

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, Ozone, Nitrogen dioxides, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: March 5, 2011.

**Al Armendariz,**

*Regional Administrator, Region 6.*

[FR Doc. 2011-6224 Filed 3-16-11; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2010-0721-201040; FRL-9282-4]

#### Approval and Promulgation of Implementation Plans; South Carolina; 110(a)(1) and (2) Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve the State Implementation Plan (SIP) submission submitted by the State of South Carolina, through the Department of Health and Environmental Control (DHEC), to demonstrate that the State meets the requirements of sections 110(a)(1) and (2) of the Clean Air Act (CAA or Act) for the 1997 8-hour ozone national ambient air quality standards (NAAQS). Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by the EPA, which is commonly referred to as an "infrastructure" SIP. South Carolina certified that the South Carolina SIP contains provisions that ensure the 1997 8-hour ozone NAAQS are implemented, enforced, and maintained in South Carolina (hereafter referred to as "infrastructure submission"). South Carolina's infrastructure submission, provided to EPA on December 13, 2007, addressed all the required infrastructure elements for the 1997 8-hour ozone NAAQS.

**DATES:** Written comments must be received on or before April 18, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2010-0721, by one of the following methods:

1. *http://www.regulations.gov*: Follow the online instructions for submitting comments.

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

3. *Fax*: (404) 562-9140.

4. *Mail*: "EPA-R04-OAR-2010-0721," Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960.

5. *Hand Delivery or Courier*: Lynorae Benjamin, 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-2010-0721. 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:** Nacosta C. 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. The telephone number is (404) 562-9140. Ms. Ward can be reached via electronic mail at [ward.nacosta@epa.gov](mailto:ward.nacosta@epa.gov).

#### Table of Contents

- I. Background
- II. What elements are required under Sections 110(a)(1) and (2)?
- III. What is EPA's analysis of how South Carolina addressed the elements of Sections 110(a)(1) and (2) "infrastructure" provisions?
- IV. Proposed Action
- V. Statutory and Executive Order Reviews

#### I. Background

On July 18, 1997, EPA promulgated a new NAAQS for ozone based on 8-hour average concentrations. The 8-hour averaging period replaced the previous 1-hour averaging period, and the level of the NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm. See 62 FR 38856. Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS. Sections 110(a)(2) require states to address basic SIP requirements,

including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs for the 1997 8-hour ozone NAAQS to EPA no later than June 2000. However, intervening litigation over the 1997 8-hour ozone NAAQS created uncertainty about how to proceed and many states did not provide the required “infrastructure” SIP submission for these newly promulgated NAAQS.

On March 4, 2004, Earthjustice submitted a notice of intent to sue related to EPA’s failure to issue findings of failure to submit related to the “infrastructure” requirements for the 1997 8-hour ozone NAAQS. EPA entered into a consent decree with Earthjustice which required EPA, among other things, to complete a **Federal Register** notice announcing EPA’s determinations pursuant to section 110(k)(1)(B) as to whether each state had made complete submissions to meet the requirements of section 110(a)(2) for the 1997 8-hour ozone NAAQS by December 15, 2007. Subsequently, EPA received an extension of the date to complete this **Federal Register** notice until March 17, 2008, based upon agreement to make the findings with respect to submissions made by January 7, 2008. In accordance with the consent decree, EPA made completeness findings for each state based upon what the Agency received from each state as of January 7, 2008.

On March 27, 2008, EPA published a final rulemaking entitled, “Completeness Findings for Section 110(a) State Implementation Plans; 8-Hour Ozone NAAQS,” making a finding that each state had submitted or failed to submit a complete SIP that provided the basic program elements of section 110(a)(2) necessary to implement the 1997 8-hour ozone NAAQS. See 73 FR 16205. For those states that did receive findings, the findings of failure to submit for all or a portion of a state’s implementation plan established a 24-month deadline for EPA to promulgate a Federal Implementation Plan to address the outstanding SIP elements unless, prior to that time, the affected states submitted, and EPA approved, the required SIPs.

The findings that all or portions of a state’s submission are complete established a 12-month deadline for EPA to take action upon the complete SIP elements in accordance with section 110(k). South Carolina’s infrastructure submission was received by EPA on December 13, 2007, and was determined to be complete on March 27, 2008. South Carolina was among other states

that did not receive a finding of failure to submit because it provided a complete submission to EPA to address the infrastructure elements for the 1997 8-hour ozone NAAQS by March 1, 2008. Today’s action is proposing to approve South Carolina’s infrastructure submission for which EPA made the completeness determination on March 27, 2008. This action is not approving any specific rule, but rather proposing that Alabama’s already approved SIP meets certain CAA requirements.

## II. What elements are required under Sections 110(a)(1) and (2)?

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state’s existing SIP already contains. In the case of the 1997 8-hour ozone NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous ozone NAAQS.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for “infrastructure” SIP requirements related to a newly established or revised NAAQS. As mentioned above, these requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. The requirements that are the subject of this proposed rulemaking are listed below<sup>1</sup> and in EPA’s October

<sup>1</sup> Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA, and (2) submissions required by section 110(a)(2)(I) which

2, 2007, memorandum entitled “Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards.”

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.<sup>2</sup>
- 110(a)(2)(D): Interstate transport.<sup>3</sup>
- 110(a)(2)(E): Adequate resources.
- 110(a)(2)(F): Stationary source monitoring system.
- 110(a)(2)(G): Emergency power.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(I): Areas designated nonattainment and meet the applicable requirements of part D.<sup>4</sup>
- 110(a)(2)(J): Consultation with government officials; public notification; and PSD and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

## III. What is EPA’s analysis of how South Carolina addressed the elements of the Sections 110(a)(1) and (2) “infrastructure” provisions?

The South Carolina infrastructure submission addresses the provisions of sections 110(a)(1) and (2) as described below.

pertain to the nonattainment planning requirements of part D, Title I of the CAA. Today’s proposed rulemaking does not address infrastructure elements related to section 110(a)(2)(I) or the nonattainment planning requirements of 110(a)(2)(C).

<sup>2</sup> This rulemaking only addresses requirements for this element as they relate to attainment areas.

<sup>3</sup> Today’s proposed rule does not address element 110(a)(2)(D)(i) (Interstate Transport) for the 1997 8-hour ozone NAAQS. Interstate transport requirements were formerly addressed by South Carolina consistent with the Clean Air Interstate Rule (CAIR). On December 23, 2008, CAIR was remanded by the DC Circuit Court of Appeals, without vacatur, back to EPA. See *North Carolina v. EPA*, 531 F.3d 896 (DC Cir. 2008). Prior to this remand, EPA took final action to approve South Carolina’s SIP revision, which was submitted to comply with CAIR. See 72 FR 57209 (October 9, 2007). In so doing, South Carolina’s CAIR SIP revision addressed the interstate transport provisions in Section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS. In response to the remand of CAIR, EPA has since proposed a new rule to address the interstate transport of NO<sub>x</sub> and SO<sub>x</sub> in the eastern United States. See 75 FR 45210 (Aug. 2, 2010) (“the Transport Rule”). However, because this rule has yet to be finalized, EPA’s action on element 110(a)(2)(D)(i) will be addressed in a separate action.

<sup>4</sup> This requirement was inadvertently omitted from EPA’s October 2, 2007, memorandum entitled “Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards,” but as mentioned above is not relevant to today’s proposed rulemaking.

1. *110(a)(2)(A): Emission limits and other control measures:* South Carolina's SIP provides an overview of the provisions of the South Carolina Air Pollution Control Regulations relevant to air quality control regulations. The regulations described below have been federally approved in the South Carolina SIP and include enforceable emission limitations and other control measures. Regulation 61–62.5, Standard No. 2, *Ambient Air Quality Standards, and Regulation 61–62.1, Definitions and General Requirements*, establish emission limits for ozone and addresses the required control measures, means and techniques for compliance of the ozone NAAQS respectively. In addition, South Carolina's state-only Regulation 61–30 gives the DHEC the authority to levy fees for permits and establishes schedules for timely action on permit applications. EPA has made the preliminary determination that the provisions contained in these chapters and South Carolina's practices are adequate to protect the 1997 8-hour ozone NAAQS in the State.

In this action, EPA is not proposing to approve or disapprove any existing State provisions with regard to excess emissions during startup, shutdown, or malfunction (SSM) of operations at a facility. EPA believes that a number of states have SSM provisions which are contrary to the CAA and existing EPA guidance, "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown" (September 20, 1999), and the Agency plans to address such state regulations in the future. In the meantime, EPA encourages any state having a deficient SSM provision to take steps to correct it as soon as possible.

Additionally, in this action, EPA is not proposing to approve or disapprove any existing State rules with regard to director's discretion or variance provisions. EPA believes that a number of states have such provisions which are contrary to the CAA and existing EPA guidance (52 FR 45109 (November 24, 1987)), and the Agency plans to take action in the future to address such state regulations. In the meantime, EPA encourages any state having a director's discretion or variance provision which is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

2. *110(a)(2)(B) Ambient air quality monitoring/data system:* South Carolina's SIP Regulation 61–62.5, Standard No. 7, *Prevention of Significant Deterioration*, along with the South Carolina Network Description and Ambient Air Network Monitoring Plan provides for an ambient air quality

monitoring system in the State. Annually, EPA approves the ambient air monitoring network plan for the state agencies. On July 1, 2010, South Carolina submitted its plan to EPA. On September 23, 2010, EPA approved South Carolina's monitoring network plan. South Carolina's approved monitoring network plan can be accessed at <http://www.regulations.gov> using Docket ID No. EPA–R04–OAR–2010–0721. EPA has made the preliminary determination that South Carolina's SIP and practices are adequate for the ambient air quality monitoring and data system related to the 1997 8-hour ozone NAAQS.

3. *110(a)(2)(C) Program for enforcement of control measures including review of proposed new sources:* Regulation 61–62.5, Standard No. 7, *Prevention of Significant Deterioration*, and Regulation 61–62.5, Standard No. 7.1, *Nonattainment New Source Review*, of South Carolina's SIP pertain to the construction of any new major stationary source or any project at an existing major stationary source in an area designated as attainment or unclassifiable. On July 1, 2005, DHEC submitted a Prevention of Significant Deterioration/New Source Review (PSD/NSR) SIP revision to EPA for approval. In August 2007, EPA sent a letter to DHEC indicating that the submittal required modification. Upon commitment from South Carolina to address these changes, EPA took final action on June 2, 2008, to partially approve, disapprove, and conditionally approve revisions to the SIP originally submitted by the State on July 1, 2005. South Carolina later fulfilled the requirements of the conditional approval through a SIP revision, submitted to EPA on April 14, 2009. Further, on December 2, 2010, South Carolina submitted, for parallel processing, a SIP revision which addresses the Ozone Implementation NSR Update requirements to include nitrogen oxides (NO<sub>x</sub>) as an ozone precursor for permitting purposes. Specifically, the Ozone Implementation NSR Update requirements include changes to major source thresholds for sources in certain classes of nonattainment areas, changes to offset ratios for marginal, moderate, serious, severe, and extreme ozone nonattainment areas, provisions addressing offset requirements for facilities that shut down or curtail operation, and a requirement stating that NO<sub>x</sub> emissions are ozone precursors. EPA is currently proposing approval of South Carolina's December

2, 2010, submission in a rulemaking separate from today's action.

On June 11, 2010, the South Carolina Governor signed an Executive Order to confirm that the State had authority to implement appropriate emission thresholds for determining which new stationary sources and modification projects become subject to PSD permitting requirements for their GHG emissions at the state level. On December 30, 2010, EPA published a final rulemaking, "Action To Ensure Authority To Implement Title V Permitting Programs Under the Greenhouse Gas Tailoring Rule" (75 FR 82254) to narrow EPA's previous approval of State title V operating permit programs that apply (or may apply) to GHG-emitting sources; this rule hereafter is referred to as the "Narrowing Rule." EPA narrowed its previous approval of certain State permitting thresholds, for GHG emissions so that only sources that equal or exceed the GHG thresholds, as established in the final Tailoring Rule, would be covered as major sources by the Federally-approved programs in the affected States. South Carolina was included in this rulemaking. On March 4, 2011, South Carolina submitted a letter withdrawing from EPA's consideration the portion of South Carolina's SIP for which EPA withdrew its previous approval in the Narrowing Rule. These provisions are no longer intended for inclusion in the SIP, and are no longer before EPA for its approval or disapproval. A copy of South Carolina's letter can be accessed at <http://www.regulations.gov> using Docket ID No. EPA–R04–OAR–2010–0721.

In this action, EPA is proposing to approve South Carolina's infrastructure SIP for the 8-hour ozone NAAQS with respect to the general requirement in section 110(a)(2)(C) to include a program in the SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved. EPA is not proposing to approve or disapprove the state's existing minor NSR program itself to the extent that it is inconsistent with EPA's regulations governing this program. EPA believes that a number of states may have minor NSR provisions that are contrary to the existing EPA regulations for this program. EPA intends to work with states to reconcile state minor NSR programs with EPA's regulatory provisions for the program. The statutory requirements of section 110(a)(2)(C) provide for considerable flexibility in designing minor NSR programs, and EPA believes it may be time to revisit the regulatory

requirements for this program to give the states an appropriate level of flexibility to design a program that meets their particular air quality concerns, while assuring reasonable consistency across the country in protecting the NAAQS with respect to new and modified minor sources.

EPA has made the preliminary determination that South Carolina's SIP and practices are adequate for program enforcement of control measures including review of proposed new sources related to the 1997 8-hour ozone NAAQS.

4. *110(a)(2)(D)(ii) Interstate and International transport provisions:* In Regulation 61–62.5 Standard 7—*Prevention of Significant Deterioration*, DHEC outlines how it will notify neighboring states of potential impacts from new or modified sources. South Carolina does not have any pending obligation under section 115 and 126. Additionally, South Carolina has federally approved regulations in its SIP that satisfy the requirements for the NO<sub>x</sub> SIP Call. See 67 FR 43546 (June 28, 2002). EPA has made the preliminary determination that South Carolina's SIP and practices are adequate for insuring compliance with the applicable requirements relating to interstate and international pollution abatement for the 1997 8-hour ozone NAAQS.

5. *110(a)(2)(E) Adequate resources:* DHEC is provided its legal authority to establish a SIP and implement related plants, in general, under S.C. Code Ann. Section 48, Title 1. Specifically, S.C. Code Ann. § 48–1–50(12) grants DHEC the statutory authority to “Accept, receive and administer grants or other funds or gifts for the purpose of carrying out any of the purposes of this chapter; accept, receive and receipt for Federal money given by the Federal government under any Federal law to the State of South Carolina for air or water control activities, surveys or programs.” S.C. Code Ann. Section 48, Title 2 grants DHEC statutory authority to establish environmental protection funds. Additionally, Regulation 61–30, *Environmental Protection Fees*, provides DHEC with the ability to access fees for environmental permitting programs. DHEC implements the SIP in accordance with the provisions of S.C. Code Ann § 1–23–40 (the Administrative Procedures Act) and S.C. Code Ann. Section 48, Title 1. In addition, the requirements of 110(a)(2)(E)(i-iii) are met when EPA performs a completeness determination for each SIP submittal. This ensures that each submittal provides evidence that adequate personnel, funding, and legal authority under State Law has been

used to carry out the state's implementation plan and related issues. This information is included in all prehearings and final SIP submittal packages for approval by EPA.

Annually, states update grant commitments based on current SIP requirements, air quality planning, and applicable requirements related to the NAAQS, including the 1997 8-hour ozone NAAQS. On April 14, 2010, EPA submitted a letter to South Carolina outlining 105 grant commitments and current status of these commitments for fiscal year 2009. The letter EPA submitted to South Carolina can be accessed at <http://www.regulations.gov> using Docket ID No. EPA–R04–OAR–2010–0721. There were no outstanding issues, therefore South Carolina's grants were finalized and closed out. EPA has made the preliminary determination that South Carolina has adequate resources for implementation of the 1997 8-hour ozone NAAQS.

6. *110(a)(2)(F) Stationary source monitoring system:* Regulation 61–62.1, *Definitions and General Requirements*, Section III—*Emissions Inventory*, of the South Carolina SIP provides for an emission inventory plan that establishes reporting requirements. Specifically, the emissions inventory plan requires sources to submit an annual emission inventory including but not limited to the following:

- i. Information on fuel burning equipment;
- ii. Types and quantities of fuel used;
- iii. Fuel analysis;
- iv. Exhaust parameters;
- v. Control equipment information;
- vi. Raw process materials and quantities used;
- vii. Design, normal and actual process rates;
- viii. Hours of operation;
- ix. Significant emission generating points or processes as discussed on the current form for reporting emissions data as provided by the Department;
- x. Any desired information listed in 40 CFR part 51, subpart A (June 10, 2002) that is requested by the Department.

South Carolina DHEC uses these data to track progress towards maintaining the NAAQS, develop control and maintenance strategies, identify sources and general emission levels, and determine compliance with emission regulations and additional EPA requirements.

Additionally, the National Emissions Inventory (NEI) is EPA's central repository for air emissions data. EPA published the Air Emissions Reporting Rule (AERR) on December 5, 2008, which modified the requirements for

collecting and reporting air emissions data (73 FR 76539). The AERR shortened the time states had to report emissions data from 17 to 12 months, giving states one calendar year to submit emissions data. All states are required to submit a comprehensive emissions inventory every three years and report emissions for certain larger sources annually through EPA's online Emissions Inventory System (EIS). States report emissions data for the six criteria pollutants and the precursors that form them—nitrogen oxides, sulfur dioxide, ammonia, lead, carbon monoxide, particulate matter, and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants. South Carolina made its latest update to the NEI February 18, 2011. EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the Web site <http://www.epa.gov/ttn/chieff/eiinformation.html>. EPA has made the preliminary determination that South Carolina's SIP and practices are adequate for the stationary source monitoring systems related to the 1997 8-hour ozone NAAQS.

7. *110(a)(2)(G) Emergency power:* Regulation 61–62.3, *Air Pollution Episodes*, of the South Carolina SIP identifies air pollution emergency episodes and preplanned abatement strategies. These criteria have previously been approved by EPA. EPA has made the preliminary determination that South Carolina's SIP and practices are adequate for emergency powers related to the 1997 8-hour ozone NAAQS.

8. *110(a)(2)(H) Future SIP revisions:* As previously discussed, South Carolina DHEC is responsible for adopting air quality rules and revising SIPs as needed to attain or maintain the NAAQS. South Carolina has the ability and authority to respond to calls for SIP revisions, and has provided a number of SIP revisions of the years for implementation of the NAAQS. S.C. Code Ann. Section 48, Title 1 provides DHEC the statutory authority to revise the SIP to accommodate changes in the NAAQS. Specific to the 1997 8-hour ozone NAAQS, South Carolina has provided the following submissions:

- August 31, 2007, SIP Revision—Rock Hill-Fort Mill (Charlotte) 8-hr Ozone Reasonably Available Control Technology and Reasonable Further Progress;
- December 13, 2007, SIP Revision (EPA approval, 74 FR 26099, June 1, 2009, with a correcting amendment 75 FR 3870, January 25, 2010) Cherokee

County 8-hour Ozone 110(a)(1) Maintenance Plan;

- April 29, 2010, SIP Revision— Supplement and Resubmission of the 1997 8-hour Ozone Rock Hill-Fort Mill Attainment Demonstration (Charlotte)

In the Rock Hill-Fort Mill, South Carolina maintenance plans for the Charlotte-Gastonia-Rock Hill, NC-SC nonattainment area, the State commits to provide additional SIP revisions for the 1997 8-hour ozone NAAQS pursuant to 175(A)(b), and also commits to provide additional SIP revisions to implement contingency measures in the future. EPA has made the preliminary determination that South Carolina's SIP and practices adequately demonstrate a commitment to provide future SIP revisions related to the 1997 8-hour ozone NAAQS when necessary.

9. *110(a)(2)(j) (121 consultation) Consultation with government officials:* South Carolina Air Regulation 61–62.5, Standard No. 7, *Prevention of Significant Deterioration*, as well as the Regional Haze Implementation Plan (which allows for consultation between appropriate state, local, and tribal air pollution control agencies as well as the corresponding Federal Land Managers), provide for consultation with government officials whose jurisdictions might be affected by SIP development activities. More specifically, South Carolina adopted state-wide consultation procedures for the implementation of transportation conformity which includes the consideration of the development of mobile inventories for SIP development. Required partners covered by South Carolina's consultation procedures include federal, state and local transportation and air quality agency officials. EPA approved South Carolina's consultation procedures on July 28, 2009 (*See* 74 FR 37168). EPA has made the preliminary determination that South Carolina's SIP and practices adequately demonstrate consultation with government officials related to the 1997 8-hour ozone NAAQS when necessary.

10. *110(a)(2)(j) (127 public notification) Public notification:* DHEC has several public notice mechanisms in place to notify the public of ozone and other pollutant forecasting, including an air quality monitoring website with ground level ozone alerts. South Carolina also has an extensive outreach program to educate the public and promote voluntary emissions reduction measures including the "Take a Break from the Exhaust" alternative transit reward system. As discussed above, Regulation 61–62.3, *Air Pollution Episodes*, requires that DHEC notify the

public of any air pollution episode or NAAQS violation. EPA has made the preliminary determination that South Carolina's SIP and practices adequately demonstrate the State's ability to provide public notification related to the 1997 8-hour ozone NAAQS when necessary.

11. *110(a)(2)(j) (PSD) PSD and visibility protection:* South Carolina demonstrates its authority to regulate new and modified sources of ozone precursors volatile organic compounds (VOCs) and NO<sub>x</sub> to assist in the protection of air quality in South Carolina's Air Regulation 61–62.5, Standard No. 7, *Prevention of Significant Deterioration*. On December 2, 2010, South Carolina submitted, for parallel processing, a SIP revision which addresses the Ozone Implementation NSR Update requirements to include NO<sub>x</sub> as an ozone precursor for permitting purposes. Specifically, the Ozone Implementation NSR Update requirements include changes to major source thresholds for sources in certain classes of nonattainment areas, changes to offset ratios for marginal, moderate, serious, severe, and extreme ozone nonattainment areas, provisions addressing offset requirements for facilities that shut down or curtail operation, and a requirement stating that NO<sub>x</sub> emissions are ozone precursors. EPA is currently proposing approval of South Carolina's December 2, 2010, submission in a rulemaking separate from today's action.

With regard to the applicable requirements for visibility protection, EPA recognizes that states are subject to visibility and regional haze program requirements under Part C of the Act (which includes sections 169A and 169B). In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, EPA finds that there is no new visibility obligation "triggered" under section 110(a)(2)(j) when a new NAAQS becomes effective. This would be the case even in the event a secondary PM<sub>2.5</sub> NAAQS for visibility is established, because this NAAQS would not affect visibility requirements under part C. South Carolina has submitted SIP revisions for approval to satisfy the requirements of the CAA Section 169A, and the regional haze and best available retrofit technology rules contained in 40 CFR 51.308. These revisions are currently under review and will be acted on in a separate action. EPA has made the preliminary determination that South Carolina's SIP and practices adequately demonstrate the State's

ability to implement PSD programs and to provide for visibility protection related to the 1997 8-hour ozone NAAQS when necessary.

12. *110(a)(2)(k) Air quality and modeling/data:* South Carolina Regulation 61–62.5, Standard No. 2, *Ambient Air Quality Standards*, and Regulation 61–62.5, Standard No. 7, *Prevention of Significant Deterioration*, require that air modeling be conducted to determine permit applicability. These standards demonstrate that South Carolina has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of the 8-hour ozone NAAQS. Additionally, South Carolina supports a regional effort to coordinate the development of emissions inventories and conduct regional modeling for several NAAQS, including the 1997 8-hour ozone NAAQS, for the Southeastern states. Taken as a whole, South Carolina's air quality regulations demonstrate that ADEM has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of the 8-hour ozone NAAQS. EPA has made the preliminary determination that South Carolina's SIP and practices adequately demonstrate the State's ability to provide for air quality and modeling, along with analysis of the associated data, related to the 1997 8-hour ozone NAAQS when necessary.

13. *110(a)(2)(l) Permitting fees:* Pursuant to S.C. Code Ann. § 48–2–50, DHEC shall charge fees for environmental programs it administers pursuant to federal and state law and regulations. Regulation 61–30, *Environmental Protection Fees*, prescribes fees applicable to applicants and holders of permits, licenses, certificates, certifications, and registrations as well as establishes procedures for the payment of fees, provides for the assessment of penalties for nonpayment, and establishes an appeals process for refuting fees. EPA has made the preliminary determination that South Carolina's SIP and practices adequately provide for permitting fees related to the 1997 8-hour ozone NAAQS when necessary.

14. *110(a)(2)(m) Consultation/participation by affected local entities:* Regulation 61–62.5, Standard No. 7, *Prevention of Significant Deterioration*, of the South Carolina SIP requires that DHEC notify the public of the application, preliminary determination, degree of incremental consumption, and the opportunity for comment prior to making a final permitting decision. DHEC has worked closely with local political subdivisions when developing

its Transportation Conformity SIP, Regional Haze Implementation Plan, Early Action Compacts, and the 8-hour Ozone Attainment Demonstration for York County, South Carolina portion of the Charlotte-Gastonia-Rock Hill NC-SC nonattainment area. EPA has made the preliminary determination that South Carolina's SIP and practices adequately demonstrate consultation with affected local entities related to the 1997 8-hour ozone NAAQS when necessary.

#### IV. Proposed Action

As described above, DHEC has addressed the elements of the CAA 110(a)(1) and (2) SIP requirements pursuant to EPA's October 2, 2007, guidance to ensure that the 1997 8-hour ozone NAAQS are implemented, enforced, and maintained in South Carolina. EPA is proposing to approve South Carolina's infrastructure submission for the 1997 8-hour ozone NAAQS because this submission is consistent with section 110 of the CAA.

#### V. 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 dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: March 7, 2011.

#### A. Stanley Meiburg,

*Acting Regional Administrator, Region 4.*

[FR Doc. 2011-6270 Filed 3-16-11; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2010-0720-201039 FRL-9282-3]

### Approval and Promulgation of Implementation Plans; Alabama; 110(a)(1) and (2) Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve the State Implementation Plan (SIP), submitted by the State of Alabama, through the Alabama Department of Environmental Management (ADEM) as demonstrating that the State meets the requirements of sections 110(a)(1) and

(2) of the Clean Air Act (CAA or the Act) for the 1997 8-hour ozone national ambient air quality standard (NAAQS). Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by the EPA, which is commonly referred to as an "infrastructure" SIP. Alabama certified that the Alabama SIP contains provisions that ensure the 1997 8-hour ozone NAAQS is implemented, enforced, and maintained in Alabama (hereafter referred to as "infrastructure submission"). Alabama's infrastructure submission, provided to EPA on December 10, 2007, addressed all the required infrastructure elements for the 1997 8-hour ozone NAAQS.

**DATES:** Written comments must be received on or before April 18, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2010-0720, 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) 562-9140.
4. *Mail:* "EPA-R04-OAR-2010-0720," Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960.

5. *Hand Delivery or Courier:* Lynorae Benjamin, 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-2010-0720. 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