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**Docket:** The index to the docket for this action is available electronically at <http://www.regulations.gov> and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Idalia Perez, EPA Region IX, (415) 972-3248, [perez.idalia@epa.gov](mailto:perez.idalia@epa.gov).

**SUPPLEMENTARY INFORMATION:** This proposal addresses the following local rules: Rule 1111, Reduction of NOx Emissions from Natural Gas-Fired, Fan-Type Central Furnaces, and Rule 1147, NOx Reductions from Miscellaneous Sources. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of these rules and if that provision may be severed from the remainder of the rules, we may adopt as final those provisions of the rules that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: July 7, 2010.

**Keith Takata,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 2010-19056 Filed 8-3-10; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 81

[EPA-R04-OAR-2010-0504-201029; FRL-9185-1]

#### 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:** Proposed rule.

**SUMMARY:** 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 Environmental Control (SC DHEC), submitted letters with a request for EPA 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"), on April 28, 2010, and May 6, 2010, respectively. 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. In today's action, EPA is proposing to determine that the states of North Carolina and South Carolina have met the Clean Air Act (CAA or the 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 proposing to approve a one-year extension of the 1997 8-hour ozone moderate attainment date for the bi-state Charlotte Area. Specifically, EPA is proposing to extend the bi-state Charlotte Area's attainment date from June 15, 2010, to June 15, 2011.

**DATES:** Comments must be received on or before September 3, 2010.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2010-0504 by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

2. E-mail: [benjamin.lynorae@epa.gov](mailto:benjamin.lynorae@epa.gov).

3. Fax: 404-562-9019.

4. Mail: "EPA-R04-OAR-2010-0504" 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.

5. *Hand Delivery or Courier:* Lynorae Benjamin, Chief, 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. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

**Instructions:** Direct your comments to Docket ID No. "EPA-R04-OAR-2010-0504-201029." EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through <http://www.regulations.gov> or e-mail, information that you consider to be CBI or otherwise protected. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA

Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**Docket:** All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, *i.e.*, CBI 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 in <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:** 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 is (404) 562-9029. Ms. Spann can also be reached via electronic mail at [spann.jane@epa.gov](mailto:spann.jane@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

- I. Background
- II. Today's Action
- III. EPA's Analysis of the States' Requests for an Attainment Date Extension for the Bi-State Charlotte Area for the 1997 8-Hour Ozone NAAQS
- IV. Proposed Actions
- V. Statutory and Executive Order Reviews

### **I. Background**

#### **A. 1997 8-Hour Ozone NAAQS**

Ground level ozone is not directly emitted by sources. Rather, emissions of nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOC) react in the presence of sunlight to form ground-level ozone. NO<sub>x</sub> and VOC are referred to as precursors of ozone. The CAA establishes a process for air quality management through the NAAQS. On July 18, 1997, EPA promulgated a revised 8-hour ozone NAAQS of 0.08 parts per million (ppm). Under EPA's regulations at 40 CFR part 50, the 1997 8-hour ozone NAAQS is attained when the 3-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to

0.08 ppm (*i.e.*, 0.084 ppm when rounding is considered) (69 FR 23857, April 30, 2004). Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement. The ambient air quality monitoring data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of part 50.

Upon promulgation of a new or revised NAAQS, the CAA requires EPA to designate as nonattainment any area that is violating the NAAQS, based on the three most recent years of ambient air quality data at the conclusion of the designation process. The bi-state Charlotte Area was designated nonattainment for the 1997 8-hour ozone NAAQS on April 30, 2004 (effective June 15, 2004) using 2001-2003 ambient air quality data (69 FR 23857, April 30, 2004). At the time of designation the bi-state Charlotte Area was classified as a moderate nonattainment area for the 1997 8-hour ozone NAAQS. In the April 30, 2004, Phase I Ozone Implementation Rule, EPA established ozone nonattainment area attainment dates based on Table 1 of section 181(a) of the CAA. This established an attainment date 6 years after the June 15, 2004, effective date for areas classified as moderate areas for the 1997 8-hour ozone nonattainment designations. Therefore the bi-state Charlotte Area's original attainment date was June 15, 2010. (*See* 69 FR 23951, April 30, 2004.) Under certain circumstances, the CAA allows for extensions of the attainment dates prescribed at the time of the original nonattainment designation. *See* below for further discussion.

As a point of clarification EPA issued a revised 8-hour ozone NAAQS in 2008. EPA subsequently reconsidered the 2008 NAAQS, and proposed a new 8-hour ozone NAAQS in January 2010. Final 8-hour ozone NAAQS are expected to be effective in August 2010. The current proposed action, however, is being taken with regard to the 1997 8-hour ozone NAAQS. Requirements for the bi-state Charlotte Area for the 2010 8-hour ozone NAAQS will be addressed in the future.

#### **B. CAA Requirements for One-Year Extension Requests**

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 2 one-year extensions of the attainment date under specified conditions. Specifically, 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 and application would produce an absurd result, EPA interprets this provision in a manner consistent with Congressional intent but reflecting the form of the 1997 8-hour NAAQS.

Therefore, EPA adopted an interpretation that under both sections 172(a)(2)(C) and 181(a)(5), an area will be eligible for the first of the one-year extensions under the 8-hour NAAQS if, for the attainment year, the area's 4th highest daily 8-hour average is 0.084 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 2 one-year extensions may be issued for a single nonattainment area.

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).

## II. Today's Actions

EPA is proposing to determine that North Carolina and South Carolina have met the CAA requirements to obtain a one-year extension of the attainment date for the 1997 8-hour ozone NAAQS for the bi-state Charlotte Area. As a result, EPA is proposing 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. EPA's proposed actions are based upon complete, quality assured, quality controlled, and certified ambient air monitoring data for 2009, and on EPA's preliminary determination that the States are meeting their federally-approved implementation plans. If today's proposed actions are finalized, the bi-state Charlotte Area's attainment date for the 1997 8-hour ozone NAAQS will be extended one-year from June 15, 2010, to June 15, 2011.

## III. EPA's Analysis of the State's Requests for an Attainment Date Extension for the Bi-State Charlotte Area for the 1997 8-Hour Ozone NAAQS

As mentioned above in this rulemaking, 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). Below provides EPA's analysis of how North Carolina and

South Carolina have met these minimum requirements.

(1) The State(s) request(s) a one-year extension.

The State of North Carolina, through NC DENR, and the State of South Carolina, through SC DHEC, submitted letters on April 28, 2010, and May 6, 2010, respectively, requesting that EPA grant a one-year extension of the attainment date for the 1997 8-hour ozone NAAQS for the bi-state Charlotte Area. Both letters contained certifications that each state is complying with all requirements and commitments pertaining to the bi-state Charlotte Area in the applicable implementation plan; and that the bi-state Charlotte Area has a 4th highest daily 8-hour average of 0.084 ppm or less for the attainment year (i.e., 2009) for this initial request for an extension. EPA's analysis of the certifications from North Carolina and South Carolina, and of the ambient air quality monitoring data for the bi-state Charlotte Area for the 1997 8-hour ozone NAAQS (i.e., in relation to the States' attainment date extension request) is provided below.

(2) All requirements and commitments in the EPA-approved SIP for the area have been complied with.

In the letters submitted by NC DENR and SC DHEC, on April 28, 2010, and May 6, 2010, respectively, both states discuss implementation of state measures in the SIP. One of the required elements for a one-year extension required under Section 181(a)(5) of the CAA is that the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan. EPA has conducted an independent review of whether both North Carolina and South Carolina are in compliance with the applicable implementation plans for the bi-state Charlotte Area as intended by Section 181(a)(5)(A) of the CAA, and has made the preliminary determination that both states are in compliance. This preliminary determination is based on EPA's belief that both states are currently meeting the EPA-approved implementation plans for the bi-state Charlotte Area.

While both states previously had outstanding requirements related to the 1997 8-hour ozone attainment demonstrations for the bi-state Charlotte Area, both states have provided the necessary SIP submittals. Nonetheless,

EPA does not and did not view submission or approval of these attainment demonstrations as relevant for meeting the "applicable implementation plans" for the bi-state Charlotte Area with regard to Section 181(a)(5)(A) of the CAA. However, EPA does note that on May 27, 2010,<sup>1</sup> letters were sent to the Governors of North Carolina and South Carolina acknowledging submission of the attainment demonstrations for the bi-state Charlotte Area. EPA's May 27, 2010, letters also announced EPA's determination that the attainment demonstration submissions provided by North Carolina and South Carolina were complete pursuant to Section 110(k)(1) of the CAA and the "Criteria for Determining the Completeness of Plan Submissions," as described in 40 CFR Part 51, Appendix V, and thus EPA stopped the sanctions clocks that were running for the States' previous failure to provide these required submissions. EPA is currently reviewing the approvability of these attainment demonstration submissions and will make its final determination on approvability through a separate rulemaking in the **Federal Register**.

(3) The area has a 4th highest daily 8-hour average of 0.084 ppm or less for the attainment year.

In the letters submitted by NC DENR and SC DHEC, on April 28, 2010, and May 6, 2010, respectively, both states have certified that the 4th highest daily 8-hour average ozone concentration for the bi-state Charlotte Area in 2009 was below 0.084 ppm, and that the 2009 ozone data which are included in EPA's Air Quality System (AQS) meets necessary quality control and quality assurance requirements. Table 1 provides the 2009 4th highest concentrations at the monitors in the bi-state Charlotte Area.

<sup>1</sup> In EPA's May 27, 2010, letters to the Governors of North Carolina and South Carolina regarding the stoppage of the sanctions clocks for the finding of failure to submit for the bi-state Charlotte attainment demonstration for the 1997 8-hour ozone NAAQS, EPA inadvertently indicated the dates of the North Carolina attainment demonstration submissions were November 12, 2008, and April 5, 2009; and the dates of the South Carolina attainment demonstration submissions were November 13, 2008, and April 29, 2009. EPA has since sent a follow up letter correcting the dates of the submission for North Carolina as November 12, 2009, and April 5, 2010; and for South Carolina as November 13, 2009, and April 29, 2010.

TABLE 1—2009 4TH HIGHEST CONCENTRATIONS FOR THE BI-STATE CHARLOTTE AREA

| Monitoring Site <sup>2</sup> | County                        | 2009 4th Highest Concentration (ppm) |
|------------------------------|-------------------------------|--------------------------------------|
| Arrowood .....               | Mecklenburg, County, NC ..... | 0.068                                |
| County Line .....            | Mecklenburg County, NC .....  | 0.071                                |
| Crouse .....                 | Lincoln County, NC .....      | 0.065                                |
| Enochville .....             | Rowan County, NC .....        | 0.073                                |
| Garinger (Plaza) .....       | Mecklenburg County, NC .....  | 0.069                                |
| Monroe .....                 | Union County, NC .....        | 0.067                                |
| Rockwell .....               | Rowan County, NC .....        | 0.071                                |

EPA has reviewed the 1997 8-hour ozone NAAQS ambient air quality monitoring data for the bi-state Charlotte Area, consistent with the requirements contained in 40 CFR part 50 and as recorded in the EPA AQS database. On the basis of that review, EPA has preliminarily concluded that for the attainment year, 2009, the bi-state Charlotte Area's 4th highest daily 8-hour average concentration was 0.073 ppm which is below the 8-hour ozone standard of 0.08 ppm (effectively 0.084 ppm).

Because the statutory provisions have been satisfied, EPA is proposing approval of North Carolina and South Carolina's attainment date extension requests for the bi-state Charlotte Area for the 1997 8-hour ozone NAAQS.

#### IV. Proposed Actions

EPA is proposing 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 because EPA believes that both North Carolina and South Carolina have met the statutory requirements for such an extension. EPA's belief is based on its preliminary determination that both states are in compliance of the requirements and commitments associated with the EPA-approved implementation plans, and on the belief that the 4th highest daily 8-hour ozone average concentration for 2009 for the bi-state Charlotte Area is below the 1997 8-hour ozone NAAQS as required by the CAA. As provided in 40 CFR 51.907, if EPA finalizes this action, it will extend, by one year, the deadline by which the bi-state Charlotte Area must attain the

1997 8-hour ozone NAAQS. It will also extend the timeframe by which EPA must make an attainment determination for the area. EPA notes that this proposed action only relates to the initial one-year extension. As noted in Section 181(a)(5) of the CAA, areas may qualify for up to 2 one-year extensions. 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.

#### VI. 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 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 state's request, provided that it meets 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 proposed 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).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

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

Dated: July 23, 2010.

**Beverly H. Banister,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 2010-19141 Filed 8-3-10; 8:45 am]

**BILLING CODE 6560-50-P**

<sup>2</sup> While York County, South Carolina does have an ozone monitor, this monitor is not included in the portion of the bi-state Charlotte Area that is currently designated nonattainment for ozone and thus is not relevant for consideration of the attainment date extension requests. However, the 4th maximum highest concentration in 2009 for the York County, South Carolina ozone monitor is 0.62 ppm—well below 0.084 ppm.