



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2016-0547; FRL-9965-85-Region 4]

### Air Plan Approval; SC: Revisions to New Source Review Rules

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

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking direct final action to approve changes to the South Carolina State Implementation Plan (SIP) to revise New Source Review (NSR) regulations. EPA is approving portions of SIP revisions submitted by the State of South Carolina, through the South Carolina Department of Health and Environmental Control (SC DHEC), on the following dates: July 18, 2011, April 10, 2014, August 12, 2015, and January 20, 2016. This action is being taken pursuant to the Clean Air Act (CAA or Act).

**DATES:** This direct final rule is effective [Insert date 60 days after publication in the Federal Register] without further notice, unless EPA receives adverse comment by [Insert date 30 days after publication in the Federal Register]. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the Federal Register and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2016-0547 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may

publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** D. Brad Akers, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Mr. Akers can be reached via telephone at (404) 562-9089 or via electronic mail at [akers.brad@epa.gov](mailto:akers.brad@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. What Action Is EPA Taking Today?**

On July 18, 2011, April 10, 2014, August 12, 2015, and January 20, 2016, SC DHEC submitted SIP revisions to EPA for approval that involve changes to South Carolina's NSR permitting regulations to make them consistent with federal requirements for NSR permitting, correct typographical errors, make internal references consistent, and clarify certain provisions. In this action, EPA is approving certain portions of these SIP submissions that make changes to South Carolina's NSR regulations at SC DHEC Regulation 61-62.5, Standard No. 7 -

“Prevention of Significant Deterioration (PSD),” and Regulation 61-62.5, Standard No. 7.1 - “Nonattainment New Source Review (NNSR),” which apply to the construction or modification of any major stationary source in areas designated as attainment or unclassifiable as required by part C of title I of the CAA, and in nonattainment areas as required by part D of title I of the CAA, respectively.

South Carolina’s PSD regulations at Regulation 61-62.5, Standard No. 7, were originally approved into the SIP on June 10, 1982 (47 FR 6017), with periodic revisions approved through April 3, 2013 (78 FR 19997). South Carolina’s NNSR regulations at Regulation 61-62.5, Standard No. 7.1, were conditionally approved into the SIP on June 2, 2008 (73 FR 31369), and were fully approved on June 23, 2011 (76 FR 36875).

South Carolina’s July 18, 2011, SIP revision modifies the PSD regulations to make minor edits for internal consistency and modifies the NNSR regulations to reflect changes to the federal NNSR regulations at 40 CFR 51.165,<sup>1</sup> including provisions promulgated in the following federal rule: “Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard-Phase 2; Final Rule To Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter and Ozone NAAQS; Final Rule for Reformulated Gasoline,” Final Rule, 70

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<sup>1</sup> EPA’s regulations governing the implementation of NSR permitting programs are contained in 40 CFR 51.160 - 51.166; 52.21, 52.24; and part 51, Appendix S. The CAA NSR program is composed of three separate programs: PSD, NNSR, and Minor NSR. PSD is established in part C of title I of the CAA and applies to major stationary sources in areas that meet the NAAQS – “attainment areas” – as well as areas where there is insufficient information to determine if the area meets the NAAQS – “unclassifiable areas.” The NNSR program is established in part D of title I of the CAA and applies to major stationary sources in areas that are not in attainment of the NAAQS – “nonattainment areas.” The Minor NSR program applies to stationary sources that do not require PSD or NNSR permits. Together, these programs are referred to as the NSR programs.

FR 71612 (November 29, 2005) (hereinafter referred to as the Phase 2 Rule). South Carolina's April 10, 2014, SIP revision modifies the PSD regulations to reflect changes to the federal PSD regulations at 40 CFR 51.166, including provisions promulgated in the following federal rule: "Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM<sub>2.5</sub>):<sup>2</sup> Amendment to the Definition of 'Regulated NSR Pollutant' Concerning Condensable Particulate Matter," (October 25, 2012) (hereinafter referred to as the PM<sub>2.5</sub> Condensables Correction Rule). South Carolina's August 12, 2015, SIP revision makes changes to South Carolina's PSD and NNSR regulations for consistency with federal provisions and to correct typographical errors. Finally, South Carolina's January 20, 2016, SIP revision modifies the State's NNSR rules to correct typographical errors and to make internal references consistent.

At this time, the Agency is not acting on changes included in the July 18, 2011, submittal to the following regulations in South Carolina's SIP: Regulation 61-62.1, Section I - "Definitions;" Regulation 61-62.1, Section II - "Permit Requirements;" Regulation 61-62.3 -

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<sup>2</sup> Airborne particulate matter (PM) with a nominal aerodynamic diameter of 2.5 micrometers or less (a micrometer is one-millionth of a meter, and 2.5 micrometers is less than one-seventh the average width of a human hair) are considered to be "fine particles" and are also known as PM<sub>2.5</sub>. Fine particles in the atmosphere are made up of a complex mixture of components including sulfate; nitrate; ammonium; elemental carbon; a great variety of organic compounds; and inorganic material (including metals, dust, sea salt, and other trace elements) generally referred to as "crustal" material, although it may contain material from other sources. The health effects associated with exposure to PM<sub>2.5</sub> include potential aggravation of respiratory and cardiovascular disease (i.e., lung disease, decreased lung function, asthma attacks and certain cardiovascular issues). On July 18, 1997, EPA revised the NAAQS for PM to add new standards for fine particles, using PM<sub>2.5</sub> as the indicator. Previously, EPA used PM<sub>10</sub> (inhalable particles smaller than or equal to 10 micrometers in diameter) as the indicator for the PM NAAQS. EPA established health-based (primary) annual and 24-hour standards for PM<sub>2.5</sub>, setting an annual standard at a level of 15.0 micrograms per cubic meter (µg/m<sup>3</sup>) and a 24-hour standard at a level of 65 µg/m<sup>3</sup> (62 FR 38652). At the time the 1997 primary standards were established, EPA also established welfare-based (secondary) standards identical to the primary standards. The secondary standards are designed to protect against major environmental effects of PM<sub>2.5</sub>, such as visibility impairment, soiling, and materials damage. On October 17, 2006, EPA revised the primary and secondary 24-hour NAAQS for PM<sub>2.5</sub> to 35 µg/m<sup>3</sup> and retained the existing annual PM<sub>2.5</sub> NAAQS of 15.0 µg/m<sup>3</sup> (71 FR 61236). On January 15, 2013, EPA published a final rule revising the primary annual PM<sub>2.5</sub> NAAQS to 12 µg/m<sup>3</sup> (78 FR 3086).

“Air Pollution Episodes;” Regulation 61-62.5, Standard No. 1 - “Emissions from Fuel Burning Operations;” Regulation 61-62.5, Standard No. 4 - “Emissions from Process Industries;” or Regulation 61-62.5, Standard No. 6 - “Alternative Emission Limitation Options (Bubble).” EPA approved the changes to Regulation 61-62.5, Standard No. 2 - “Ambient Air Quality Standards,” included in the July 18, 2011, submittal, on April 3, 2013 (78 FR 1994). EPA is not acting on the changes included in the April 10, 2014, submittal to the following regulations: Regulation 61-62.1, Section I - “Definitions;” Regulation 61-62.2 - “Prohibition of Open Burning;” Regulation 61-62.5, Standard No. 7 - “Prevention of Significant Deterioration,” at paragraph (b)(32)(i)(a);<sup>3</sup> or Regulation 61-62.6 - “Control of Fugitive Particulate Matter.” EPA is not acting on the changes included in the August 12, 2015, submittal to the following regulations: Regulation 61-62.5, Standard No. 1 - “Emissions from Fuel Burning Operations,” or Regulation 61-62.5, Standard No. 2 - “Ambient Air Quality Standards.” Additionally, EPA is not acting on the changes included in the January 20, 2016, submittal to the following regulations: Regulation 61-62.1, Section II - “Permit Requirements;” Regulation 61-62.5, Standard No. 5 - “Volatile Organic Compounds;” or Regulation 61-62.6 - “Control of Fugitive Particulate Matter.” EPA will address these proposed changes to the South Carolina SIP in a separate action.

The August 12, 2015, submittal includes a change to South Carolina’s PSD regulation, Regulation 61-62.5, Standard No. 7 at paragraph (b)(32)(i)(a) regarding the definition of “major stationary source.” Specifically, this submittal corrects a typographical error by removing a

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<sup>3</sup> The change to paragraph (b)(32)(i)(a) modifies the definition of “major stationary source” to spell out the acronym for “NAICS” as “North American Industrial Classification System” within the phrase “except ethanol production facilities producing ethanol by natural fermentation under the North American Industry Classification System (NAICS) codes 325193 or 312140.” EPA is not taking action on this change because the phrase regarding ethanol production facilities is not in the SIP. SC DHEC submitted the original phrase regarding ethanol production facilities for approval on April 14, 2009; however, EPA has not approved it into the SIP.

duplicate word from the paragraph. This duplicate word was not present in any version of (b)(32)(i)(a) submitted to EPA previously for incorporation into the SIP. Therefore, this change is not presently before EPA for consideration. EPA is approving other changes made to the PSD regulation in the August 12, 2015, submittal, as detailed in Section III of this preamble.

The August 12, 2015, submittal includes a change to South Carolina's NNSR regulation, Regulation 61-62.5, Standard No. 7.1 at paragraph (d)(1)(C)(v)(b)(2) regarding the calculation of emission offsets. However, this change had previously been submitted to EPA on April 14, 2009, in response to a June 2, 2008, conditional approval of the NNSR program revisions (73 FR 31368), and was approved on June 23, 2011 (76 FR 36875). Therefore, this change is not presently before EPA for consideration.<sup>4</sup> There are other changes to the NNSR regulation included in the August 12, 2015, submittal that EPA is approving in this action, as detailed in Section III of this preamble.

EPA is not acting on the following changes originally included in the August 12, 2015, submittal because they have been withdrawn from EPA's consideration via a December 20, 2016, letter. The August 12, 2015, submittal originally included new language in Regulation 61-62.5, Standard No. 7 at paragraphs (b)(30)(v) and (b)(34)(iii)(d) to exclude fugitive emissions from the determination of creditable emission increases and decreases. This submittal also originally included a revision to the definition of "best available control technology (BACT)" in Regulation 61-62.5, Standard No. 7 at paragraph (b)(8), which reverted language in the

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<sup>4</sup> South Carolina also submitted changes to Regulation 61-62.5, Standard No. 7.1 regarding the calculation of emission offsets in a June 17, 2013, SIP submittal. These changes, at paragraphs (d)(1)(C)(v)(a)(2) and (3), were submitted to EPA on April 14, 2009, along with the change to paragraph (d)(1)(C)(v)(b)(2) described above, and were approved by EPA on June 23, 2011 (76 FR 36875). Therefore, these changes are not presently before EPA for consideration. All changes in the June 17, 2013, submittal regarding NNSR have been addressed by EPA.

definition to that included in a previous version of the South Carolina regulations. Both sets of revisions were withdrawn from EPA's consideration subsequent to the August 12, 2015, final submittal in the December 20, 2016, letter. Finally, a revision to the definition of "net emissions increase" in Regulation 61-62.5, Standard No. 7 at paragraph (b)(34)(iii)(c) was withdrawn in a June 27, 2017, letter. Both the December 20, 2016, and June 27, 2017, letters are included in the docket for this action.

## **II. Background**

This direct final action will revise South Carolina's PSD and NNSR regulations in the SIP as described in Section III, below. Many of these changes are administrative in nature, including updating internal references and correcting typographical errors. The July 18, 2011, SIP revision also makes changes to the NNSR regulations to adopt provisions from EPA's Phase 2 Rule for ozone nonattainment areas. The April 10, 2014, submittal makes changes to PSD regulations to reflect EPA's PM<sub>2.5</sub> Condensables Correction Rule. Background information on these federal rules is provided below.

### **A. Phase 2 Rule**

Part of South Carolina's July 18, 2011, SIP submittal to revise its NNSR regulations relates to EPA's Phase 2 Rule regarding updates to the implementation of the 1997 8-hour Ozone NAAQS. On November 29, 2005, EPA published the Phase 2 Rule, which addressed control and planning requirements as they applied to areas designated nonattainment for the 1997 8-hour ozone NAAQS<sup>5</sup> such as reasonably available control technology, reasonably available control

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<sup>5</sup> On July 18, 1997, EPA promulgated a revised 8-hour ozone NAAQS of 0.08 parts per million – also referred to as the 1997 8-hour ozone NAAQS. On April 30, 2004, EPA designated areas as unclassifiable/attainment,

measures, reasonable further progress, modeling and attainment demonstrations, NSR, and the impact to reformulated gas for the 1997 8-hour ozone NAAQS transition (70 FR 71612). The NSR permitting requirements established in the rule included the following provisions: (1) recognized nitrogen oxides as an ozone precursor for PSD purposes; (2) changes to the NNSR rules establishing major stationary source thresholds (marginal, moderate, serious, severe, and extreme nonattainment area classifications) and significant emission rates for the 8-hour ozone, PM<sub>10</sub>, and carbon monoxide NAAQS; and (3) revised the criteria for crediting emission reductions credits from operation shutdowns and curtailments as offsets, and changes to offset ratios for marginal, moderate, serious, severe, and extreme ozone nonattainment areas. For additional information on provisions in the Phase 2 Rule, see the November 29, 2005, final rule (70 FR 71612).

**B. NSR PM<sub>2.5</sub> Rule and PM<sub>2.5</sub> Condensables Correction Rule**

On May 16, 2008, EPA finalized the rule entitled “Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM<sub>2.5</sub>),” Final Rule, 73 FR 28321 (May 16, 2008) (hereinafter referred to as the NSR PM<sub>2.5</sub> Rule). The NSR PM<sub>2.5</sub> Rule revised the federal NSR program requirements to establish the framework for implementing preconstruction permit review for the PM<sub>2.5</sub> NAAQS in both attainment and nonattainment areas. South Carolina previously adopted most of the provisions promulgated in the NSR PM<sub>2.5</sub> Rule, as approved on June 23, 2011 (76 FR 36875).

In the NSR PM<sub>2.5</sub> Rule, EPA revised the definition of “regulated NSR pollutant” for PSD

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nonattainment, or unclassifiable for the 1997 8-hour ozone NAAQS. In addition, on April 30, 2004, as part of the framework to implement the 1997 8-hour ozone NAAQS, EPA promulgated an implementation rule in two phases (Phase I and II). The Phase I Rule (effective on June 15, 2004), provided the implementation requirements for designating areas under subpart 1 and subpart 2 of the CAA (69 FR 23951).

to add a paragraph providing that “particulate matter (PM) emissions, PM<sub>2.5</sub> emissions, and PM<sub>10</sub> emissions” must include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures and that on or after January 1, 2011, such condensable particulate matter must be accounted for in applicability determinations and in establishing emissions limitations for PM, PM<sub>2.5</sub> and PM<sub>10</sub> in permits. *See* 73 FR 28348-49 (changes made to 40 CFR 51.166(b)(49)(vi), 52.21(b)(50)(vi), and 40 CFR part 51, Appendix S - Emissions Offset Interpretative Ruling). A similar paragraph added to the NNSR rule does not include the phrase “particulate matter (PM) emissions” or the term “PM”<sup>6</sup> within the definition of “regulated NSR pollutant.” *See* 73 FR 28347.

On October 25, 2012, EPA finalized a rulemaking to amend the definition of “regulated NSR pollutant” promulgated in the NSR PM<sub>2.5</sub> Rule regarding the PM condensable provision at 40 CFR 51.166(b)(49)(vi), 52.21(b)(50)(i), and 40 CFR part 51, Appendix S - “Emissions Offset Interpretative Ruling.” 77 FR 65107. The rulemaking simply removed the phrase “particulate matter (PM) emissions” and the term “PM” from the definition of “regulated NSR pollutant” in these rules thereby eliminating the inadvertent requirement in the NSR PM<sub>2.5</sub> Rule that the measurement of condensable “particulate matter (PM) emissions” be included as part of the measurement and regulation of condensable PM for the NAAQS. The phrase “particulate matter (PM) emissions” includes particles that are larger than PM<sub>2.5</sub> and PM<sub>10</sub> and is an indicator measured under various New Source Performance Standards (NSPS) (40 CFR part 60).

### **III. Analysis of the State’s Submittals**

#### **A. Submittal Dated July 18, 2011**

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<sup>6</sup> The terms “PM<sub>2.5</sub>” and “PM<sub>10</sub>” remain in the definition.

South Carolina's July 18, 2011, SIP revision made changes to the PSD regulation, Regulation 61-62.5, Standard No. 7, to make internal references consistent. These changes are made to Standard No. 7 at paragraphs (q)(2) and (q)(3) - "Public participation;" (r)(4) - "Source obligation;" and (w)(1) - "Permit rescission" and were state effective on May 27, 2011. EPA is approving these administrative edits to the SIP.

This SIP submittal also made changes to the NNSR regulation, Regulation 61-62.5, Standard No. 7.1, at paragraph (c)(7)(A)(i), adopting thresholds in the definition of "major stationary source" for different classifications of ozone nonattainment areas (as codified at 40 CFR 51.165(a)(1)(iv)(A)(I)). These thresholds correspond to precursors of ozone in "serious" and "extreme" nonattainment areas. EPA is approving these changes to the NNSR regulations as consistent with the Phase 2 Rule. South Carolina adopted other provisions promulgated in the Phase 2 Rule previously, and EPA approved them into the South Carolina SIP on June 2, 2008 (73 FR 31368) and June 23, 2011 (76 FR 36875).

EPA has concluded that incorporating these change into the SIP will not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the CAA. The changes to Regulation 61-62.5, Standard No. 7 are administrative in nature, and the changes to Standard No. 7.1 increase the number of sources potentially subject to NNSR permitting by establishing lower emissions thresholds.

**B. Submittal Dated April 10, 2014**

South Carolina's April 10, 2014, SIP revision made changes to the definitions in the PSD regulation, Regulation 61-62.5, Standard No. 7. The only changes that EPA is adopting from the

April 10, 2014, submittal in this rulemaking are at paragraph (b)(44) regarding the definition of “regulated NSR pollutant.” These changes were state effective on December 27, 2013. This definition is revised to be consistent with the PM<sub>2.5</sub> Condensables Correction Rule, detailed in Section II, above, by removing the phrase “particulate matter (PM) emissions” and the term “PM” which were originally included in the federal definition in error and by rearranging the formatting structure of the definition.

A March 14, 2011, SIP submittal adopted provisions promulgated in the NSR PM<sub>2.5</sub> Rule, as approved into the SIP on June 23, 2011 (76 FR 36875). This previous approval also adopted the phrase “particulate matter (PM) emissions” and the term “PM” as promulgated in error in the PM<sub>2.5</sub> NSR Rule. The April 10, 2014, submittal in effect only removes the problematic language to be consistent with the current federal definition and rearranges the definition because EPA approved the remaining changes to (b)(44) in the June 23, 2011, action discussed above.

In today’s action, EPA is approving the changes that remove the phrase “particulate matter (PM) emissions” and the term “PM” and that rearrange the formatting structure of the definition for consistency with the PM<sub>2.5</sub> Condensables Correction Rule. EPA has concluded that incorporating these change into the SIP will not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the CAA. The changes merely correct an inadvertent error in the PSD regulations as discussed above.

### **C. Submittal Dated August 12, 2015**

The August 12, 2015, SIP revision modifies the definitions of “baseline actual emissions” and “projected actual emissions” in Regulation 61-62.5, Standard No. 7 at paragraphs

(b)(4)(i)(a), (b)(4)(ii)(a), and (b)(41)(ii)(b) and in Standard No. 7.1 at paragraphs (c)(2)(A)(i), (c)(2)(B)(i), and (c)(11)(B)(ii) to include emissions associated with “malfunctions” in determining PSD and NNSR applicability, respectively. These changes were state effective on June 26, 2015.

EPA added malfunction emissions to the federal definitions of “baseline actual emissions” and “projected actual emissions” as part of its NSR reform rules.<sup>7</sup> In its July 1, 2005, SIP revision addressing NSR reform, the State sought to exclude this change from its SIP-approved PSD and NNSR regulations. The State’s primary motivation for seeking the exclusion was its belief that it would be difficult for the regulated community to predict and quantify malfunction emissions when estimating projected actual emissions. EPA conditionally approved South Carolina’s SIP revision on June 2, 2008 (73 FR 31368), noting in the associated September 12, 2007, notice of proposed rulemaking (72 FR 52031) that the exclusion of malfunction emissions did not lessen the stringency of the State’s NSR program. South Carolina updated its regulations in a submittal dated April 14, 2009, to satisfy the conditional approval, resulting in a formal approval on June 23, 2011 (76 FR 36875).

South Carolina’s August 12, 2015, submittal seeks to add malfunction emissions to the definitions of “baseline actual emissions” and “projected actual emissions” in its SIP-approved PSD and NNSR regulations. The State retains the requirement that “baseline actual emissions” exclude any non-compliant emissions that occur while the source was operating above any emission limitation that was legally enforceable during the 24-month period used to calculate

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<sup>7</sup> EPA published rules on December 31, 2002 (67 FR 80186), November 7, 2003 (68 FR 63021), on June 13, 2007 (72 FR 32526), revising the methodology for determining “baseline actual emissions” among other things. Sometimes, these rules taken together are referred to as “NSR reform.” For more information on NSR reform, see <https://www.epa.gov/nsr/nsr-regulatory-actions#nsrreform>.

baseline emissions. EPA has concluded that incorporating these changes into the SIP will not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the CAA. The State is requesting the change for consistency with the federal rules because the discrepancy was causing confusion among the regulated community and because the regulated community had not substantiated the State's initial concerns regarding the potential difficulty in projecting malfunction emissions. In its July 1, 2005, SIP submittal, the State concluded that there would be no environmental benefit to excluding malfunction emissions from the definitions at issue because the inclusion of malfunction emissions in both baseline actual emissions and projected actual emissions "would cancel each other out because they typically would be the same before and after a change."<sup>8</sup> In correspondence associated with the August 12, 2015, submittal, the State affirms that the exclusion has provided no environmental benefit.<sup>9</sup> Furthermore, EPA notes that there are no nonattainment areas in South Carolina, and that air quality is below the NAAQS for all criteria pollutants.<sup>10</sup>

The August 12, 2015, submittal made other changes to the PSD regulation, Regulation 61-62.5, Standard No. 7, to correct typographical errors, clarify certain provisions, and mirror federal provisions. These changes are made to the following paragraphs: (a)(2)(iv)(f) regarding "Applicability procedures;" (b)(5)(ii)(b), (b)(32)(i)(a), and (b)(34)(vi)(c) regarding the

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<sup>8</sup> See South Carolina's July 1, 2005, SIP submittal which is included in the docket for today's action.

<sup>9</sup> See email communication from Elizabeth Basil, SC DHEC, to Brad Akers, EPA Region 4 dated September 1, 2016, included in the docket for this action.

<sup>10</sup> Air quality design values for all criteria air pollutants are available at: <https://www.epa.gov/air-trends/air-quality-design-values>.

definitions of “baseline area,” “major stationary source,” and “net emissions increase,” respectively; (i)(8)(ii) and (i)(10) - “Exemptions;” (m)(1)(i)(a) regarding “Air quality analysis;” (n)(1) regarding “Source information;” (u)(4) regarding class III areas; and (aa)(6)(ii) and (aa)(8)(ii)(b)(2) regarding “Actuals [Plantwide Applicability Limits] PALs.” The August 12, 2015, submittal made other changes to the NNSR regulation, Regulation 61-62.5, Standard No. 7.1, at paragraph (i)(6)(ii) regarding “Actuals PALs” for consistency with federal regulations. EPA is approving these changes to the SIP with the exception of the change to Regulation 61-62.5, Standard No. 7, paragraph (b)(32)(i)(a) as noted in Section I, above. EPA has concluded that incorporating these changes into the SIP will not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the CAA. These changes are primarily administrative and do not substantively impact applicability requirements or emissions from subject units.

**D. Submittal Dated January 20, 2016**

The January 20, 2016, submittal made changes to the NNSR regulation, Regulation 61-62.5, Standard No. 7.1, only to correct typographical errors and to make internal references consistent. These changes, state effective on November 27, 2015, are made to paragraphs (c)(6)(C)(v)(a) and (c)(7)(A)(i)(d) regarding the definitions of “major modification” and “major stationary source;” and paragraph (d)(1)(C)(viii) regarding “Permitting requirements.” EPA is approving these changes to the SIP. EPA has concluded that incorporating these changes into the SIP will not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the CAA because the changes are administrative in nature.

#### **IV. Incorporation by Reference**

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the SC DHEC regulatory paragraphs identified above in Section III within SC DHEC Regulation No. 61-62.5, Standard No. 7, entitled “Prevention of Significant Deterioration,” state effective on May 27, 2011 (paragraphs identified in Section III.A, above), December 27, 2013 (paragraphs identified in Section III.B, above), and June 26, 2015 (paragraphs identified in Section III.C, above), and the SC DHEC regulatory paragraphs identified above in Section III within Standard No. 7.1, entitled “Nonattainment New Source Review,” state effective on May 27, 2011 (paragraphs identified in Section III.A, above), June 26, 2015 (paragraphs identified in Section III.C, above), and November 27, 2015 (paragraphs identified in Section III.D, above).

Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA’s approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.<sup>11</sup> EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and/or at the EPA Region 4 Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

#### **V. Final Action**

EPA is approving the changes to the SIP identified in Section III, above, because they are

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<sup>11</sup> 62 FR 27968 (May 22, 1997).

consistent with the CFR and the CAA. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this Federal Register publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective [Insert date 60 days after publication in the Federal Register] without further notice unless the Agency receives adverse comments by [Insert date 30 days after publication in the Federal Register].

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All adverse comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on [Insert date 60 days after publication in the Federal Register] and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

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

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 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 action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those

imposed by state law. For that reason, this action:

- is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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 (Public Law 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 direct final action for the State of South Carolina does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because it does not have substantial direct effects on an Indian Tribe. The Catawba Indian Nation Reservation is located within the state of South Carolina. Pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27-16-120, “all state and local environmental laws and regulations apply to the [Catawba Indian Nation] and Reservation and are fully enforceable by all relevant state and local agencies and authorities.” EPA notes this action will not impose substantial direct costs on Tribal governments or preempt Tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER

OFFICE: insert date 60 days from date of publication of this document in the Federal Register].

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

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

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Volatile organic compounds.

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

Dated: July 26, 2017.

V. Anne Heard

Acting Regional Administrator,

Region 4.

40 CFR part 52 is amended as follows:

**PART 52--APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

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

**Subpart PP – South Carolina**

2. Section 52.2120(c) is amended by revising entries under Regulation No. 62.5 for “Standard No. 7” and “Standard No. 7.1” and by revising footnote 1 to the table to read as follows:

**§ 52.2120 Identification of plan.**

\* \* \* \* \*  
(c) \* \* \*

Air Pollution Control Regulations for South Carolina

<b>State citation</b>	<b>Title/subject</b>	<b>State effective date</b>	<b>EPA approval date</b>	<b>Federal Register Notice</b>
**	**	*	*	*
<i>Standard No. 7</i>	Prevention of Significant Deterioration	June 26, 2015 <sup>1</sup>	[Insert date of publication in Federal Register]	[Insert citation of publication]
<i>Standard No. 7.1</i>	Nonattainment New Source Review	November 27, 2015 <sup>1</sup>	[Insert date of publication in <u>Federal Register</u> ]	[Insert citation of publication]
**	**	*	*	*

<sup>1</sup> EPA did not take action on the version of Regulation 61-62.5, Standard No. 7, paragraph (b)(32)(i)(a) state effective on December 27, 2013, included in a SIP revision submitted by the State on April 10, 2014, because this version contains changes to a phrase regarding ethanol production facilities that is not in the SIP. South Carolina submitted a SIP revision on April 14, 2009, that includes the phrase “except ethanol production facilities producing ethanol by natural fermentation under the North American Industry Classification System (NAICS) codes 325193 or 312140,” as amended in the Ethanol Rule (72 FR 24060 (May 1, 2007)), at Standard No. 7, paragraphs (b)(32)(i)(a), (b)(32)(iii)(b)(t), and (i)1(vii)(t) and at Standard No. 7.1, paragraphs (c)7(C)(xx) and (e)(T). EPA has not taken action to approve that portion of the April 14, 2009, SIP revision and incorporate this phrase into the SIP. The version of Standard No. 7, paragraphs (b)(32)(i)(a), (b)(32)(iii)(b)(t), and (i)1(vii)(t) and Standard No. 7.1, paragraphs (c)(7)(C)(xx) and (e)(T) was state effective on June 24, 2005 and conditionally approved by EPA on June 2, 2008 (73 FR 31369), and were fully approved on June 23, 2011 (76 FR 36875).

\* \* \* \* \*

[FR Doc. 2017-16810 Filed: 8/9/2017 8:45 am; Publication Date: 8/10/2017]