to this final action and described in ''Background'' sections of EPA's August 4, 2010, proposed rulemaking and this final rulemaking) and approval of attainment demonstrations. EPA held a public comment period from August 4, 2010, through September 3, 2010, to provide the public with opportunity to specifically comment on the proposed approval of the attainment date extension for the bi-state Charlotte Area for the 1997 8-hour ozone NAAQS. The Commenter provided a detailed letter with their comments in opposition to EPA's proposed action to extend the bi-state Charlotte Area's attainment date to which EPA is responding in this final rulemaking. Although the Commenter suggests that EPA should incorporate by reference comments previously submitted to North Carolina and South Carolina during their state public comment periods for their attainment demonstrations and reasonable further progress plans, and to EPA during a public comment period on the attainment demonstration for the bi-state Charlotte Area,[2] the Commenter does not identify and EPA did not identify anything in those comments that are relevant to the analysis of whether the bi-state Charlotte Area is eligible for the first attainment date extension provided under CAA section 181(a)(5) and 40 CFR 51.907.

Comment 3: The Commenter asserts several times throughout the comment letter that EPA should reclassify the bi-state Charlotte Area to ''serious'' for the 1997 8-hour ozone NAAQS. Specifically, the Commenter states ''EPA should instead reclassify the area to 'serious' nonattainment status * * *'' and ''[i]n the wake of the missed deadline, the Act now requires reclassification of the Metrolina area to 'serious' status.'' The Commenter goes on to conclude that ''[t]he proposed extension is inconsistent with the Clean Air Act's statutory scheme and its emphasis on attainment deadlines. EPA should require North and South Carolina officials to comply with the Act and prepare a SIP revision consistent with the Metrolina area's legally required bump-up to 'serious' status.''

Response 3: EPA disagrees with the Commenter's assertions and conclusion that the Act requires the Agency to reclassify the bi-state Charlotte Area to ''serious'' for the 1997 8-hour ozone NAAQS ''[i]n the wake of the missed deadline * * *'' Congress contemplated the potential for areas to miss the attainment date deadlines in the CAA and allows for extensions of the attainment date deadline so long as areas meet the requirements of section 181(a)(5). EPA's analysis indicates that both North Carolina and South Carolina have met the requirements of section 181(a)(5) of the CAA (as interpreted by 40 CFR 51.907) for the initial one-year extension of the 1997 8-hour ozone moderate area attainment date for the bi-state Charlotte Area, and thus the Act does not require EPA to reclassify the bi-state Charlotte Area to ''serious'' status. Additionally, given that EPA has determined that the bi-state Charlotte Area qualifies for the one-year extension for the moderate ozone classification, the bi-state Charlotte Area is not subject to being ''bumped-up'' and thus is not subject to the planning requirements that would be triggered by a bump-up.

Comment 4: The Commenter states ''[t]he deadline for meeting the 1997 ozone standard was June 15, 2010, and there is still no Federally approved State Implementation Plan ('SIP') for meeting that standard. As a result, EPA lacks authority to grant the proposed extension, and the Metrolina area should instead be reclassified to 'serious' nonattainment status, triggering the development of a new plan with additional control strategies. As we explained in our previous comments, the Clean Air Act allows EPA to grant extensions only when a state has complied with all the requirements of the approved SIP for an area. The States have no approved SIP for meeting the ozone NAAQS in this area. As indicated in the notice, both states have provided 'necessary SIP [State Implementation Plan] submittals,' intended to meet 'outstanding requirements related to the 1997 8-hour ozone attainment demonstration for the bi-state Charlotte area.' But these plan submissions were not made until after the conclusion of the 2009 ozone season, and therefore could only purport to demonstrate attainment of the 1997 ozone NAAQS, retroactively, despite modeling and monitoring data to the contrary. The proposed extension signifies a *de facto* approval of these plans and introduces a relaxed *post hoc* standard, which would be contrary to the requirements of the Act and which would encourage states to take a 'wait-and-see' approach to SIP control strategies.''

Response 4: EPA does not agree with the Commenter's assertion that EPA lacks the authority to grant the requests from North Carolina and South Carolina for an extension of the bi-state Charlotte Area's 1997 8-hour ozone attainment date. In EPA's August 4, 2010, proposed rulemaking, EPA explained that section 181(a)(5) of the CAA is what EPA must consider when contemplating a state's request for a one-year extension to an ozone attainment date. The Commenter appears to question whether North Carolina and South Carolina meet the requirements of section 181(a)(5)(A) which states ''the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan * * *'' As noted in EPA's August 4, 2010, proposed rulemaking, the ''applicable implementation plan'' is defined by the CAA in section 302(q) as ''the portion (or portions) of the implementation plan, or most revision thereof, *which has been approved* under section 7410 of this title, or promulgated under section 7410(c) of this title, or promulgated or approved pursuant to regulations promulgated under section 7601(d) of this title and which implements the relevant requirements of this chapter.'' [Emphasis added].Thus, the ''compliance'' that is relevant to evaluating the States' eligibility for an attainment date extension under section 181(a)(5) is solely with those requirements and commitments that have been approved into the existing SIP—not with those which may yet be approved. EPA has made an independent assessment of whether North Carolina and South Carolina are in compliance with all the requirements and commitments pertaining to the bi-state Charlotte Area in the applicable implementation plan, as defined by section 302(q), and the Agency has made the determination that both states are in compliance. EPA also notes that originally, North Carolina and South Carolina submitted attainment demonstrations for the bi-Charlotte Area for the 1997 8-hour ozone NAAQS on June 15, 2007, and August 31, 2007, respectively. Subsequently, both states withdrew their original attainment demonstrations but later submitted these attainment demonstrations with

[2] The Commenter submitted comments during EPA's public comment period for review of the adequacy of the motor vehicle emissions budgets for the attainment demonstrations for the bi-state Charlotte Area as provided by North Carolina and South Carolina. EPA has a separate process from today's rulemaking to consider comments received during EPA's Adequacy public comment period.

updated and supplemental information. EPA disagrees that this final action is a *de facto* approval of these plans. These plans are still pending before EPA. The Commenter also mentions that EPA's final action to approve the extension of the attainment date for the bi-state Charlotte Area introduces a relaxed *post hoc* standard, which would be contrary to the requirements of the Act and which would encourage states to take a ''wait-and-see'' approach to SIP control strategies. EPA disagrees. If EPA determines that a state has not submitted a required nonattainment area SIP, mandatory sanctions are imposed 18 and 24 months after such a finding and EPA is required to promulgate a Federal implementation plan within two years. The CAA provides appropriate incentives to ensure that states do not take a ''wait and see'' approach for attainment of the NAAQS. When North Carolina and South Carolina withdrew their original attainment demonstrations for the bi-state Charlotte Area (which were provided in 2007), EPA issued a finding of failure to submit. *See* 74 FR 21550 (May 8, 2009). The submissions that both North Carolina and South Carolina provided in 2009 were provided in response to EPA's finding of failure to submit.

Comment 5: One Commenter states ''[t]he Metrolina area's ozone problem is chronic and significant.'' Additionally, the Commenter cites the American Lung Association 2010 State of the Air Report and mentions that the report ranks Charlotte as the 10th most polluted city in the country for ozone. The Commenter goes on to state that ''[i]n contrast to the anomalous 2009 ozone season, pollution levels during the first part of the 2010 summer have continued to exceed the 1997 standard of 84 ppb [parts per billion][or 0.084 ppm], with the 'County Line' monitor registering as high as 96 ppb [or 0.096 ppm], and the Metrolina monitors recording 30 exceedances of the 2008 standard (75 ppb [or 0.075 ppm]) as of August 28, 2010. Air quality planning should do as much as possible to protect citizens' health in nonattainment areas, and at the very least, the region must comply with express Clean Air Act Requirements.'' Another Commenter states ''[t]he 2010 ozone season clearly shows that the current control methods to obtain attainment for the 1997 standard for the Charlotte region are not effective. The 2009 ozone season had favorable weather conditions. This alone allowed for the low ozone numbers. The intent of Congress, through the CAA, is for non-attainment areas to reach attainment. Delaying the decision by one year will allow the Charlotte area to continue building roads. Is not mobile sources the largest contributor to ozone formation in the Charlotte area?''

Response 5: EPA agrees with the Commenters that the unusually hot summer of 2010 resulted in more exceedances of the ozone NAAQS at the monitors within the bi-state Charlotte Area. However, based on EPA's preliminary evaluation of the data, the bi-state Charlotte Area appears to still be monitoring attainment for the 1997 ozone NAAQS. Additionally, EPA's preliminary evaluation indicates that the bi-state Charlotte Area could be eligible for the second extension of the attainment date, if requested. Regardless, air quality data for the 2010 ozone season is not relevant to the issue of whether the bi-state Charlotte Area qualifies for the first one-year extension of its attainment date as provided under CAA section 181(a)(5) and 40 CFR 51.907. EPA notes that nonattainment areas are allowed to build roads and are subject to requirements to demonstrate that these activities will not interfere with air quality goals. EPA's granting of the one-year extension to the attainment date will not relieve the bi-state Charlotte Area of continuing to make the demonstration that transportation planning activities will not interfere with air quality goals.

Comment 6: The Commenter states ''EPA may only extend the nonattainment deadline for an area that has not met the NAAQS if 'the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan.' 42 U.S.C. § 7511(a)(5)(A). The Act defines 'the term ''applicable implementation plan'' ' as 'the portion (or portions) of the implementation plan, or most recent revision thereof, *which has been approved* under section 110 of this title.' Id. § 7602(q). [Emphasis added] Section 110, in turn, provides that '[e]ach State shall * * * adopt and submit to the Administrator, *within 3 years* * * * *after promulgation of a [NAAQS]* (or any revision thereof) under section 109 [42 § USCS 7409] for any air pollutant, *a plan* which provides for implementation, maintenance, an enforcement of such primary standard in each air quality control region * * * within such State,' Id. § 7410(a)(1). Section 110 goes on to prescribe that 'each such plan shall * * * meet the applicable requirements of Part D of this subchapter (relating to nonattainment areas).' Id. § 7410(a)(1). Among the applicable requirements of Part D, 'plan provisions * * * *shall provide for attainment* of the national ambient air quality standards.' Id. § 7502(c)(1). In other words, to qualify for an extension, a state must comply with its federally approved SIP, which among other requirements, must demonstrate attainment.''

Response 6: EPA agrees with the Commenter's citation to 42 U.S.C. 7511(a)(5)(A)[section 181(a)(5)(A)], and to 42 U.S.C. 7602(q) [section 302(q)] as the relevant provisions of the CAA to consider. Additionally, EPA agrees with the Commenter's emphasis on ''which has been approved'' of the Act's definition for the term ''applicable implementation plan.'' It is the emphasis on ''which has been approved'' that EPA relied on to make the determination that North Carolina and South Carolina are meeting the requirements of 181(a)(5)(A). However, EPA does not agree with the Commenter's apparent broadening of the definition of ''applicable implementation plan'' to mean that EPA must consider plans which have not yet been approved. The CAA is unambiguous on the requirements for EPA to grant an extension and on what EPA should consider as the ''applicable implementation plan,'' and based on those requirements, EPA has determined that both North Carolina and South Carolina qualify for an extension of the attainment date for the 1997 8-hour ozone NAAQS for the bi-state Charlotte Area.

Comment 7: The Commenter notes that both North Carolina and South Carolina submitted attainment demonstrations for the bi-state Charlotte Area in 2007, but later withdrew these submissions after EPA sent a letter to both States with a recommendation that North Carolina and South Carolina request a voluntary reclassification of the bi-state Charlotte Area to ''serious'' status for the 1997 8-hour ozone NAAQS. Additionally, the Commenter notes that in EPA's letter, the Agency states ''if we are required to take rulemaking action on the SIP, we see no alternative to proposing disapproval of the SIP's attainment demonstration.'' The Commenter goes on to state that ''[c]learly, the States submitted 'a plan' as contemplated by the extension provision, but it was not an approvable plan, and therefore, not a plan that would provide a basis for a future extension request. Indeed, rather than demonstrate attainment, the modeling in the submissions actually predicted that the area would fail to meet the standard by the deadline. After signaling its intent to disapprove the submissions, however, EPA allowed the States to ''withdraw'' their plans, an

action that is not authorized under the Clean Air Act, which contravenes EPA's obligation to take action on a plan submission, and 'approve or disapprove it, either in whole or in part.' ''

Response 7: These comments are not relevant to this rulemaking. The issues raised concern whether attainment demonstrations submitted in 2007 adequately demonstrated whether the bi-state Charlotte Area would attain the 1997 ozone NAAQS by June 2010 and they do not address whether the bi-state Charlotte Area qualifies for an attainment date extension. EPA notes, however, that we disagree with the Commenter's assertion that States are not authorized under the CAA to withdraw submitted SIPs. The CAA does not directly address this issue; however, EPA can see no reasonable interpretation that the Act prohibits a state from withdrawing a submitted plan prior to EPA final action. The CAA provides states with a choice whether to submit plans and to take the lead in regulating sources for purposes of attainment and maintenance of the NAAQS. Consistent with that overall paradigm, states can choose to withdraw submitted SIPs at any time prior to EPA final action, which establishes those requirements under Federal law. Once the plan is approved and made Federally enforceable, it can no longer be withdrawn or altered except through a SIP revision or a Federal implementation plan. If the withdrawn SIP had been submitted to meet a specific statutory requirement and the state does not replace the SIP submission upon withdrawal with a new SIP submission to meet that statutory requirement (or, in appropriate instances, with an attainment determination that suspends the obligation to meet such requirement), EPA has the authority to make a finding of failure to submit for that required submission. EPA also notes that subsequently, both North Carolina and South Carolina resubmitted their attainment demonstrations for the 1997 8-hour ozone NAAQS.

Comment 8: The Commenter states that ''[d]uring the 2009 ozone season, cool temperatures and a slow economy contributed to a dramatic decline in ozone pollution, albeit not enough to bring the three-year ozone design value into attainment by the June 2010 deadline. Nevertheless, the States have resubmitted their 'withdrawn' 2007 submissions for public comment and agency approval, along with supplemental plans that establish higher motor vehicle emissions budgets. These submissions do not provide the legal basis for an extension because they have never been federally approved, and thus have not be made federally enforceable, *see* 42 U.S.C. § 7413, and they therefore do not meet the definition of 'applicable implementation plan.' ''

Response 8: As provided in previous responses, EPA disagrees with the Commenter's premise that the attainment demonstration submissions are required to be approved in order for EPA to grant the request from North Carolina and South Carolina for a one-year extension to the attainment date for the 1997 8-hour ozone NAAQS.

Comment 9: The Commenter states that ''EPA's **Federal Register** notice appears to indicate that the States 'are meeting their federally-approved implementation plans' by virtue of adequate monitoring alone. 75 Fed. Reg. 46881, 46883.'' Further, the Commenter mentions that ''EPA guidance documents direct states requesting an extension under 42 U.S.C. § 7511(a)(5) to both certify compliance with the approved SIP for the current classification, and to document the preparations being taken to address the 'consequences of eventually not attaining the NAAQS,' including meeting new requirements that take effect upon reclassification of the area.'' The Commenter concludes this point by stating ''[t]he States' extension requests, however, neither explain how they have complied with all requirements of an 'approved SIP' that does not exist, nor mention the possibility that the area might not attain the NAAQS by the extended deadline.''

Response 9: EPA disagrees with the Commenter's assertion that EPA's analysis of whether North Carolina and South Carolina ''are meeting their federally-approved implementation plans'' is ''by virtue of adequate monitoring alone.'' Over the past several years, the bi-state Charlotte Area has benefitted from the reduction in emissions attributable to the implementation of federal, state and local programs. Some of the federal control measures that have come on line since the bi-state Charlotte Area was designated nonattainment for the 1997 8-hour ozone NAAQS in 2004 include: Tier 2 vehicle and fuels standards; heavy-duty gasoline and diesel highway vehicle standards; nonroad spark-ignition engines and recreational engines standards; and large nonroad diesel engine standards. North Carolina has also implemented state programs that have provided emissions reductions in the bi-state Charlotte Area. These state programs include: (1) The Clean Air Bill which expanded the inspection and maintenance program from 9 to 48 counties; (2) North Carolina's nitrogen oxide (NOx) SIP Call rule which was predicted to reduce summertime NOx emissions from power plants and other industries by sixty-eight percent; and (3) North Carolina's Clean Smokestack Act which required coal-fired power plants in North Carolina to reduce annual NOx emissions by seventy-seven percent by 2009, and to reduce annual sulfur dioxide emissions by forty-nine percent by 2009 and seventy-three percent by 2013. Additionally, EPA disagrees with the Commenter's statement that an ''approved SIP'' does not exist for the bi-state Charlotte Area. As noted in EPA's proposed rulemaking, the ''applicable implementation plan'' is defined by the CAA in section 302(q) as the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under section 110, or promulgated under section 110(c), or promulgated or approved pursuant to regulations promulgated under section 301(d) and which implements the relevant requirements of the CAA. Lastly, EPA disagrees with the Commenter's statement indicating that the States did not provide the necessary certification regarding compliance with their approved SIPs. On April 28, 2010, NC DENR stated in a letter to EPA, that it ''certifies that the state has complied with all requirements and commitments pertaining to the area in the applicable ozone implementation plan.'' On May 6, 2010, SC DHEC, in a letter to EPA, stated ''South Carolina has complied with all requirements and commitments pertaining to the area in the South Carolina State Implementation Plan.'' EPA believes that these statements provide the necessary certification from the States. EPA also notes that North Carolina and South Carolina considered the consequences of eventually not attaining the NAAQS. They conducted modeling for the year 2012 in case they did not have clean data and were required to be reclassified to serious. That modeling would have been submitted to EPA as the States' attainment demonstration for a serious classification had the area been reclassified to serious.

Comment 10: The Commenter states that ''[t]he agency's permissive proposed approach would encourage poor air quality planning. Indeed, the State's plan submissions allow unfettered expansion of the area's highway network without regard to long-term air quality consequences.'' The Commenter goes on to say that ''[r]eclassification of the area to 'serious' nonattainment status would require better developed and more accurate travel modeling that would help to

ensure that road capacity investments will not compromise air quality for years to come. *See* 40 CFR § 93.122''

Response 10: The August 4, 2010, proposed rulemaking and this final action do not involve the approval of any plans for the bi-state Charlotte Area for the 1997 8-hour ozone standard. Additionally, while not relevant to this final action, EPA notes that the development of the mobile emissions in the States' attainment demonstration plans for the bi-state Charlotte Area were developed through a required interagency process, pursuant to 40 CFR 93.105, that includes federal, state and local air quality and transportation partners. The Commenter mentions that the ''[r]eclassification of the area to 'serious' nonattainment status would require better developed and more accurate travel modeling that would help to ensure that road capacity investments will not compromise air quality for years to come.'' While EPA agrees that there are different travel demand modeling requirements for ''serious'' versus ''moderate'' ozone areas, EPA also notes that 40 CFR 93.122(d) states ''[i]n all areas not otherwise subject to paragraph (b) of this subsection, regional emissions analyses must use those procedures described in paragraph (b) of this section if the use of those procedures has been the previous practice of the MPO * * *'' The transportation modeling requirements for ''serious'' areas are outlined in 40 CFR 93.122(b). In a letter dated December 3, 2010, NC DENR provided EPA with additional information regarding the travel demand modeling practices currently employed in the bi-state Charlotte Area. Attached to the letter, the Senior Transportation Planner for the Charlotte Department of Transportation provides a comparison of the current practice for travel demand modeling for the entire bi-state Charlotte Area and the requirements of 40 CFR 93.122(b) for a ''serious'' area. The comparison demonstrates that the current practices for travel demand modeling meet the requirements for a ''serious'' area although the bi-state Charlotte Area is a ''moderate'' area. NC DENR's December 3, 2010, letter can be found in the docket for this final rulemaking. A reclassification of the area to ''serious'' would not change the current travel demand modeling practice in the bi-state Charlotte Area since the bi-state Charlotte Area is currently meeting the ''serious'' area requirements, and in accordance with 40 CFR 93.122(b) and (d), this practice must be maintained.

Comment 11: The Commenter mentions that ''[s]tate officials have argued that reclassifying and undertaking more stringent control measures to ensure compliance with the existing ozone standard is unnecessary because EPA will soon approve a new standard and require new plans to meet the standard.'' Further, the Commenter goes on to say, ''* * * not only has EPA recently delayed its expected release of the new, stricter standards, but even without delay, waiting until implementation of the new standard would result in several years of delay in the adoption of the additional control measures required today as part of 'bump up' to a 'serious' classification.'' The Commenter continues by noting the delay of the promulgation of the new ozone standard and anticipated dates for the attainment demonstration submissions. The Commenter mentions ''approval of inadequate plans now will only delay efforts to address the serious air quality problems in the Charlotte metro area and make attainment under the 2008 standard, or a stronger one, much more difficult, uncertain, and expensive.''

Response 11: Neither the States' position (as articulated by the Commenter) nor this comment are relevant to this action. This action solely concerns whether the States have demonstrated that a one-year attainment date extension is appropriate for the 1997 ozone NAAQS. EPA notes that in a separate process, the Agency is reconsidering the 2008 ozone NAAQS and, if EPA determines a different NAAQS should be promulgated, the Agency will undertake rulemaking to address the requirements for the implementation of that NAAQS. The fact that EPA may issue a new standard at a future date has no bearing on whether the area qualifies for a one-year extension of its attainment date for the 1997 ozone NAAQS.

Comment 12: In their comment letter, the Commenter notes that at a meeting with EPA Region 4, EPA staff suggested that the Act requires the Agency to grant an extension. The Commenter states ''[n]o legal grounds exist for such an interpretation'' and goes on to state ''[t]he agency only has authority to grant an extension when a state's air quality and compliance with an approved implementation plan satisfy the statutory requirements, and even then, the agency's authority to grant an extension is discretionary.'' The Commenter also states ''To the contrary, disapproving the plan submissions and requiring bump-up is the only action that complies with the plain meaning of the Clean Air Act.''

Response 12: For the reasons provided in previous comments, EPA disagrees with the Commenter's interpretation of the Act.

IV. Final Action

EPA is taking final action to approve North Carolina's April 28, 2010, and South Carolina's May 6, 2010, requests for EPA to grant a one-year extension (from June 15, 2010 to June 15, 2011) of the bi-state Charlotte Area attainment date for the 1997 8-hour ozone NAAQS. EPA has determined that both North Carolina and South Carolina have met the statutory requirements for such an extension.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve SIP submissions and requests that comply with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing the States' requests for an extension of the 1997 8-hour ozone NAAQS attainment date for the bi-state Charlotte Area, EPA's role is to approve the States' requests, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves a state request for an extension of the 1997 8-hour ozone NAAQS attainment date as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this final action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- 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).

EPA has also determined that the one year extension for the bi-state Charlotte Area does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because there are no ''substantial direct effects'' on an Indian Tribe as a result of this action. The Catawba Indian Nation Reservation is located within the South Carolina portion of the bi-state Charlotte Area. EPA notes that the proposal for this rule incorrectly stated that the South Carolina ''SIP is not approved to apply in Indian country located in the state.'' However, pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27–16–120, ''all state and local environmental laws and regulations apply to the [Catawba Indian Nation] and Reservation and are fully enforceable by all relevant state and local agencies and authorities.'' Thus, the South Carolina SIP does apply to the Catawba Reservation. This final action to approve the one year extension for the bi-state Charlotte Area, however, does not add, subtract or change any existing state or local regulations in the SIP. Therefore, EPA has determined that there will be no substantial direct effects to the Catawba. In addition, EPA also notes that this final action will not impose substantial direct costs on Tribal governments or preempt Tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 1, 2011. 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 81

Environmental protection, Air pollution control.

Dated: May 19, 2011.

Gwendolyn Keyes Fleming,

Regional Administrator, Region 4.

40 CFR part 81 is amended as follows:

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

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

■ 2. In § 81.334, the table entitled ''North Carolina–Ozone (8-Hour Standard)'' is amended under ''Charlotte-Gastonia-Rock Hill, NC-SC'' by revising the entries for ''Cabarrus County,'' ''Gaston County,'' ''Iredell County (part) Davidson Township, Coddle Creek Township,'' ''Lincoln County,'' ''Mecklenburg County,'' ''Rowan County,'' and ''Union County'', and adding footnote 4, to read as follows:

§ 81.334 North Carolina.

* * * * *

NORTH CAROLINA—OZONE

[8-Hour standard]

Designated	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Charlotte-Gastonia-Rock Hill, NC–SC	This action is effective May 31, 2011 ...	Nonattainment ..	June 15, 2004 ..	[4] Subpart 2/Moderate.
Cabarrus County	This action is effective May 31, 2011 ...	Nonattainment ..	June 15, 2004 ..	[4] Subpart 2/Moderate.
Gaston County	This action is effective May 31, 2011 ...	Nonattainment ..	June 15, 2004 ..	[4] Subpart 2/Moderate.
Iredell County (part) Davidson Township, Coddle Creek Township.	This action is effective May 31, 2011 ...	Nonattainment ..	June 15, 2004 ..	[4] Subpart 2/Moderate.
Lincoln County	This action is effective May 31, 2011 ...	Nonattainment ..	June 15, 2004 ..	[4] Subpart 2/Moderate.
Mecklenburg County	This action is effective May 31, 2011 ...	Nonattainment ..	June 15, 2004 ..	[4] Subpart 2/Moderate.
Rowan County	This action is effective May 31, 2011 ...	Nonattainment ..	June 15, 2004 ..	[4] Subpart 2/Moderate.
Union County	This action is effective May 31, 2011 ...	Nonattainment ..	June 15, 2004 ..	[4] Subpart 2/Moderate.
* *	*	*	*	*

[a] Includes Indian Country located in each county or area, except as otherwise specified.

[1] This date is June 15, 2004, unless otherwise noted.

* * * * * * *

[4] Attainment date extended to June 15, 2011.

* * * * * * *

3. In § 81.341, the table entitled ''South Carolina—Ozone (8-Hour Standard)'' is amended under ''Charlotte-Gastonia-Rock Hill, NC–SC'' by revising the entry for ''York County (part) Portion along MPO lines'' to read as follows:

§ 81.341 South Carolina.

* * * * *

SOUTH CAROLINA—OZONE

[8-Hour standard]

Designated	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
* * * * * * *				
Charlotte-Gastonia-Rock Hill, NC–SC:				
York County (part) Portion along MPO lines.	This action is effective May 31, 2011 ...	Nonattainment ..	June 15, 2004 ..	[3] Subpart 2/Moderate.
* * * * * * *				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.
* * * * * * *
[3] Attainment date extended to June 15, 2011.
* * * * * * *

[FR Doc. 2011–13278 Filed 5–27–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, and 25

[ET Docket No. 10–142; FCC 11–57]

Fixed and Mobile Services in the Mobile Satellite Service Bands at 1525–1559 MHz and 1626.5–1660.5 MHz, 1610–1626.5 MHz and 2483.5–2500 MHz, and 2000–2020 MHz and 2180–2200 MHz

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission amends its rules to make additional spectrum available for new investment in mobile broadband networks while also ensuring that the United States maintains robust mobile satellite service capabilities. First, this document adds co-primary Fixed and Mobile allocations to the Mobile Satellite Service (MSS) 2 GHz band, consistent with the International Table of Allocations, allowing more flexible use of the band, including for terrestrial broadband services, in the future. Second, to create greater predictability and regulatory parity with the bands licensed for terrestrial mobile broadband service, the document extends the Commission's existing secondary market spectrum manager spectrum leasing policies, procedures, and rules that currently apply to wireless terrestrial services to terrestrial services provided using the Ancillary Terrestrial Component (ATC) of an MSS system.

DATES: Effective June 30, 2011.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Kevin Holmes, Wireless Telecommunications Bureau at 202–418–2487 or *kevin.holmes@fcc.gov,* or Nicholas Oros, Office of Engineering and Technology at 202–418–0636 or *nicholas.oros@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* FCC 11–57, adopted on April 5, 2011, and released on April 6, 2011, as corrected by an erratum issued on April 15, 2011. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 488–5300, facsimile (202) 488–5563, or via e-mail at *fcc@bcpiweb.com.* The complete text is also available on the Commission's Web site at *http://wireless.fcc.gov/edocs_public/attachment/FCC-11-57A1doc.* This full text may also be downloaded at: *http://wireless.fcc.gov/releases.html.* Alternative formats (computer diskette, large print, audio cassette, and Braille) are available by contacting Brian Millin at (202) 418–7426, TTY (202) 418–7365, or via e-mail to *bmillin@fcc.gov.*

Summary

The Federal Communications Commission makes additional spectrum available for new investment in mobile broadband networks while also ensuring that the United States maintains robust MSS capabilities. This action is consistent with Recommendation 5.8.4 of the National Broadband Plan, which recommended that 90 megahertz of spectrum allocated to MSS could be made available for terrestrial mobile broadband use, while preserving sufficient MSS capability to serve rural areas, public safety, and other important national purposes. The rules adopted herein: (1) Add co-primary Fixed and Mobile allocations to the MSS 2GHz band, consistent with the International Table of Allocations, and (2) extend the Commission's existing secondary market spectrum manager spectrum leasing policies, procedures, and rules that currently apply to wireless terrestrial services to services provided using the ATC of an MSS system.

I. Background

1. *Mobile Satellite Service Spectrum Allocation.* MSS is a radiocommunications service involving transmission between mobile earth stations and one or more space stations. As we discussed in the *MSS NPRM,* three MSS frequency bands are capable of supporting broadband service: The 2 GHz band (''S-band'') from 2000–2020 MHz and 2180–2200 MHz, the Big LEO Band from 1610–1626.5 MHz and 2483.5–2500 MHz, and the L-band from 1525–1559 MHz and 1626.5–1660.5 MHz. 75 FR 49871 (August 16, 2010). Although the International Table of Allocations includes a primary Fixed and Mobile services allocation along with the primary Mobile-Satellite allocation in the S-band, such co-allocations do not exist in the U.S. Table. The Big LEO and L-bands are not allocated for Fixed and Mobile services either in the United States or on an international basis.

2. In addition, as noted in the *MSS NOI,* MSS has the capability to serve important needs, such as rural access and disaster recovery. 75 FR 49871 (August 16, 2010). MSS has the ability to provide communications to mobile