

Control Area. These amendments are necessary to implement VOC contingency measures within the Fredericksburg VOC Emissions Control Area. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

#### V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the “Attorney General’s Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the executive order.

This proposed rule, extending the applicability of four consumer and commercial product regulations into the new Fredericksburg VOC Emissions Control Area, does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: August 30, 2007.

**Donald S. Welsh,**

*Regional Administrator, Region III.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2005-SC-0004-200735; FRL-8466-3]

#### Approval and Promulgation of Implementation Plans; South Carolina; Prevention of Significant Deterioration and Nonattainment New Source Review Rules

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

**ACTION:** Proposed conditional approval.

**SUMMARY:** EPA is proposing to partially approve, disapprove, and conditionally approve specific portions of the proposed revisions to the South Carolina State Implementation Plan (SIP) submitted by the State of South Carolina on July 1, 2005. The proposed revisions modify South Carolina’s Prevention of Significant Deterioration (PSD) program and provide for a new Nonattainment New Source Review (NNSR) program to be incorporated into the SIP. EPA’s proposal to partially approve and disapprove certain portions of the July 1, 2005, SIP submittal is consistent with section 110(k)(3) of the Clean Air Act (CAA). EPA’s proposal to conditionally approve other portions of the July 1, 2005, SIP submittal is consistent with section 110(k)(4) of the CAA. As part of the conditional approval, which applies only to the NNSR program, South Carolina will have twelve months from the date of EPA’s final conditional approval of the SIP revisions in which to revise its NNSR rules, as described herein, to be consistent with existing federal law.

In addition to the conditional approval of the NNSR program, EPA is proposing to approve one provision of South Carolina’s minor source permitting program, partially approve South Carolina’s PSD program, and disapprove two elements of South Carolina’s PSD and NNSR rules that relate to provisions that were vacated from the federal program by the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit Court) on June 24, 2005. The two elements vacated from the federal rules pertain to pollution control projects (PCPs) and clean units. These elements exist in the South Carolina rules in both the PSD and NNSR programs, and all references to PCPs and clean units in both programs are being proposed for disapproval. As part of the conditional approval of South Carolina’s NNSR program, South Carolina must commit to revise its rules to include

requirements for calculating emissions reductions that will be used for offsets and ensure those reductions are surplus to other federal requirements. In the interim, until the State NNSR program changes are in effect, as part of the conditional approval, the State must commit to utilize the provisions of 40 Code of Federal Regulations (CFR) part 51, Appendix S to supplement its NNSR program until it is both State-effective and approved by EPA into the South Carolina SIP.

Changes to the federal new source review (NSR) regulations were promulgated by EPA on December 31, 2002, and reconsidered with minor changes on November 7, 2003, (collectively, these two final actions are called the "2002 NSR Reform Rules"). EPA's 2002 NSR Reform Rules, now proposed for inclusion in the South Carolina SIP, contain provisions for baseline emissions calculations, an actual-to-projected-actual methodology for calculating emissions changes, options for plantwide applicability limits (PALs), and recordkeeping and reporting requirements.

**DATES:** Comments must be received on or before October 12, 2007.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2005-SC-0004, by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *E-mail*: [fortin.kelly@epa.gov](mailto:fortin.kelly@epa.gov).
3. *Fax*: 404-562-9019.
4. *Mail*: (Docket ID No. EPA-R04-OAR-2005-SC-0004), 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*: Deliver your comments to: Ms. Kelly Fortin, 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-2005-SC-0004. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *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 information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *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 *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 docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *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 business hours are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For information regarding the South Carolina State Implementation Plan, contact Ms. Nacosta Ward, 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. Telephone number: (404) 562-9140; e-mail address: [ward.nacosta@epa.gov](mailto:ward.nacosta@epa.gov). For information regarding New Source Review, contact Ms. Kelly Fortin, Air Permits Section, at the same address above. Telephone number: (404) 562-9117; e-mail address: [fortin.kelly@epa.gov](mailto:fortin.kelly@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

Throughout this document, references to "EPA," "we," "us," or "our," are intended to mean the U.S. Environmental Protection Agency. The supplementary information is arranged as follows:

- I. What Action Is EPA Proposing?
- II. Why Is EPA Proposing this Action?
- III. What Is EPA's Analysis of South Carolina's NSR Rule Revisions?
  - A. Definitions and General Standards; South Carolina Regulation 61-62.1
  - B. Prevention of Significant Deterioration; South Carolina Regulation 61-62.5, Standard No. 7
  - C. Nonattainment New Source Review; South Carolina Regulation 61-62.5, Standard No. 7.1
- IV. What Action Is EPA Proposing to Take?
- V. Statutory and Executive Order Reviews

#### **I. What Action Is EPA Proposing?**

On July 1, 2005, the State of South Carolina, through the South Carolina Department of Health and Environmental Control (DHEC), submitted revisions to the South Carolina SIP. The SIP submittal consists of changes to the South Carolina Air Pollution Control Regulations and Standards (South Carolina Regulations). Specifically, the proposed SIP revisions include changes to South Carolina Regulation 61-62.1 entitled "Definitions and General Standards;" Regulation 61-62.5, Standard No. 7 entitled "Prevention of Significant Deterioration;" and Regulation 61-62.5, Standard No. 7.1 entitled "Nonattainment New Source Review." DHEC submitted this SIP revision in response to EPA's December 31, 2002, changes to the Federal NSR program. EPA is proposing to partially approve and disapprove certain portions of the July 1, 2005, SIP submittal, consistent with section 110(k)(3) of the CAA. EPA is also proposing to conditionally approve provisions of the July 1, 2005, SIP submittal consistent with section 110(k)(4) of the CAA. As part of the conditional approval, South Carolina will have twelve months from the date of EPA's final conditional approval of the SIP revisions in which to further revise its NNSR rules, as described herein, to be consistent with existing Federal law.

Consistent with section 110(k)(3) of the CAA, EPA may partially approve and disapprove portions of a SIP revision that meet all the applicable requirements and are severable from the remainder of the revision that is being disapproved or conditionally approved. Pursuant to section 110(k)(3), EPA is proposing to (1) approve one provision of South Carolina's minor source permitting program (discussed more fully below); (2) partially approve South Carolina's PSD program; and (3) disapprove all references to PCPs and clean units in South Carolina's PSD and NNSR programs. The PCP and clean unit references are all severable from the other provisions of South Carolina's PSD and NNSR programs. EPA is not approving any portion of South Carolina's rules regarding PCPs and clean units. Further, any use by South Carolina of its State rules on PCPs and clean units is, according to a Federal appeals court, contrary to the CAA.

Pursuant to section 110(k)(4) of the CAA, EPA may conditionally approve a portion of a SIP revision based on a commitment from the State to adopt specific, enforceable measures no later than twelve months from the approval date of final conditional approval. If the State fails to commit to undertake the necessary changes, or fails to actually make the changes within the twelve month period, EPA will issue a finding of disapproval. EPA is not required to propose the finding of disapproval.

The necessary revisions to the South Carolina SIP will materially alter the existing SIP-approved rule. As a result, the State must also make a new SIP submittal to EPA for approval that includes the rule changes within twelve months from the date of EPA's final action conditionally approving South Carolina's NNSR program. As with any SIP revision, South Carolina must undergo public notice and comment, and allow for a public hearing (and any other procedures required by State law), on the proposed changes to its rules. If South Carolina fails to adopt and submit the specified measures by the end of one year (from the final conditional approval), or fails to make a SIP submittal to EPA within twelve months following the final conditional approval, EPA will issue a finding of disapproval. If South Carolina timely revises its rules and submits the revised SIP submittal, EPA will process that SIP revision consistent with the CAA.

More specifically, with regard to the conditional approval of the NNSR program, South Carolina must revise its rules to include a methodology for calculating emissions reductions to be used as offsets that includes a baseline

for determining credit for emissions offsets that, at a minimum, meets the requirements set out in 40 CFR 51.165(a)(3)(i) and Appendix S section IV.C. The emission offsets provisions must also specify that the reductions must be surplus and cannot be used for offsets if they are otherwise required by the South Carolina SIP or other Federal standards, such as the New Source Performance Standards (NSPS) and National Emissions Standards for Hazardous Air Pollutants (NESHAP), including the Maximum Achievable Control Technology (MACT) standards. As part of the conditional approval, South Carolina must commit to make these changes within the twelve month timeframe. Further, in the interim, until the required State NNSR program changes are in effect, South Carolina must commit to utilize the requirements of the Federal NNSR program outlined in 40 CFR part 51, Appendix S.

## II. Why Is EPA Proposing This Action?

On December 31, 2002 (67 FR 80186), EPA published final rule changes to title 40 CFR parts 51 and 52, regarding the CAA's PSD and NNSR programs. On November 7, 2003 (68 FR 63021), EPA published a notice of final action on the reconsideration of the December 31, 2002, final rule changes. In that November 7, 2003, final action, EPA added the definition of "replacement unit," and clarified an issue regarding PALs. The December 31, 2002, and the November 7, 2003, final actions are collectively referred to as the "2002 NSR Reform Rules." The purpose of this action is to propose to partially approve, disapprove and conditionally approve certain portions of the SIP submittal from the State of South Carolina, which includes the provisions of EPA's 2002 NSR Reform Rules.

The 2002 NSR Reform Rules are part of EPA's implementation of Parts C and D of title I of the CAA, 42 U.S.C. 7470–7515. Part C of title I of the CAA, 42 U.S.C. 7470–7492, is the PSD program, which applies in areas that meet the National Ambient Air Quality Standards (NAAQS)—"attainment" areas—as well as in areas for which there is insufficient information to determine whether the area meets the NAAQS—"unclassifiable" areas. Part D of title I of the CAA, 42 U.S.C. 7501–7515, is the NNSR program, which applies in areas that are not in attainment of the NAAQS—"nonattainment" areas. Collectively, the PSD and NNSR programs are referred to as the "New Source Review" or NSR programs. EPA regulations implementing these programs are contained in 40 CFR

51.165, 51.166, 52.21, 52.24, and part 51, Appendix S.

The CAA's NSR programs are preconstruction review and permitting programs applicable to new and modified stationary sources of air pollutants regulated under the CAA. The NSR programs of the CAA include a combination of air quality planning and air pollution control technology program requirements. Briefly, section 109 of the CAA, 42 U.S.C. 7409, requires EPA to promulgate primary NAAQS to protect public health and secondary NAAQS to protect public welfare. Once EPA sets those standards, states must develop, adopt, and submit to EPA for approval, a SIP that contains emissions limitations and other control measures to attain and maintain the NAAQS. Each SIP is required to contain a preconstruction review program for the construction and modification of any stationary source of air pollution to assure that the NAAQS are achieved and maintained; to protect areas of clean air; to protect air quality related values (such as visibility) in national parks and other areas; to assure that appropriate emissions controls are applied; to maximize opportunities for economic development consistent with the preservation of clean air resources; and to ensure that any decision to increase air pollution is made only after full public consideration of the consequences of the decision.

The 2002 NSR Reform Rules made changes to five areas of the NSR programs. In summary, the 2002 Rules: (1) Provided a new method for determining baseline actual emissions; (2) adopted an actual-to-projected-actual methodology for determining whether a major modification has occurred; (3) allowed major stationary sources to comply with PALs to avoid having a significant emissions increase that triggers the requirements of the major NSR program; (4) provided a new applicability provision for emissions units that are designated clean units; and (5) excluded PCPs from the definition of "physical change or change in the method of operation." On November 7, 2003 (68 FR 63021), EPA published a notice of final action on its reconsideration of the 2002 NSR Reform Rules, which added a definition for "replacement unit" and clarified an issue regarding PALs. For additional information on the 2002 NSR Reform Rules, see, 67 FR 80186 (December 31, 2002), and <http://www.epa.gov/nsr>.

After the 2002 NSR Reform Rules were finalized and effective (March 3, 2003), industry, state, and environmental petitioners challenged numerous aspects of the 2002 NSR

Reform Rules, along with portions of EPA's 1980 NSR Rules (45 FR 52676, August 7, 1980). On June 24, 2005, the D.C. Circuit Court issued a decision on the challenges to the 2002 NSR Reform Rules. *New York v. United States*, 413 F.3d 3 (D.C. Cir. 2005). In summary, the D.C. Circuit Court vacated portions of the rules pertaining to clean units and PCPs, remanded a portion of the rules regarding recordkeeping, 40 CFR 52.21(r)(6) and 40 CFR 51.166(r)(6), and either upheld or did not comment on the other provisions included as part of the 2002 NSR Reform Rules. On June 13, 2007 (72 FR 32526), EPA took final action to revise the 2002 NSR Reform Rules to remove from the CFR all provisions pertaining to clean units and the PCP exemption that were vacated by the D.C. Circuit Court. These proposed actions are consistent with the D.C. Circuit Court's decision because the vacated portions of the Federal rules will not be approved as part of the South Carolina SIP. Further, EPA notes that use of any PCP and clean unit rules has been deemed contrary to the CAA by a Federal appeals court.

With regard to the remanded portions of the 2002 NSR Reform Rules related to recordkeeping, on March 8, 2007 (45 FR 10445), EPA responded to the D.C. Circuit Court's remand by proposing two alternative options to clarify what constitutes "reasonable possibility" and when the "reasonable possibility" recordkeeping requirements apply. The "reasonable possibility" provision identifies for sources and reviewing authorities the circumstances under which a major stationary source undergoing a modification that does not trigger major NSR must keep records. South Carolina's SIP revisions are approvable at this time because the South Carolina rules are at least as stringent as the current Federal rules (see, e.g., South Carolina Regulation 61-62.5, Standard No. 7). If EPA adopts recordkeeping criteria that are more stringent than the current South Carolina rules on recordkeeping, the State's rules may need to be revised to be at least as stringent as the Federal requirements.

The 2002 NSR Reform Rules require that state agencies adopt and submit revisions to their SIP permitting programs implementing the minimum program elements of the 2002 NSR Reform Rules no later than January 2, 2006. (Consistent with changes to 40 CFR 51.166(a)(6)(i), state agencies are now required to adopt and submit SIP revisions within three years after new amendments are published in the **Federal Register**.) State agencies may meet the requirements of 40 CFR part 51

and the 2002 NSR Reform Rules with different but equivalent regulations. However, if a state decides not to implement any of the new applicability provisions, that state is required to, among other things, demonstrate that its existing program is at least as stringent as the federal program.

On July 1, 2005, DHEC submitted a SIP revision for the purpose of revising the State's NSR permitting provisions. These changes were made primarily to adopt EPA's 2002 NSR Reform Rules. As discussed in further detail below, EPA believes the revisions contained in the South Carolina submittal are approvable for inclusion into the South Carolina SIP so long as the specific changes described below are made within twelve months of the date of EPA's final conditional approval. As a result, EPA is proposing to partially approve and disapprove, and conditionally approve the South Carolina SIP revisions, consistent with sections 110(k)(3) and 110(k)(4) of the CAA. As part of the conditional approval South Carolina must commit to utilize the provisions of 40 CFR part 51, Appendix S, for its NNSR program until the specified changes to that program are in effect and approved into the SIP by EPA.

### III. What Is EPA's Analysis of South Carolina's NSR Rule Revisions?

South Carolina currently has a SIP-approved NSR program for new and modified stationary sources. Today, EPA is proposing to partially approve, disapprove, and conditionally approve revisions to South Carolina's existing NSR program. South Carolina's proposed revisions became State-effective on June 24, 2005, and were submitted to EPA on July 1, 2005. Copies of the revised rules, as well as the State's Technical Support Document, can be obtained from the Docket, as discussed in the **ADDRESSES** section above. A discussion of the specific changes to South Carolina's rules comprising the SIP revision, as well as the additional changes to be made by South Carolina to its rules as part of the conditional approval, follows.

#### A. Definitions and General Standards; South Carolina Regulation 61-62.1

EPA is proposing to approve Section II of South Carolina Regulation 61-62.1 regarding general permit requirements. South Carolina revised Section II, paragraph H.1, of its regulations to allow for synthetic minor permits in nonattainment areas. On April 30, 2004 (69 FR 23858), one area in South Carolina was designated nonattainment for the 8-hour ozone NAAQS, which

prompted the changes to Section II. The proposed SIP revision recognizes that South Carolina now has a nonattainment area and Section II includes the appropriate requirements for synthetic minor source permits in nonattainment areas. Since the only South Carolina area previously designated as nonattainment prior to the April 2004 designation was redesignated to attainment prior to the due date for NNSR rules, South Carolina's rules only allowed for a major source or major modification, as defined by Regulation 61-62.5, Standard No. 7 (PSD), to request federally enforceable permit conditions to limit a source's potential to emit and become a synthetic minor source. EPA is proposing to approve South Carolina's revisions to Regulation 61-62.1 to allow synthetic minor sources to obtain preconstruction permits in nonattainment as well as attainment areas. This portion of South Carolina's NSR program is severable from the NNSR rules subject to the proposed conditional approval and will not be affected by EPA's proposed disapproval. If South Carolina does not submit the required changes to its NNSR program within the specified time period, and EPA takes action to disapprove the conditionally approved portions of the NNSR program, Regulation 61-62.1 will not be affected because it is being proposed for approval today.

#### B. Prevention of Significant Deterioration; South Carolina Regulation 61-62.5, Standard No. 7

South Carolina Regulation 61.62.5, Standard No. 7, contains the preconstruction review program that provides for the prevention of significant deterioration of ambient air quality as required under Part C of title I of the CAA (the PSD program). The PSD program applies to sources that are major stationary sources or undergoing major modifications in areas that are designated as attainment or unclassifiable with regard to any NAAQS. South Carolina's PSD program was originally approved into the SIP by EPA on February 10, 1982, and has been revised several times since then in order to remain consistent with federal rule changes. The current changes to Standard No. 7, which EPA is now proposing to partially disapprove and partially approve into the South Carolina SIP, were submitted to update the existing South Carolina Regulation to be consistent with the current federal PSD rules, including the 2002 NSR Reform Rules. The SIP revision addresses baseline actual emissions, actual-to-projected actual applicability

tests, and PALs. South Carolina's SIP revision also includes two portions of EPA's 2002 NSR Reform Rules that were vacated by the D.C. Circuit Court—PCPs and clean units. As a result, EPA is proposing to partially approve the PSD portion of the South Carolina SIP

revision with the exception of references to PCPs and clean units which EPA is proposing to disapprove (similar references also exist in South Carolina's NNSR program). The PCP and clean unit references are severable from the PSD and NNSR programs. EPA is

disapproving all rules and/or rule sections in the South Carolina PSD rules (and NNSR rules, discussed later in this notice) referencing clean units or PCPs. Specifically, the following South Carolina rules are being proposed for disapproval.

TABLE 1.—PSD PCP AND CLEAN UNIT REFERENCES

South Carolina regulation 61–62.5, standard 7	Corresponding vacated federal provision 40 CFR 52.21	Subject
(a)(2)(iv)(e) .....	(a)(2)(iv)(e) .....	Clean unit applicability.
(a)(2)(iv)(f)—Second sentence ....	(a)(2)(iv)(f)—Second sentence ...	Entire second sentence (“For example * * *”) Reference to clean unit.
(a)(2)(vi) .....	(a)(2)(vi) .....	PCP provision.
(b)(12) .....	(b)(42) .....	Clean unit definition.
(b)(30)(iii)(h) .....	(b)(2)(iii)(h) .....	PCP provision.
(b)(34)(iii)(b) .....	(b)(3)(iii)(b) .....	Clean unit provision.
(b)(34)(vi)(d) .....	(b)(3)(vi)(d) .....	Clean unit and PCP provisions.
(b)(35) .....	(b)(32) .....	PCP definition.
(r)(6) <sup>1</sup> .....	(r)(6) .....	Reference to clean unit.
(r)(7) <sup>1</sup> .....	NA .....	Reference to clean unit.
(x) .....	(x) .....	Clean unit provision.
(y) .....	(y) .....	Clean unit provision.
(z) .....	(z) .....	PCP provision.

<sup>1</sup> Only the reference to the term “clean unit” is being proposed for disapproval. The remainder of this regulatory provision is being proposed for approval.

In addition to EPA's proposal to disapprove the South Carolina PSD and NNSR rules regarding PCPs and clean units, EPA notes that any use of such rules has been deemed contrary to the CAA by a Federal appeals court.

As part of its evaluation of the South Carolina SIP submittal, EPA performed a line-by-line comparison of the proposed revisions to the federal requirements. During this review it was noted that a typographical error exists in paragraph (b)(41)(ii)(d) of Standard No. 7, South Carolina Regulation 61–62.5, where there is a reference to paragraph (a)(41)(ii)(a). This reference should be to paragraph (b)(41)(ii)(a). Although this is a minor issue that does not affect the approvability of this portion of the SIP revision, South Carolina should correct this error the next time this rule is revised.

As a general matter, state agencies may meet the requirements of 40 CFR part 51, and the 2002 NSR Reform Rules, with different but equivalent regulations. However, if a state decides not to implement any of the new applicability provisions, that state is required to demonstrate that its existing program is at least as stringent as the federal program. As part of its SIP submittal, South Carolina (through DHEC) provided EPA with an “equivalency demonstration” regarding two differences from the federal rules.

One difference relates to the removal of the word “malfunction” from the definitions of “baseline actual emissions” at paragraph (b)(4)(i)(a) and

“projected actual emissions” at paragraph (b)(41)(ii)(b) in Standard No. 7, South Carolina Regulation 61–62.5. In justifying the change, DHEC notes the difficulty of predicting malfunction emissions as part of the projected actual emissions. In addition, DHEC is concerned about the possibility that including malfunction emissions may result in the unintended rewarding of the source's poor operation and maintenance by allowing malfunction emissions to be included in baseline emissions that will be used to calculate emissions changes and emissions credits.

A second difference involves the inclusion of language in the definition of baseline actual emissions at paragraph (b)(4)(ii) in Standard No. 7, South Carolina Regulation 61–62.5, which provides DHEC with the authority to determine if the 24-month look-back period selected by the source is appropriate. In its equivalency determination, DHEC states that it is simply asserting its authority to review the source's calculations, if necessary, to ensure that the time period selected is appropriate. EPA agrees that DHEC may explicitly retain such authority, consistent with EPA's 2002 NSR Reform Rules. EPA concurs with the State that neither this change, nor the difference regarding “malfunctions,” lessens the stringency of South Carolina's NSR program. Therefore, South Carolina's PSD program may be partially approved, with the exception of the PCP and clean unit references, which are subject to

disapproval. Notably, EPA has not yet taken final action in response to the D.C. Circuit Court's remand of the recordkeeping provisions of EPA's 2002 NSR Reform Rules. South Carolina's rule contains recordkeeping requirements that are at least as stringent as the federal rule. While final action by EPA with regard to the remand may require South Carolina to take action to revise their rules, at this time, the South Carolina rules are consistent with federal requirements.

After conducting the line-by-line evaluation and reviewing the equivalency determinations for certain portions of South Carolina Regulation 61–62.5, Standard No. 7, EPA has determined that the proposed SIP revisions are consistent with the federal program requirements for the preparation, adoption and submittal of implementation plans for the Prevention of Significant Deterioration of Air Quality, set forth at 40 CFR 51.166, with the exception of the PCP and clean unit provisions. Therefore, EPA is now proposing to partially approve and disapprove, pursuant to section 110(k)(3), the PSD portion of the July 1, 2005, SIP revision.

*C. Nonattainment New Source Review; South Carolina Regulation 61–62.5, Standard No. 7.1*

South Carolina's NNSR program, which provides permitting requirements for major sources in or impacting upon nonattainment areas, is set forth at Regulation 61–62.5, Standard No. 7.1.

Effective June 15, 2004, one area in South Carolina was designated nonattainment for the 8-hour ozone NAAQS. Since the only area in South Carolina previously designated as nonattainment was redesignated to attainment prior to the due date for the NNSR rules, South Carolina's rules did not contain any provisions for the permitting of sources in nonattainment areas.

South Carolina's NNSR program applies to the construction and modification of any major stationary source of air pollution in a nonattainment area, as required by Part D of title I of the CAA. To receive approval to construct, a source that is subject to South Carolina Regulation 61–62.5, Standard No. 7.1 must show that it will not cause a net increase in pollution, will not create a delay in the area attaining the NAAQS, and will install and use control technology that achieves the lowest achievable emissions rate. The provisions in the South Carolina rules were established to meet the current federal nonattainment rule, including the 2002 NSR Reform Rules, which are found at 40 CFR 51.160–51.165, and part 51, Appendix S.

As part of its evaluation of the South Carolina submittal, EPA performed a line-by-line review of the proposed revisions, as well as reviewing the equivalency determinations. EPA has determined that South Carolina's NNSR program is not entirely consistent with the program requirements for the preparation, adoption and submittal of implementation plans for NSR, set forth at 40 CFR 51.160–51.165, and that revisions are necessary for full approval. The required changes relate to

requirements for emission reductions that facilities will use to “offset” proposed emissions increases. Consistent with section 110(k)(4), EPA may conditionally approve South Carolina's SIP revision based on the State's commitment to adopt specific, enforceable measures by a date certain, not to exceed one year after the date of the conditional approval.

The CAA prohibits the use of emission reductions “otherwise required” by CAA requirements as creditable emission reductions for the purpose of NSR offsets. See CAA section 173(c)(2). In addition, the federal regulations require that emission reductions used for offsets must be “surplus.” See 40 CFR 51.165(a)(3)(ii)(C)(1)(i). The corresponding State language at 7.1(d)(1)(C)(iii)(a) indicates that reductions may be generally credited if they are permanent, quantifiable, and federally enforceable, but does not specifically address the “surplus” provision of the federal rules. The State regulation also indicates that reductions can be claimed for use as offsets to the extent the DHEC has not relied upon them for the issuance of permits under regulations approved pursuant to 40 CFR part 51, subpart I or in demonstrating attainment or reasonable further progress. See Standard 7.1(d)(viii). EPA believes this provision could be interpreted to allow the use of emissions reductions that have been required by NESHAP or NSPS requirements or may have been required by other SIP provisions not used towards reasonable further progress or in the demonstration of attainment. Hence, it is EPA's determination that the State rule does not explicitly meet

the CAA and federal requirements set out at 40 CFR 51.165.

The State nonattainment regulations also do not specifically address how the emission reductions used for offsets will be calculated. The federal regulations require each plan to provide that the “offset baseline” shall be the actual emissions of the source from which offset credit is obtained. See 40 CFR 51.165(a)(3)(i). The Emissions Offset Interpretive Ruling, 40 CFR part 51, Appendix S, sets forth the conditions upon which a major source or modification would be allowed to construct in a nonattainment area and includes provisions for establishing the baseline for calculating emissions offsets. See 40 CFR part 51, Appendix S section IV.C. At a minimum, the State rule should contain the baseline provisions for calculating offsets that meet the requirements of Appendix S. EPA is proposing to conditionally approve the South Carolina SIP revision including the NNSR program and provide South Carolina with twelve months after EPA's final conditional approval in which to effectuate the changes necessary for EPA to approve South Carolina's NNSR program.

As discussed earlier, EPA is proposing to disapprove two provisions of South Carolina's NNSR program that relate to provisions that were vacated from the federal program by the D.C. Circuit Court. The two provisions vacated from the federal rules pertain to PCPs and clean units. The PCP and clean unit references are severable from the remainder of the NNSR program. Specifically, the following South Carolina rules are being proposed for disapproval.

TABLE 2.—NNSR PCP AND CLEAN UNIT REFERENCES

South Carolina regulation 61–62.5, standard 7.1	Corresponding vacated federal provision 40 CFR 51.165	Subject
(b)(5) .....	(a)(2)(ii)(E) .....	Clean unit applicability.
(b)(6)—Second Sentence .....	(a)(2)(ii)(F)—Second sentence ...	Entire second sentence (“For example * * *”) Reference to clean unit.
(b)(8) .....	(a)(2)(iv) .....	PCP provision.
(c)(4) .....	(a)(1)(xxix) .....	Clean unit definition.
(c)(6)(C)(viii) .....	(a)(1)(v)(C)(8) .....	PCP provision.
(c)(8)(C)(iii) .....	(a)(1)(vi)(C)(3) .....	Clean unit provision.
(c)(8)(E)(v) .....	(a)(1)(vi)(E)(5) .....	Clean unit and PCP provisions.
(c)(10) .....	(a)(1)(xxv) .....	PCP definition.
(d)(1)(C)(ix) .....	(a)(3)(ii)(H) .....	Clean unit and PCP provisions.
(d)(1)(C)(x) .....	(a)(3)(ii)(I) .....	Clean unit and PCP provisions.
(d)(3) <sup>1</sup> .....	(a)(6) .....	Reference to clean unit.
(d)(4) <sup>1</sup> .....	NA .....	Reference to clean unit.
(f) .....	(c) .....	Clean unit provision.
(g) .....	(d) .....	Clean unit provision.
(h) .....	(e) .....	PCP provision.

<sup>1</sup> Only the reference to the term “clean unit” is being proposed for disapproval. The remainder of this regulatory provision is being proposed for approval.

In addition to EPA's proposal to disapprove the South Carolina PSD and NNSR rules referencing PCPs and clean units, EPA notes that any use of such rules has been deemed contrary to the CAA by a Federal appeals court.

As discussed above, South Carolina provided EPA with an equivalency demonstration to show that its program is at least as stringent as the federal program. The two differences from the federal rule for which the State is proposing equivalency are the same as those identified in the State's PSD program. These deviations from the federal rule are acceptable, and may be retained in South Carolina's final NNSR program proposed as part of this conditional approval.

The first difference regards the removal of the word "malfunction" from the definitions of "baseline actual emissions" at paragraph (c)(2)(B)(ii) and "projected actual emissions" at paragraph (c)(11)(B)(ii) in Regulation 61-62.5, Standard No. 7.1. In justifying the difference, DHEC notes the difficulty of predicting malfunction emissions as part of the projected actual emissions. In addition DHEC is concerned about the possibility that including malfunction emissions may result in the unintended rewarding of the source's poor operation and maintenance by allowing malfunction emissions to be included in baseline emissions that will be used to calculate emissions changes and emissions credits.

The second difference involves the inclusion of language in the definition of baseline actual emissions at paragraph (c)(2)(B) in Regulation 61-62.5, Standard No. 7.1, to indicate that DHEC reserves the right to determine if the 24-month look-back period selected by the source is appropriate. In its equivalency determination, DHEC states that it is simply asserting its authority to review the source's calculations, if necessary, to ensure that the time period selected is appropriate. EPA agrees that DHEC may explicitly retain such authority, consistent with EPA's 2002 NSR Reform Rules. EPA believes neither of these differences lessens the stringency of South Carolina's NNSR program.

In summary, EPA is proposing to disapprove two elements of South Carolina's new NNSR rules that pertain to PCPs and clean units and which were vacated from the federal program by the D.C. Circuit Court. These two elements include various rules which are listed in Table 2, above. In addition, EPA is proposing to conditionally approve the remainder of South Carolina's new NNSR program into the SIP. As part of the conditional approval mechanism,

within twelve months of EPA's final action on the conditional approval, the State must: (1) Revise the NNSR program to include a provision that emission reductions are surplus and are not to be used as offsets if they are otherwise required by the SIP, NSPS, NESHAP, including MACT, standards or other federal requirements; (2) revise its rule to include a methodology for the calculation of emissions reductions that includes a baseline for determining credit for emissions offsets that, at a minimum, meet the requirements set out in 40 CFR part 51, Appendix S section IV.C.; and (3) implement the provisions found in 40 CFR part 51, Appendix S until its revised NNSR program is in effect and approved into the SIP by EPA. If South Carolina fails to comply with the substantive requirements in the specified period of time, EPA will issue a finding of disapproval.

#### IV. What Action Is EPA Proposing To Take?

EPA is proposing to partially approve, disapprove, and conditionally approve revisions to the South Carolina SIP (Regulation 61-62.1, Regulation 61-62.5 Standard No. 7, and Regulation 61-62.5 Standard No. 7.1) submitted by DHEC on July 1, 2005, which include changes to South Carolina's PSD and NNSR programs. As part of the partial approval, EPA is approving the entirety of South Carolina's PSD program with the exception of any references to PCPs and clean units, which are proposed for disapproval (see Table 1). EPA is also approving Regulation 61-61.2 regarding synthetic minor sources that is part of the minor source permitting program. As part of the disapproval, EPA is disapproving all rules referencing clean units and PCPs in South Carolina's NNSR program (see Table 2). As part of the conditional approval, South Carolina must (1) revise the NNSR program to include a provision that emission reductions must be surplus and are not to be used as offsets if they are otherwise required by the SIP, NSPS, NESHAP, including MACT, standards or other federal requirements and submit to EPA a SIP revision within twelve months with the revised rule; (2) revise its NNSR program to include a methodology for calculating offsets, and submit to EPA a SIP revision within twelve months with the revised rule; and (3) utilize the provisions of 40 CFR part 51, Appendix S to supplement its NNSR program until South Carolina's NNSR program is approved by EPA. Consistent with section 110(k), EPA is now proposing to partially approve, disapprove and conditionally approve

the July 1, 2005, SIP revision from South Carolina.

#### V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This proposed action merely proposes to approve state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. As a result, it does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 40 CFR Part 52

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

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

Dated: September 5, 2007.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

[FR Doc. E7-17979 Filed 9-11-07; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 97

[EPA-R05-OAR-2007-0519; FRL-8466-2]

#### Approval of Implementation Plans of Michigan: Clean Air Interstate Rule

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to conditionally approve a revision to the Michigan State Implementation Plan (SIP) submitted on July 16, 2007. This revision incorporates provisions related to the implementation of EPA's Clean Air Interstate Rule (CAIR), promulgated on May 12, 2005, and subsequently revised on April 28, 2006, and December 13, 2006, and the CAIR Federal Implementation Plan (CAIR FIP) concerning SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season emissions for the state of Michigan, promulgated on April 28, 2006, and subsequently revised December 13, 2006. EPA is not

proposing to make any changes to the CAIR FIP, but is proposing, to the extent EPA approves Michigan's SIP revision, to amend the appropriate appendices in the CAIR FIP trading rules simply to note that approval.

The SIP revision that EPA is proposing to conditionally approve is an abbreviated SIP revision that addresses: The applicability provisions for the NO<sub>x</sub> ozone season trading program under the CAIR FIP and supporting definitions of terms; the methodology to be used to allocate NO<sub>x</sub> annual and ozone season NO<sub>x</sub> allowances under the CAIR FIP and supporting definitions of terms; and provisions for opt-in units under the CAIR FIP. Michigan will be submitting additional SO<sub>2</sub> rules in the future.

**DATES:** Comments must be received on or before October 12, 2007.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2007-0519, by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.

2. *E-mail*: [mooney.john@epa.gov](mailto:mooney.john@epa.gov).

3. *Fax*: (312) 886-5824.

4. *Mail*: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery*: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

**Instructions:** Direct your comments to Docket ID No. EPA-R05-OAR-2007-0519. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *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 *www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *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 *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 and any form of encryption and should 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 *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 *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. We recommend that you telephone Douglas Aburano, Environmental Engineer, at (312) 353-6960, before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Douglas Aburano, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-6960, [aburano.douglas@epa.gov](mailto:aburano.douglas@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Table of Contents

- I. What Action Is EPA Proposing To Take?
- II. What Is the Regulatory History of CAIR and the CAIR FIP?
- III. What Are the General Requirements of CAIR and the CAIR FIP?
- IV. What Are the Types of CAIR SIP Submittals?
- V. Analysis of Michigan's CAIR SIP Submittal