

ten-year planning period, through 2018; the state has addressed adequately the application of Best Available Retrofit Technology to specific stationary sources; the state has an adequate regional haze monitoring strategy; the state has provided for consultation and coordination with federal land managers in producing its regional haze plan; and, provided for the regional haze plan's future revisions.

In addition, we are proposing to approve California's 2007 Transport SIP and the following specific elements of the CRHP as satisfying the CAA Section 110(a)(2)(D)(i)(II) requirement to prohibit emissions that will interfere with measures to protect visibility in another state for the 1997 8-hour ozone and 1997 PM<sub>2.5</sub> NAAQS: Chapter 3 (Emissions Inventory), chapter 4 (California 2018 Progress Strategy), and, chapter 8 (Consultation).

## VII. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive 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 Clean Air Act; and

- Does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, 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 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Visibility, Volatile organic compounds.

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

Dated: March 9, 2011.

**Jared Blumenfeld,**

*Regional Administrator, Region IX.*

[FR Doc. 2011-6003 Filed 3-14-11; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA-R04-OAR-2010-0958-201104; FRL-9280-7]**

### Approval and Promulgation of Implementation Plans; South Carolina: Prevention of Significant Deterioration and Nonattainment New Source Review; Fine Particulate Matter and Nitrogen Oxides as a Precursor to Ozone

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a revision to the South Carolina State Implementation Plan (SIP), submitted by the State of South Carolina, through the South Carolina Department of Health and Environmental Control (SC DHEC), to EPA on December 2, 2010, for

parallel processing. The proposed SIP revision modifies South Carolina's New Source Review (NSR) Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) programs. The proposed revision makes two changes for which EPA is proposing approval in today's rulemaking. First, the revision incorporates NSR provisions for fine particulate matter (also known as PM<sub>2.5</sub>) as amended in EPA's 2008 NSR PM<sub>2.5</sub> Implementation Rule (hereafter referred to as the "NSR PM<sub>2.5</sub> Rule") into the South Carolina SIP. Second, the proposed revision addresses a PSD permitting requirement promulgated in the 1997 8-Hour Ozone National Ambient Air Quality Standards (NAAQS) Implementation Rule NSR Update Phase II (hereafter referred to as the "Ozone Implementation NSR Update or Phase II Rule"). Both changes in the proposed SIP revision are necessary to comply with federal regulations related to South Carolina's NSR permitting program. EPA is proposing approval of the December 2, 2010, proposed SIP revision because the Agency has preliminarily determined that the revisions are in accordance with the Clean Air Act (CAA or Act) and EPA regulations regarding NSR permitting.

**DATES:** Comments must be received on or before April 14, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2010-0958 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-2010-0958, 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:* Ms. 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-2010-0958." 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:** For information regarding the South Carolina SIP, contact Ms. Twunjala Bradley, 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. Ms. Bradley's telephone number is (404) 562-9352; e-mail address: [bradley.twunjala@epa.gov](mailto:bradley.twunjala@epa.gov). For information regarding NSR, contact Ms. Yolanda Adams, Air Permits Section, at the same address above. Ms. Adams' telephone number is (404) 562-9241; e-mail address: [adams.yolanda@epa.gov](mailto:adams.yolanda@epa.gov). For information regarding the Phase II Rule, contact Ms. Jane Spann, Regulatory Development Section, at the same address above. Ms. Spann's telephone number is (404) 562-9029; e-mail address: [spann.jane@epa.gov](mailto:spann.jane@epa.gov). For information regarding the PM<sub>2.5</sub> NAAQS, contact Mr. Joel Huey, Regulatory Development Section, at the same address above. Mr. Huey's telephone number is (404) 562-9104; e-mail address: [huey.joel@epa.gov](mailto:huey.joel@epa.gov).

#### SUPPLEMENTARY INFORMATION:

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##### I. What action is EPA proposing in today's notice?

On December 2, 2010, SC DHEC submitted a proposed revision to EPA for approval into the South Carolina SIP to adopt Federal requirements for NSR permitting. The December 2, 2010, submittal addresses PSD and NNSR requirements related to the implementation of the 2006 PM<sub>2.5</sub> NAAQS as well as adding a provision of the PSD NO<sub>x</sub> as a precursor requirement established in the Phase II Rule. Pursuant to section 110 of the CAA, EPA is proposing to approve these changes into the South Carolina SIP.

South Carolina's December 2, 2010, SIP revision was submitted as a draft SIP revision and is not yet state-effective. Therefore, South Carolina requested that EPA "parallel process"

the SIP revision.<sup>1</sup> Under this procedure, the EPA Regional Office works closely with the state while developing new or revised regulations. Generally, the state submits a copy of the proposed regulation or other revisions to EPA before conducting its public hearing. EPA reviews this proposed state action and prepares a notice of proposed rulemaking. EPA publishes this notice of proposed rulemaking in the **Federal Register** and solicits public comment in approximately the same time frame during which the state is holding its public hearing. The state and EPA thus provide for public comment periods on both the State and the Federal actions in parallel.

After South Carolina submits the formal state-effective SIP revision request (including a response to all public comments raised during the state's public participation process), EPA will prepare a final rulemaking notice for the SIP revision. If changes are made to the SIP revision after EPA's notice of proposed rulemaking, such changes must be acknowledged in EPA's final rulemaking action. If the changes are significant, then EPA may be obligated to re-propose the action. In addition, if the changes render the SIP revision not approvable, EPA's re-proposal of the action would be a disapproval of the revision.

##### II. What is the background for the action proposed by EPA in today's notice regarding NSR permitting requirements for the PM<sub>2.5</sub> NAAQS?

Today's proposed action to revise the South Carolina SIP relates to EPA's "Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM<sub>2.5</sub>)," Final Rule, 73 FR 28321 (May 16, 2008) (the "NSR PM<sub>2.5</sub> Rule"). In the NSR PM<sub>2.5</sub> Rule, EPA finalized regulations to implement the NSR program for the PM<sub>2.5</sub> NAAQS. As a result of EPA's final NSR PM<sub>2.5</sub> Rule, states are required to provide SIP submissions no later than May 16, 2011, to address these requirements for both the PSD and NNSR programs. South Carolina's December 2, 2010, proposed SIP revision addresses the PSD and NNSR requirements for the PM<sub>2.5</sub> NAAQS. More detail on the NSR PM<sub>2.5</sub> Rule can be found in EPA's May 16, 2008, final rule and is summarized below.

<sup>1</sup> While the transmittal letter for South Carolina's submission is dated October 20, 2010, EPA did not officially receive South Carolina's request for parallel processing until December 2, 2010.

### A. Fine Particulate Matter and the NAAQS

Fine particles in the atmosphere are made up of a complex mixture of components. Common constituents include sulfate (SO<sub>4</sub>); nitrate (NO<sub>3</sub>); ammonium; elemental carbon; a great variety of organic compounds; and inorganic material (including metals, dust, sea salt, and other trace elements) generally referred to as “crustal” material, although it may contain material from other sources. Airborne particulate matter (PM) with a nominal aerodynamic diameter of 2.5 micrometers or less (a micrometer is one-millionth of a meter, and 2.5 micrometers is less than one-seventh the average width of a human hair) are considered to be “fine particles” and are also known as PM<sub>2.5</sub>. “Primary” particles are emitted directly into the air as a solid or liquid particle (e.g., elemental carbon from diesel engines or fire activities, or condensable organic particles from gasoline engines). “Secondary” particles (e.g., sulfate and nitrate) form in the atmosphere as a result of various chemical reactions.

The health effects associated with exposure to PM<sub>2.5</sub> include potential aggravation of respiratory and cardiovascular disease (i.e., lung disease, decreased lung function asthma attacks and certain cardiovascular issues). Epidemiological studies have indicated a correlation between elevated PM<sub>2.5</sub> levels and premature mortality. Groups considered especially sensitive to PM<sub>2.5</sub> exposure include older adults, children, and individuals with heart and lung diseases. For more details regarding health effects and PM<sub>2.5</sub> see EPA’s Web site at <http://www.epa.gov/oar/particlepollution/> (see heading “Health and Welfare”).

On July 18, 1997, EPA revised the NAAQS for PM to add new standards for fine particles, using PM<sub>2.5</sub> as the indicator. Previously, EPA used PM<sub>10</sub> (inhalable particles smaller than or equal to 10 micrometers in diameter) as the indicator for the PM NAAQS. EPA established health-based (primary) annual and 24-hour standards for PM<sub>2.5</sub>, setting an annual standard at a level of 15 micrograms per cubic meter (µg/m<sup>3</sup>) and a 24-hour standard at a level of 65 µg/m<sup>3</sup>. 62 FR 38652. At the time the 1997 primary standards were established, EPA also established welfare-based (secondary) standards identical to the primary standards. The secondary standards are designed to protect against major environmental effects of PM<sub>2.5</sub>, such as visibility impairment, soiling, and materials damage. On October 17, 2006, EPA

revised the primary and secondary NAAQS for PM<sub>2.5</sub>. In that rulemaking, EPA reduced the 24-hour NAAQS for PM<sub>2.5</sub> to 35 µg/m<sup>3</sup> and retained the existing annual PM<sub>2.5</sub> NAAQS of 15 µg/m<sup>3</sup>. 71 FR 61236.

### B. What is the NSR program?

The CAA NSR program is a preconstruction review and permitting program applicable to certain new and modified stationary sources of air pollutants regulated under the CAA. The program includes a combination of air quality planning and air pollution control technology requirements. The CAA NSR program is composed of three separate programs: PSD, NNSR, and Minor NSR. PSD is established in Part C of title I of the CAA and applies in areas that meet the NAAQS “attainment areas” as well as areas where there is insufficient information to determine if the area meets the NAAQS—“unclassifiable areas.” The NNSR program is established in Part D of title I of the CAA and applies in areas that are not in attainment of the NAAQS—“nonattainment areas.” The Minor NSR program addresses construction or modification activities that do not qualify as “major” and applies regardless of the designation of the area in which a source is located. Together, these programs are referred to as NSR programs. EPA regulations governing the implementation of these programs are contained in 40 Code of Federal Regulations (CFR) Parts 51.165, 51.166, 52.21, 52.24, and part 51, Appendix S.

Section 109 of the CAA requires EPA to promulgate a primary NAAQS to protect public health and a secondary NAAQS to protect public welfare. Once EPA sets those standards, states must develop, adopt, and submit a SIP to EPA for approval that includes emission limitations and other control measures to attain and maintain the NAAQS. See CAA § 110. Each SIP is also required to include a preconstruction review program for the construction and modification of any stationary source of air pollution to assure the maintenance of the NAAQS. The December 2, 2010, SIP submittal revises South Carolina’s PSD and NNSR programs.

### C. Implementation of NSR Requirements for PM<sub>2.5</sub>

After EPA promulgated the NAAQS for PM<sub>2.5</sub> in 1997, the Agency issued a guidance document entitled “Interim Implementation of New Source Review Requirements for PM<sub>2.5</sub>.” John S. Seitz, EPA, October 23, 1997 (the “Seitz memo”). The Seitz memo was designed to help states implement NSR requirements pertaining to the new

PM<sub>2.5</sub> NAAQS in light of technical difficulties posed by PM<sub>2.5</sub> at that time. Specifically, the Seitz memo stated: “PM-10 may properly be used as a surrogate for PM-2.5 in meeting NSR requirements until these difficulties are resolved.”

EPA also issued a guidance document entitled “Implementation of New Source Review Requirements in PM-2.5 Nonattainment Areas” (the “2005 PM<sub>2.5</sub> Nonattainment NSR Guidance”), on April 5, 2005, the date that EPA’s PM<sub>2.5</sub> nonattainment area designations became effective for the 1997 NAAQS. This memorandum provided guidance on the implementation of the nonattainment major NSR provisions in PM<sub>2.5</sub> nonattainment areas in the interim period between the effective date of the PM<sub>2.5</sub> nonattainment area designations (April 5, 2005) and EPA’s promulgation of final PM<sub>2.5</sub> NNSR regulations. Besides re-affirming the continuation of the PM<sub>10</sub> Surrogate Policy for PM<sub>2.5</sub> attainment areas set forth in the Seitz memo, the 2005 PM<sub>2.5</sub> NNSR Guidance recommended that until EPA promulgated the PM<sub>2.5</sub> major NSR regulations, “States should use a PM<sub>10</sub> nonattainment major NSR program as a surrogate to address the requirements of nonattainment major NSR for the PM<sub>2.5</sub> NAAQS.”

On May 16, 2008, EPA finalized a rule to implement the 1997 PM<sub>2.5</sub> NAAQS, including changes to the NSR program. 73 FR 28321. The 2008 NSR PM<sub>2.5</sub> Rule revised the NSR program requirements to establish the framework for implementing preconstruction permit review for the PM<sub>2.5</sub> NAAQS in both attainment and nonattainment areas. The 2008 NSR PM<sub>2.5</sub> Rule requires that major stationary sources seeking permits must begin directly satisfying the PM<sub>2.5</sub> requirements, as of the effective date of the rule, rather than relying on PM<sub>10</sub> as a surrogate, with two exceptions. The first exception is a “grandfathering” provision in the Federal PSD program at 40 CFR 52.21(i)(1)(xi). This grandfathering provision applied to sources that had applied for, but had not yet received, a final and effective PSD permit before the July 15, 2008, effective date of the May 2008 final rule. The second exception was that states with SIP-approved PSD programs could continue to implement the Seitz Memo’s PM<sub>10</sub> Surrogate Policy for up to three years (until May 2011) or until the individual revised state PSD programs for PM<sub>2.5</sub> are approved by EPA, whichever comes first. For additional

information on the NSR PM<sub>2.5</sub> Rule, see 73 FR 28321.<sup>2</sup>

On February 11, 2010, EPA proposed to repeal the grandfathering provision for PM<sub>2.5</sub> contained in the federal PSD program at 40 CFR 52.21(i)(1)(xi) and to end early the PM<sub>10</sub> Surrogate Policy applicable in states that have a SIP-approved PSD program. 75 FR 6827. In support of this proposal, EPA explained that the PM<sub>2.5</sub> implementation issues that led to the adoption of the PM<sub>10</sub> Surrogate Policy in 1997 have been largely resolved to a degree sufficient for sources and permitting authorities to conduct meaningful permit-related PM<sub>2.5</sub> analyses. EPA has not yet taken final action on this proposal. Though EPA has not finalized a repeal of the PM<sub>2.5</sub> grandfathering provision at 40 CFR 52.21(i)(1)(xi), South Carolina elected not to include this provision in its SIP submittal.

The NSR PM<sub>2.5</sub> Rule also established the following NSR requirements to implement the PM<sub>2.5</sub> NAAQS: (1) Require NSR permits to address directly emitted PM<sub>2.5</sub> and precursor pollutants; (2) establish significant emission rates for direct PM<sub>2.5</sub> and precursor pollutants (including sulfur dioxide (SO<sub>2</sub>) and NO<sub>x</sub>); (3) establish PM<sub>2.5</sub> emission offsets; and (4) require states to account for gases that condense to form particles (“condensables”) in PM<sub>2.5</sub> emission limits. In addition, the NSR PM<sub>2.5</sub> Rule gives states the option of allowing interpollutant trading for the purpose of offsets under the PM<sub>2.5</sub> NNSR program. South Carolina’s December 2, 2010, proposed submittal addresses the PSD and NNSR requirements related to EPA’s May 16, 2008, NSR PM<sub>2.5</sub> Rule.

### III. What is the background for the action proposed by EPA in today’s notice regarding the Phase II Rule for NO<sub>x</sub> as an ozone precursor?

Today’s proposed action on the South Carolina SIP also relates to EPA’s Phase II Rule. 70 FR 71612 (November 29, 2005). In the Phase II Rule, EPA finalized regulations to address permit requirements for the 1997 8-hour ozone NAAQS to implement the NSR program by specifically identifying NO<sub>x</sub> as an ozone precursor.

On July 18, 1997, EPA promulgated a revised 8-hour ozone NAAQS of 0.08 parts per million—also referred to as the 1997 8-hour ozone NAAQS. On April 30, 2004, EPA designated areas as attainment, nonattainment and

unclassifiable for the 1997 8-hour ozone NAAQS. As part of the 2004 designations, EPA also promulgated an implementation rule for the 1997 8-hour ozone NAAQS in two phases. Phase I of EPA’s 1997 8-hour ozone implementation rule (Phase I Rule), published on April 30, 2004, effective on June 15, 2004, provided the implementation requirements for designating areas under subpart 1 and subpart 2 of the CAA (69 FR 23951).

On November 29, 2005, EPA promulgated the second phase for implementation provisions related to the 1997 8-hour ozone NAAQS—also known as the Phase II Rule (70 FR 71612). The Phase II Rule addressed control and planning requirements as they applied to areas designated nonattainment for the 1997 8-hour ozone NAAQS such as reasonably available control technology, reasonably available control measures, reasonable further progress, modeling and attainment demonstrations and NSR, and the impact to reformulated gas for the 1997 8-hour ozone NAAQS transition. The Phase II Rule requirements include, among other changes, a provision stating that NO<sub>x</sub> is an ozone precursor. 70 FR 71612, 71679. In the Phase II Rule, EPA stated as follows:

“The EPA has recognized NO<sub>x</sub> as an ozone precursor in several national rules because of its contribution to ozone transport and the ozone nonattainment problem. The EPA’s recognition of NO<sub>x</sub> as an ozone precursor is supported by scientific studies, which have long recognized the role of NO<sub>x</sub> in ozone formation and transport. Such formation and transport is not limited to nonattainment areas. Therefore, we believe NO<sub>x</sub> should be treated consistently as an ozone precursor in both our PSD and nonattainment NSR regulations. For these reasons, we have promulgated final regulations providing that NO<sub>x</sub> is an ozone precursor in attainment areas.”

Specific to this rulemaking, the Phase II Rule made changes to federal regulations 40 CFR 51.165 and 51.166 (which governs the NNSR and PSD permitting programs respectively).

Pursuant to these requirements, states were required to submit SIP revisions adopting the federal requirements of the Phase II Rule (at 40 CFR 51.165 and 51.166) into their SIP no later than June 15, 2007. On July 1, 2005, South Carolina submitted a SIP revision to adopt the PSD and NNSR provisions amended in the 2002 NSR Reform rules.<sup>3</sup> The SIP revision became state-

effective on June 24, 2005, and adopted PSD and applicable NNSR provisions at 40 CFR 51.165 and 51.166, respectively. Also in the July 1, 2005 submittal, South Carolina recognized NO<sub>x</sub> as an ozone precursor for NSR permitting purposes by adopting provisions into its SIP. At the time of South Carolina’s NSR Reform SIP submittal, the Phase II Rule had not been finalized by EPA. However, the South Carolina NSR program had recognized NO<sub>x</sub> emissions as an ozone precursor in their PSD permitting practice. EPA took final action to approve South Carolina’s NSR Reform SIP revision as well as NO<sub>x</sub> as a precursor provisions into the South Carolina SIP on June 2, 2008. 73 FR 31368. The December 2, 2010, proposed SIP revision (the subject of this action), incorporates a NO<sub>x</sub> as ozone precursor PSD requirement that was not included in the South Carolina’s July 1, 2005, SIP submittal to be consistent with Federal regulations for NSR permitting purposes. Together, South Carolina’s July 1, 2005 (73 FR 31368) and December 2, 2010, SIP revisions incorporate the Phase II Rule permitting requirements pertaining to NO<sub>x</sub> as an ozone precursor into the South Carolina SIP.

### IV. What is EPA’s analysis of South Carolina’s SIP revisions?

South Carolina currently has a SIP-approved NSR program for new and modified stationary sources. South Carolina’s Regulation 61–62.5, Standard Number 7, contains the PSD preconstruction review program and Regulation 61–62.5, Standard Number 7.1 contains the permitting requirements for major sources in or impacting nonattainment areas (NNSR program). Today, EPA is proposing to approve changes to South Carolina’s Regulation 61–62.5 to update South Carolina’s existing NSR program to be consistent with current federal NSR regulations, including adopting regulations amended in the NSR PM<sub>2.5</sub> Rule and the Phase II Rule (at 40 CFR 51.165 and 51.166). More detail is provided below regarding EPA’s analysis of the changes to South Carolina’s SIP as provided in the December 2, 2010, SIP revision.

#### A. EPA’s Analysis of South Carolina’s NSR Rule Revision To Adopt the NSR PM<sub>2.5</sub> Requirements

South Carolina’s Regulation 61–62.5, Standards Number 7 and 7.1 adopt the

published a notice of final action on the reconsideration of the December 31, 2002, final rule changes. The December 31, 2002, and the November 7, 2003, final actions are collectively referred to as the “2002 NSR Reform Rules.”

<sup>2</sup> Additional information on this issue can also be found in an August 12, 2009, final order on a title V petition describing the use of PM<sub>10</sub> as a surrogate for PM<sub>2.5</sub>. In the Matter of *Louisville Gas & Electric Company*, Petition No. IV–2008–3, Order on Petition (August 12, 2009).

<sup>3</sup> On December 31, 2002 (67 FR 80186), EPA published final rule changes to 40 CFR parts 51 and 52, regarding the CAA’s PSD and NNSR programs. On November 7, 2003 (68 FR 63021), EPA

provisions at 40 CFR 51.165 and 51.166, respectively, as amended by the promulgation of the NSR PM<sub>2.5</sub> Rule for PSD and NNSR. Specifically, South Carolina's December 2, 2010, proposed SIP revision addresses the following NSR PM<sub>2.5</sub> provisions: (1) Requirement for NSR permits to address directly emitted PM<sub>2.5</sub> and precursor pollutants; (2) significant emission rates for direct PM<sub>2.5</sub> and precursor pollutants (SO<sub>2</sub> and NO<sub>x</sub>); and (3) requirement of states to address condensable PM in establishing enforceable emission limits for PM<sub>10</sub> or PM<sub>2.5</sub>. In light of EPA's February 11, 2010, proposed rulemaking to repeal the PM<sub>10</sub> "grandfathering" provision, as noted in Section II.C above, South Carolina's December 2, 2010, SIP revision does not address 40 CFR 52.21(i)(1)(ix) promulgated in the NSR PM<sub>2.5</sub> Rule. Even if EPA's proposed repeal of the PM<sub>10</sub> "grandfathering" provision is not finalized before today's action, South Carolina's SIP revision is approvable because it is at least as stringent as current federal law, and is consistent with section 110 of the CAA.

In addition, South Carolina's SIP revision does not incorporate optional provisions set forth at 40 CFR 51.165(a)(11) authorizing the use of interpollutant trading for the purpose of offsets under the PM<sub>2.5</sub> NNSR program. Because the NSR PM<sub>2.5</sub> Rule gives states discretion regarding whether to include interpollutant trading provisions in their PM<sub>2.5</sub> NNSR programs, South Carolina's decision not to adopt such provisions does not affect the approvability of South Carolina's December 2, 2010, draft SIP revision. EPA has preliminarily determined that South Carolina's December 2, 2010, draft SIP revision is consistent with the NSR PM<sub>2.5</sub> Rule for PSD and NNSR and with section 110 of the CAA. *See, e.g.*, NSR PM<sub>2.5</sub> Rule, 75 FR 31514.

#### *B. EPA's Analysis of South Carolina's NSR Rule Revision To Adopt the Phase II Rule Requirement for NO<sub>x</sub> as an Ozone Precursor*

South Carolina's December 2, 2010, proposed SIP revision also updates its PSD permitting regulations at 61–62–5 Standard No. 7. The submittal adds the requirement related to NO<sub>x</sub> as an ozone precursor provision as amended in the Phase II Rule. Specifically, the change addresses the inclusion of "nitrogen oxides" in the footnote at 61–62.5(i)(5)(i) (as amended at 40 CFR 51.166(i)(5)(i)(e)) to recognize NO<sub>x</sub> as an ozone precursor. The provision at 40 CFR 51.166(i)(5)(i)(e) requires sources with a net increase of 100 tons per year or more of NO<sub>x</sub> to perform an ambient impact analysis.

As mentioned above in Section III, South Carolina submitted a SIP revision on July 1, 2005, to update its PSD and NNSR Regulations (at Regulation 61–62.5, Standards No. 7 and 7.1) to adopt the 2002 NSR Reform permitting requirements as well as incorporate provisions recognizing NO<sub>x</sub> as an ozone precursor. The SIP revision became state-effective on June 24, 2005 and EPA took final action to approve the SIP revision on June 2, 2008. 73 FR 31368. Together, South Carolina's July 1, 2005, SIP revision (73 FR 31368, June 2, 2008) and the December 2, 2010, SIP revision (the subject of today's action), incorporate into South Carolina's SIP (at Regulation 61–62.5, Standards No. 7 and 7.1) all of the requirements for permitting pertaining to NO<sub>x</sub> as an ozone precursor as required by the Phase II Rule, 70 FR 71612 (November 29, 2005). EPA is proposing to determine that South Carolina's December 2, 2010, SIP revision is consistent with the federal requirements of the Phase II Rule and the CAA.

#### **V. Proposed Action**

EPA is proposing to approve South Carolina's December 2, 2010, SIP revision adopting federal regulations amended in the NSR PM<sub>2.5</sub> Rule and the Phase II Rule (recognizing NO<sub>x</sub> as an ozone precursor) into the South Carolina SIP. EPA has made the preliminary determination that this SIP revision is approvable because it is in accordance with the CAA and EPA regulations regarding NSR permitting.

#### **VI. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive 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 proposed 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 52**

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: March 7, 2011

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 2011–6009 Filed 3–14–11; 8:45 am]

**BILLING CODE 6560–50–P**

## **FEDERAL COMMUNICATIONS COMMISSION**

### **47 CFR Part 73**

[MB Docket No. 11–33, RM–11623; DA 11–406]

### **Television Broadcasting Services; Topeka, KS**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.