

1 *NOTE: Text shown in italics reflects changes that are included in the proposed rule published 03-01-2010 on OAH's*
2 *website for which the public comment period closes 04-30-2010.*
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4 15A NCAC 02D .0531 is proposed for amendment as follows:
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6 **15A NCAC 02D .0531 SOURCES IN NONATTAINMENT AREAS**

7 (a) For the purpose of this Rule the definitions contained in 40 CFR 51.165(a)(1) and 40 CFR 51.301 shall apply except
8 the definition of "baseline actual emissions."

9 (1) "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated new source
10 review (NSR) pollutant, as determined in accordance with Parts (A) through (C) of this Subparagraph:

11 (A) For an existing emissions unit, baseline actual emissions means the average rate, in tons per
12 year, at which the emissions unit actually emitted the pollutant during any consecutive 24-
13 month period selected by the owner or operator within the 5-year period immediately
14 preceding the date that a complete permit application is received by the Division for a permit
15 required under this Rule. The Director shall allow a different time period, not to exceed 10
16 years immediately preceding the date that a complete permit application is received by the
17 Division, if the owner or operator demonstrates that it is more representative of normal
18 source operation. For the purpose of determining baseline actual emissions, the following
19 shall apply:

20 (i) The average rate shall include fugitive emissions to the extent quantifiable, and
21 emissions associated with startups, shutdowns, and malfunctions.

22 (ii) The average rate shall be adjusted downward to exclude any non-compliant
23 emissions that occurred while the source was operating above any emission
24 limitation that was legally enforceable during the consecutive 24-month period.

25 (iii) For an existing emission unit (other than an electric utility steam generating unit),
26 the average rate shall be adjusted downward to exclude any emissions that would
27 have exceeded an emission limitation with which the major stationary source must
28 currently comply. However, if the State has taken credit in an attainment
29 demonstration or maintenance plan consistent with the requirements of 40 CFR
30 51.165(a)(3)(ii)(G) for an emission limitation that is part of a maximum achievable
31 control technology standard that the Administrator proposed or promulgated under
32 part 63 of the Code of Federal Regulations, the baseline actual emissions shall be
33 adjusted to account for such emission reductions.

34 (iv) For an electric utility steam generating unit, the average rate shall be adjusted
35 downward to reflect any emissions reductions under G.S. 143-215.107D and for
36 which cost recovery is sought pursuant to G.S. 62-133.6.

37 (v) For a regulated NSR pollutant, when a project involves multiple emissions units,
38 only one consecutive 24-month period shall be used to determine the baseline actual
39 emissions for all the emissions units being changed. A different consecutive 24-
40 month period for each regulated NSR pollutant.

41 (vi) The average rate shall not be based on any consecutive 24-month period for which
42 there is inadequate information for determining annual emissions, in tons per year,
43 and for adjusting this amount if required by Subparts (ii) and (iii) of this Part.

44 (B) For a new emissions unit, the baseline actual emissions for purposes of determining the
45 emissions increase that will result from the initial construction and operation of such unit
46 shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

47 (C) For a plantwide applicability limit (PAL) for a stationary source, the baseline actual
48 emissions shall be calculated for existing emissions units in accordance with the procedures
49 contained in Part (A) of this Subparagraph, and for a new emissions unit in accordance with
50 the procedures contained in Part (B) of this Subparagraph.

51 (2) In the definition of "net emissions increase," the reasonable period specified in 40 CFR
52 51.165(a)(1)(vi)(C)(1) shall be seven years.

53 (3) Particulate matter PM_{2.5} significant levels in 40 CFR 51.165(a)(1)(x)(A) are incorporated by reference
54 except as otherwise provided in this Rule. A net emission increase or the potential of a source to emit
55 nitrogen oxide emissions shall be significant if the rate of emissions would equal or exceed 140 tpy.

1 Sulfur dioxide and nitrogen oxides are precursor to PM_{2.5} in all nonattainment areas. Volatile organic
2 compounds and ammonia are not precursors to PM_{2.5}.

3 (b) Redesignation to Attainment. If any county or part of a county to which this Rule applies is later designated in 40
4 CFR 81.334 as attainment ~~for ozone or carbon monoxide~~, all sources in that county subject to this Rule before the
5 redesignation date shall continue to comply with this Rule.

6 (c) Applicability. 40 CFR 51.165(a)(2) is incorporated by reference. This Rule applies to areas designated as
7 nonattainment in 40 CFR 81.334, including any subsequent amendments or editions.
8 ~~the following areas:~~

9 ~~(1) Ozone Nonattainment Areas, to major stationary sources and major modifications of sources of~~
10 ~~volatile organic compounds or nitrogen oxides for which construction commences after the area in~~
11 ~~which the source is located is designated according to Part (A) or (B) of this Subparagraph:~~

12 ~~(A) areas designated in 40 CFR 81.334 as nonattainment for ozone, or~~

13 ~~(B) any of the following areas and in that area only when the Director notices in the North~~
14 ~~Carolina Register that the area is in violation of the ambient air quality standard for ozone:~~

15 ~~(i) Charlotte/Gastonia, consisting of Mecklenburg and Gaston Counties; with the~~
16 ~~exception allowed under Paragraph (l) of this Rule;~~

17 ~~(ii) Greensboro/Winston Salem/High Point, consisting of Davidson, Forsyth, and~~
18 ~~Guilford Counties and that part of Davie County bounded by the Yadkin River,~~
19 ~~Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin~~
20 ~~River; or~~

21 ~~(iii) Raleigh/Durham, consisting of Durham and Wake Counties and Dutchville~~
22 ~~Township in Granville County.~~

23 ~~Violations of the ambient air quality standard for ozone shall be determined according to 40~~
24 ~~CFR 50.9.~~

25 ~~(2) Carbon Monoxide Nonattainment Areas. This Rule applies to major stationary sources and major~~
26 ~~modifications of sources of carbon monoxide located in areas designated in 40 CFR 81.334 as~~
27 ~~nonattainment for carbon monoxide and for which construction commences after the area in which the~~
28 ~~source is located is listed in 40 CFR 81.334 as nonattainment for carbon monoxide.~~

29 (d) This Rule is not applicable to:

30 (1) complex sources of air pollution regulated only under Section .0800 of this Subchapter and not under
31 any other rule in this Subchapter;

32 (2) emission of pollutants at the new major stationary source or major modification located in the
33 nonattainment area that are pollutants other than the pollutant or pollutants for which the area is
34 nonattainment. (A major stationary source or major modification that is major for volatile organic
35 compounds or nitrogen oxides is also major for ozone.);

36 (3) emission of pollutants for which the source or modification is not major;

37 (4) a new source or modification that qualifies for exemption under the provision of 40 CFR 51.165(a)(4);
38 or

39 (5) emission of compounds listed under 40 CFR 51.100(s) as having been determined to have negligible
40 photochemical reactivity except carbon monoxide.

41 (e) 15A NCAC 02Q .0102 and .0302 are not applicable to any source to which this Rule applies. The owner or operator
42 of the source shall apply for and receive a permit as required in 15A NCAC 02Q .0300 or .0500.

43 (f) To issue a permit to a source to which this Rule applies, the Director shall determine that the source meets the
44 following requirements:

45 (1) The new major stationary source or major modification will emit the nonattainment pollutant at a rate
46 no more than the lowest achievable emission rate;

47 (2) The owner or operator of the proposed new major stationary source or major modification has
48 demonstrated that all major stationary sources in the State that are owned or operated by this person
49 (or any entity controlling, controlled by, or under common control with this person) are subject to
50 emission limitations and are in compliance, or on a schedule for compliance that is federally
51 enforceable or contained in a court decree, with all applicable emission limitations and standards of
52 this Subchapter that EPA has authority to approve as elements of the North Carolina State
53 Implementation Plan for Air Quality;

54 (3) The owner or operator of the proposed new major stationary source or major modification will obtain
55 sufficient emission reductions of the nonattainment pollutant from other sources in the nonattainment

1 area so that the emissions from the new major source and associated new minor sources will be less
2 than the emissions reductions by a ratio of at least 1.00 to 1.15 for volatile organic compounds and
3 nitrogen oxides and by a ratio of less than one to one for carbon monoxide. The baseline for this
4 emission offset shall be the actual emissions of the source from which offset credit is obtained.
5 Emission reductions shall not include any reductions resulting from compliance (or scheduled
6 compliance) with applicable rules in effect before the application. The difference between the
7 emissions from the new major source and associated new minor sources of carbon monoxide and the
8 emission reductions shall be sufficient to represent reasonable further progress toward attaining the
9 National Ambient Air Quality Standards. The emissions reduction credits shall also conform to the
10 provisions of 40 CFR 51.165(a)(3)(ii)(A) through (G) and (J); and

- 11 (4) The North Carolina State Implementation Plan for Air Quality is being carried out for the
12 nonattainment area in which the proposed source is located.

13 (g) New natural gas-fired electrical utility generating units *for which cost recovery is sought pursuant to G. S. 62-133.6*
14 *shall install lowest achievable emission rate technology for NO_x and SO₂, regardless of the applicability of the rest*
15 *of this Rule.*

16 (h) 40 CFR 51.165(f) is incorporated by reference except that 40 CFR 51.165(f)(10)(iv)(A) is changed to read: "If the
17 emissions level calculated in accordance with Paragraph (f)(6) of this Section is equal to or greater than 80 percent of the
18 PAL level, the Director shall renew the PAL at the same level." 40 CFR 51.165(f)(10)(iv)(B) is not incorporated by
19 reference.

20 (i) When a particular source or modification becomes a major stationary source or major modification solely by
21 virtue of a relaxation in any enforceable limitation established after August 7, 1980, on the capacity of the
22 source or modification to emit a pollutant, such as a restriction on hours of operation, then the provisions of
23 this Rule shall apply to the source or modification as though construction had not yet begun on the source or
24 modification.

25 (j) To issue a permit to a source of a nonattainment pollutant, the Director shall determine, in addition to the
26 other requirements of this Rule, that an analysis (produced by the permit applicant) of alternative sites, sizes,
27 production processes, and environmental control techniques for the source demonstrates that the benefits of
28 the source significantly outweigh the environmental and social costs imposed as a result of its location,
29 construction, or modification.

30 (k) The provisions of 40 CFR 52.21(r)(2) regarding the period of validity of approval to construct are
31 incorporated by reference except that the term "Administrator" is replaced with "Director".

32 (l) Approval of an application regarding the requirements of this Rule shall not relieve the owner or operator of
33 the responsibility to comply fully with applicable provisions of other rules of this Chapter and any other
34 requirements under local, state, or federal law.

35 (m) ~~Except as provided in 40 CFR 52.28(c)(6), when for a source or modification subject to this Rule may~~
36 ~~affect the visibility of a Class I area named in Paragraph (c) of Rule .0530 of this Section,~~ the following
37 procedures shall be followed:

- 38 (1) The owner or operator of the source shall provide an analysis of the impairment to visibility that would
39 occur because of the source or modification and general commercial, industrial and other growth
40 associated with the source or modification;
- 41 (2) When a source or modification may affect the visibility of in a Class I area named in
42 Paragraph (c) of Rule .0530 of this Section, ~~The~~ the Director shall provide written notification to
43 all affected Federal Land Managers within 30 days of receiving the permit application or within 30
44 days of receiving advance notification of an application. The notification shall be at least 30 days
45 before the publication of the notice for public comment on the application. The notification shall
46 include a copy of all information relevant to the permit application including an analysis provided by
47 the source of the potential impact of the proposed source on visibility;
- 48 (3) The Director shall consider any analysis concerning visibility impairment performed by the Federal
49 Land Manager if the analysis is received within 30 days of notification. If the Director finds that the
50 analysis of the Federal Land Manager fails to demonstrate to his satisfaction that an adverse impact on
51 visibility will result in the Class I area, the Director shall provide in the notice of public hearing on the
52 application, an explanation of his decision or notice where the explanation can be obtained;
- 53 (4) The Director shall issue permits only to those sources whose emissions will be consistent with making
54 reasonable progress toward the national goal of preventing any future, and remedying any existing,
55 impairment of visibility in mandatory Class I areas when the impairment results from manmade air
56 pollution. In making the decision to issue a permit, the Director shall consider the cost of compliance,

1 the time necessary for compliance, the energy and nonair quality environmental impacts of
2 compliance, and the useful life of the source; and

- 3 (5) The Director may require monitoring of visibility in or around any Class I area by the proposed new
4 source or modification when the visibility impact analysis indicates possible visibility impairment.

5 The requirements of this Paragraph shall not apply to nonprofit health or nonprofit educational institutions.

6 ~~(n) Paragraphs (f) and (j) of this Rule shall not apply to a new major stationary source or a major modification of a
7 source of volatile organic compounds or nitrogen oxides for which construction commences after the area in which the
8 source is located has been designated according to Part (c)(1)(B) of this Rule and before the area is designated in 40
9 CFR 81.334 as nonattainment for ozone if the owner or operator of the source demonstrates, using the Urban Airshed
10 Model (UAM), that the new source or modification will not contribute to or cause a violation. The model used shall be
11 that maintained by the Division. The Division shall run the model only after the permit application has been submitted.
12 The permit application shall be incomplete until the modeling analysis is completed. The owner or operator of the source
13 shall apply such degree of control and obtain such offsets necessary to demonstrate the new source or modified source
14 will not cause or contribute to a violation.~~

15 ~~(n)~~ (n) If the owner or operator of a source is using projected actual emissions to avoid applicability of nonattainment
16 new source review, the owner or operator shall notify the director of the modification before beginning actual
17 construction. The notification shall include:

- 18 (1) a description of the project,
19 (2) identification of sources whose emissions could be affected by the project,
20 (3) the calculated projected actual emissions and an explanation of how the projected actual emissions
21 were calculated, including identification of emissions excluded by 40 CFR 51.165(a)(1)(xxviii)(B)(3),
22 (4) the calculated baseline actual emissions and an explanation of how the baseline actual emissions were
23 calculated, and
24 (5) any netting calculations if applicable.

25 If upon reviewing the notification, the Director finds that the project will cause a nonattainment new source review
26 evaluation, then the Director shall notify the owner or operator of his findings. The owner or operator shall not make the
27 modification until it has received a permit issued pursuant to this Rule. If a permit revision is not required pursuant to this
28 Rule, the owner or operator shall maintain records of annual emissions in tons per year on a calendar year basis related to
29 the modifications for 10 years following resumption of regular operations after the change if the project involves
30 increasing the emissions unit's design capacity or its potential to emit the regulated NSR pollutant; otherwise these
31 records shall be maintained for five years following resumption of regular operations after the change. The owner or
32 operator shall submit a report to the director within 60 days after the end of each year during which these records must be
33 generated. The report shall contain the items listed in 40 CFR 51.165(a)(6)(v)(A) through (C). The owner or operator
34 shall make the information documented and maintained under this Paragraph available to the Director or the general
35 public pursuant to the requirements in 40 CFR 70.4(b)(3)(viii).

36 ~~(o) The reference to the Code of Federal Regulations (CFR) in this Rule are incorporated by reference unless a
37 specific reference states otherwise. Except for 40 CFR 81.334, **The the version of the Code of Federal Regulations
38 CFR incorporated in this Rule is that as of June 13, 2007 2007. 2007. May 16, 2008 except those provisions noticed
39 as stayed in 69 FR 40274, and does not include any subsequent amendments or editions to the referenced material.
40 and does not include any subsequent amendments or editions to the referenced material.**~~

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42 *History Note:* Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 143-215.108(b);
43 Eff. June 1, 1981;
44 Amended Eff. December 1, 1993; December 1, 1992;
45 Temporary Amendment Eff. March 8, 1994 for a period of 180 days or until the permanent rule is
46 effective, whichever is sooner;
47 Amended Eff. _____: May 1, 2008; May 1, 2005; July 1, 1998; July 1, 1996; July 1, 1995; July 1,
48 1994.
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