



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2024-0241; FRL-13590-01-R4]

Air Plan Approval; South Carolina; Minor Source Permit Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA or Agency) is proposing action on changes to South Carolina's State Implementation Plan (SIP) to revise regulations prescribing minor source permitting program requirements, including minor new source review (NSR) requirements, involving, in part, minor source permitting public participation, in SIP revisions submitted by the State of South Carolina through the South Carolina Department of Health and Environmental Control (SC DHEC) on October 1, 2007; July 18, 2011; August 8, 2014; July 27, 2016; and April 24, 2020. This proposal supplements previous proposals the EPA published on August 17, 2017, and January 21, 2025. This proposal is being issued pursuant to the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2024-0241 at *regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The 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. The 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 <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Faith Goddard, Multi-Air Pollutant Coordination Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-8757. Ms. Goddard can also be reached via electronic mail at goddard.faith@epa.gov.

SUPPLEMENTARY INFORMATION:

We use multiple abbreviations and terms in this notice of proposed rulemaking (NPRM). While this list may not be exhaustive, for ease of reading and for reference purposes, the EPA defines the following terms and acronyms here:

CAA	Clean Air Act
CFR	Code of Federal Regulations
EPA	Environmental Protection Agency
FESOP	Federally Enforceable State Operating Permit
FR	Federal Register
NAAQS	National Ambient Air Quality Standard or Standards
NNSR	Nonattainment New Source Review
NPRM	Notice of Proposed Rulemaking
NSR	New Source Review
PSD	Prevention of Significant Deterioration
PTE	Potential to Emit
SIP	State Implementation Plan

Table of Contents

I. Executive Summary

- A. What Action is the EPA Proposing Today?*
- B. What is the Legal Authority and What are the Requirements?*

II. Proposed Action

III. Background

- A. Minor NSR Program*
- B. Minor NSR Program Public Participation Requirements*
- C. Minor Source Operating Permitting Program*
- D. South Carolina's Minor Source Permitting Program*
- E. EPA's August 17, 2017, and January 21, 2025, Proposals*

IV. Summary of South Carolina's Submittals

A. Subsection II(D)

1. Summary of Subsection II(D) Revisions
2. The EPA's Analysis of Subsection II(D) Revisions

B. Subsection II(E)

1. Summary of Subsection II(E) Revisions
2. The EPA's Analysis of Subsection II(E) Revisions

C. Subsection II(F)

1. Summary of Subsection II(F) Revisions
2. The EPA's Analysis of Subsection II(F) Revisions

D. Subsection II(G)

1. Summary of Subsection II(G) Revisions
2. The EPA's Analysis of Subsection II(G) Revisions

E. Subsection II(I)

1. Summary of Subsection II(I) Revisions
2. The EPA's Analysis of Subsection II(I) Revisions

F. Subsection II(N)

1. Summary of Subsection II(N) Revisions
2. The EPA's Analysis of Subsection II(N) Revisions

V. Incorporation by Reference

VI. Statutory and Executive Order Reviews

I. Executive Summary

A. What Action is the EPA Proposing Today?

On October 1, 2007; July 18, 2011; August 8, 2014; July 27, 2016;¹ and April 24, 2020, SC DHEC² submitted SIP revisions to the EPA for approval that include changes to South Carolina's minor source permitting regulations to clarify and streamline the State's federally approved minor source preconstruction and operating permit program. These regulations require minor stationary sources of air pollutants planning to construct or modify to first obtain a construction permit and to obtain and maintain operating permits in accordance with the South Carolina Code of Regulations Annotated (S.C. Code Ann. Regs.) (hereinafter "Regulation") 61-62.1, Section II, *Permit Requirements*. The portion of the SIP-approved minor source permitting

¹ While the July 27, 2016, submittal was signed and dated by SC DHEC on July 25, 2016, it was received via the EPA's SPeCS for SIPs system on July 27, 2016.

² On July 1, 2024, SC DHEC was restructured into a health agency, the Department of Public Health, and an environmental agency, the Department of Environmental Services (DES). In a letter dated June 20, 2024, South Carolina represented to the EPA that all the functions, powers, and duties of the environmental divisions, offices, and programs of DHEC, including the authority to administer and enforce SIPs, are retained and continued in full force and effect under SC DES. This letter is available in the docket for this proposed rulemaking. In this NPRM, "State," "Department," "SC DHEC," and "SC DES" are interchangeable where applicable.

program covering construction permits is generally referred to as the minor NSR program. The portion of the SIP-approved minor source permitting program covering operating permits also includes a program referred to as the federally enforceable State operating permit (FESOP) program. The EPA had previously proposed action on these submitted SIP revisions on January 21, 2025. *See* 94 FR 41591. This NPRM is intended to be in supplement to, and not replace, that prior proposed action. Here, the EPA is proposing to approve identified portions of the SIP submissions that make changes to South Carolina's minor source permitting program requirements contingent on the EPA finalizing a recently proposed change to relevant national regulations.³

B. What is the Legal Authority and What are the Requirements?

Under CAA section 110(k)(3), the EPA has a statutory obligation to approve SIP submittals that meet all applicable CAA requirements.⁴ Pursuant to CAA section 110(k)(3), the EPA may approve portions of a SIP submittal if those portions meet all the applicable CAA requirements.

Additionally, under CAA section 110(l), the EPA cannot approve a SIP revision if it would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined by CAA section 171), or any other applicable requirement of the CAA, including CAA section 110(l).⁵ The EPA evaluates CAA section 110(l) non-interference on a case-by-case basis considering the circumstances of each SIP revision.

II. Proposed Action

On July 7, 2026, the EPA published a proposal to revise the public participation

³ In this NPRM, the EPA is not proposing to act on a portion of the revisions to Regulation 61-62.1, Section II. Specifically, the EPA is not proposing to act on changes to the following provisions: Section II prefatory text and subsections II(A); II(B); II(C); II(H); II(J); II(K); II(L); II(M); and II(O). The EPA proposed action on these subsections on August 8, 2017, NPRM (82 FR 39083) and on January 21, 2025, NPRM (90 FR 6954). The EPA is also proposed action on a portion of subsection II(B) in a separate NPRM.

⁴ *See* 42 U.S.C. 7410(k)(3).

⁵ CAA section 110(l) also requires each SIP revision to undergo reasonable notice and public hearing at the State level.

regulatory requirements for sources subject to NSR programs in SIPs.⁶ If the EPA's July 7, 2026, NPRM is finalized as proposed, state and local air agencies would have the discretion to determine whether, and the extent to which, public participation elements are appropriate and reasonable in their minor NSR programs. For more information on the proposed revisions to the Federal minor NSR regulations and the rationale for the July 7, 2026, NPRM, please refer to the July 7, 2026, NPRM⁷ and related docket materials.⁸ Any comments on those proposed revisions and the EPA's rationale for those changes should be made on the July 7, 2026, NPRM and are not being solicited through this proposed action. If the EPA were to finalize the July 7, 2026, NPRM as proposed, the EPA is proposing to approve changes to South Carolina Regulation 61-62.1, Section II, *Permit Requirements*, subsections II(D), II(E), II(F), II(G), II(I), and II(N), for the reasons discussed in Section IV of this NPRM. This proposal supplements, and does not replace, previous proposals the EPA published on August 17, 2017,⁹ and January 21, 2025.¹⁰

III. Background

A. Minor NSR Program

CAA section 110(a)(2)(C) requires that SIPs include a program to regulate the construction and modification of any stationary source as necessary to assure that the NAAQS are achieved. Additionally, CAA section 110(a)(2)(C) cites to more detailed CAA permitting requirements that pertain to the construction and modification of major sources of air pollution. These CAA requirements for regulating the construction and modification of stationary sources are known collectively as the NSR program. The NSR program is comprised of the Prevention of Significant Deterioration (PSD) program, established in part C of title I of the CAA and applicable to major stationary sources and major modifications in attainment and unclassifiable

⁶ See 91 FR 41591, "Minor New Source Review Program Air Permitting Public Participation Requirements for State Implementation Plans."

⁷ See 91 FR 41591.

⁸ Docket ID: EPA-HQ-OAR-2025-1212, available at <https://www.regulations.gov/docket/EPA-HQ-OAR-2025-1212>.

⁹ See 82 FR 39083.

¹⁰ See 90 FR 6954.

areas; the Nonattainment NSR (NNSR) program, established in part D of title I of the CAA and applicable to major stationary sources and major modifications located in nonattainment areas; and the minor NSR program, applicable to a universe of new sources and modifications, as defined in a State's implementation plan, that fall below major NSR thresholds in any area.¹¹ Pursuant to CAA section 110(a)(2)(C) and 40 CFR 51.160, SIPs must contain a minor NSR program regulating the modification and construction of stationary sources as necessary to assure that NAAQS are achieved.

The minor NSR program is established under CAA section 110(a)(2)(C), which is the statutory foundation for the portion of the CFR at 40 CFR 51.160-51.164. The regulatory requirements at 40 CFR 51.160-51.164 generally apply to all NSR programs but, because of more specific implementing regulations for the PSD and NNSR programs found respectively at 40 CFR 51.166 and 40 CFR 51.165, the implementing regulations at 40 CFR 51.160-51.164 serve primarily as the basis for the EPA's evaluation of minor NSR programs. The requirements at 40 CFR 51.160-51.164 apply to all new minor sources and modifications under a state's minor NSR program in accordance with 40 CFR 51.160. States have discretion to define the scope of their minor NSR programs within the bounds of CAA section 110 and 40 CFR 51.160-51.164. The EPA's implementing regulations at 40 CFR 51.160 set forth requirements for "legally enforceable procedures" applicable to minor NSR programs. 40 CFR 51.160(a) requires SIPs to set forth minor NSR programs with legally enforceable procedures that enable a state to determine whether the construction or modification of a source will result in a violation of applicable portions of the control strategy or interference with attainment or maintenance of the NAAQS. 40 CFR 51.160(e) requires such programs to identify the types and sizes of sources subject to review and discuss the basis for determining which sources are subject. Where a State

¹¹ The EPA's regulations governing the implementation of the NSR permitting programs are contained in 40 CFR 51.160-51.166 (40 CFR Part 51 Subpart I); 52.21 and 52.24; and Appendix S to part 51. 40 CFR 51.165 sets forth requirements for the NNSR program in conjunction with 52.24 and Appendix S to part 51; 40 CFR 51.166 sets forth requirements for State PSD programs in SIPs; and 40 CFR 52.21 implements PSD requirements for PSD programs administered by EPA and States with delegated authority.

has a defined minor NSR program under 51.160, subject sources cannot subsequently be exempt from that program's requirements, barring a demonstration under 51.160(e) that such sources are not needed for the state's program to meet the requirements of section 110(a)(2)(A) and 40 CFR 51.160.

B. Minor NSR Program Public Participation Requirements

On July 7, 2026, the EPA published a NPRM proposing to revise the Federal public participation requirements for minor NSR programs to be approved into SIPs.¹² In that NPRM, the EPA proposed to revise the Agency's regulations at 40 CFR 51.161 to remove the requirement for public notice and comment as a minimum feature of State and local minor source NSR programs.¹³ In that NPRM, the EPA stated that the approach proposed within more closely adheres to the statutory language in CAA section 110(a)(2)(C) as it applies to minor NSR, noting section 110(a)(2)(C) requires only that each SIP provide for the "regulation of the modification and construction of" stationary sources "as necessary to assure that [the NAAQS] are achieved," but does not specify, with respect to minor NSR, specifically what air agencies must include for the SIP to be approvable.¹⁴

If the EPA's July 7, 2026, NPRM is finalized as proposed, state and local air agencies would have the discretion to determine whether, and the extent to which, public participation elements are appropriate and reasonable in their minor NSR programs. For more information on the proposed rule revisions and the rationale for the July 7, 2026, NPRM, please refer to the July 7, 2026, NPRM¹⁵ and related docket materials.¹⁶ Any comments on those proposed revisions and the EPA's rationale for those changes should be made on the July 7, 2026 NPRM and are not being solicited through this proposed action.

¹² See 91 FR 41591, "Minor New Source Review Program Air Permitting Public Participation Requirements for State Implementation Plans."

¹³ See 91 FR 41591, 41600. The July 7, 2026, NPRM does not address and would not affect Federal public participation requirements for FESOP programs. See 91 FR 41591, 41598.

¹⁴ See 91 FR 41591, 41598.

¹⁵ *Id* at 41591.

¹⁶ Docket ID: EPA-HQ-OAR-2025-1212, available at <https://www.regulations.gov/docket/EPA-HQ-OAR-2025-1212>.

C. Minor Source Operating Permitting Program

In contrast to the requirements in CAA section 110(a)(2)(C) and at 40 CFR 51.160-51.164 applicable to minor source construction permitting, there are no statutory or regulatory requirements applicable to the issuance of minor source operating permits or the evaluation of minor source operating permit programs.¹⁷ Furthermore, although the EPA has the authority to approve such programs into SIPs under CAA section 110(a)(2)(B) and (D), state operating permit programs are not a required element in SIPs. A subset of minor source operating permitting programs comprise FESOP programs. FESOPs are federally enforceable permits issued by a state under a SIP-approved minor source operating permit program meeting the criteria identified by the EPA in the preamble to a June 28, 1989, final rulemaking action (1989 Preamble).¹⁸ The 1989 Preamble notes the flexibility states have in conducting public participation for FESOPs, noting that the EPA would consider the public participation practices sufficient “as long as ample opportunity is provided for comment on permits prior to their final issuance.”¹⁹ Many States, such as South Carolina, adopted FESOPs as an additional mechanism for creating federally enforceable limits to avoid major source requirements like those applicable to CAA title V sources.

Under the CAA, there are no explicit requirements for minor source operating permit programs in SIPs, which are not required minimum elements of SIPs to begin with.²⁰ That absence, in contrast with the statutory requirements applicable to minor NSR programs and the detailed statutory requirements applicable to major source operating permit programs prescribed by Congress, indicates that the CAA affords maximum discretion to States in developing their minor source operating permit programs for voluntary inclusion in SIPs within the bounds of CAA section 110, to include the discretion to require public participation, and, if so, to what

¹⁷ CAA sections 110(a)(2)(C) and 172(b)(5) establish statutory requirements for the operation of major sources which are satisfied by requirements in the EPA’s PSD and NNSR regulations.

¹⁸ See 54 FR 27274, 27282.

¹⁹ *Id.* at 27282, 27283.

²⁰ See 54 FR 27274, 27282.

extent. Furthermore, although the 1989 Preamble sets forth criteria for “federal enforceability” applicable to FESOPs, including the criterion that “permits are issued subject to public participation,”²¹ all permits issued under a SIP-approved minor source permitting program are federally enforceable.²² This is true even if a SIP-approved minor source permitting program does not provide for public participation for the operating permits issued.

D. South Carolina’s Minor Source Permitting Program

South Carolina has a SIP-approved minor source permitting program at Regulation 61-62.1, Section II, that includes requirements for minor NSR and minor source operating permitting. In the October 1, 2007, SIP revision submittal letter, the State explains that the revisions to Section II clarify and streamline South Carolina’s SIP-approved permitting program, which requires stationary sources planning to construct, alter, or add to a source of air pollutants to first obtain a construction permit from the State and to request an operating permit prior to placing the new or altered source into operation. Minor source permitting programs, such as South Carolina’s SIP-approved program under Section II, apply to stationary sources that do not require major source permits, *e.g.*, PSD, NNSR, and/or title V permits.

South Carolina’s SIP-approved minor source preconstruction permitting program covers two categories of sources: true minor sources, *i.e.*, sources where the potential to emit (PTE) of regulated NSR pollutants is below applicable major stationary source or major modification thresholds without any enforceable emission limitations to constrain emissions; and synthetic minor sources, *i.e.*, sources that accept enforceable emission limitations to restrict the PTE of regulated NSR pollutants below major source and major modifications applicability thresholds. The EPA originally approved South Carolina’s minor NSR regulations into the SIP in 1972 and approved subsequent revisions through June 2, 2008, with additional changes approved on

²¹ *Id.*

²² *See, e.g.*, 40 CFR 52.23.

October 13, 2022.²³

South Carolina’s minor source operating permitting program covers two categories of sources: true minor sources, *i.e.*, sources where the PTE of any air pollutant is below applicable major stationary source or major source thresholds without any enforceable emission limitations to constrain emissions; and conditional major sources, *i.e.*, sources where conditional major permits establish enforceable emission limitations to restrict the PTE of any air pollutant below major source applicability thresholds. The EPA originally approved “the addition of a requirement...in Section II...that an operating permit be obtained in addition to construction permits which were previously required” into South Carolina’s SIP in 1974 and subsequently approved revisions to those operating permit provisions, *e.g.*, in 1980, 1982, and 1983.²⁴

In 1995, South Carolina submitted a voluntary SIP revision to modify its SIP-approved minor source operating permitting program to carve out a FESOP program for “conditional major” operating permits at Regulation 61-62.1, subsection II(G). The State created this FESOP program pursuant to the 1989 Preamble to allow it to issue operating permits restricting a source’s potential to emit below major source thresholds. The EPA approved that SIP revision on December 11, 1995,²⁵ as satisfying the five FESOP criteria. In that action, the Agency also recognized that the FESOP program approved in that rulemaking did not cover all minor source operating permits issued by the State under Regulation 61-62.1, subsection II(B), which is SIP-approved and contains the State’s generally applicable operating permit provisions that also cover true minor operating permits. Subsection II(B) is recodified and revised, in part, under subsection II(F) in the SIP submissions which are the subject of this NPRM.

E. The EPA’s August 17, 2017, and January 21, 2025, Proposals

²³ See 37 FR 10842, 10892 (May 31, 1972); 37 FR 23085, 23091 (Oct. 28, 1972); 73 FR 31368 (June 2, 2008); and 87 FR 62034 (Oct. 13, 2022).

²⁴ See 39 FR 4082 (Feb. 1, 1974); 45 FR 45581 (July 7, 1980); 47 FR 32123 (July 26, 1982); and 48 FR 50078 (Oct. 31, 1983).

²⁵ See 60 FR 63434.

Through NPRMs published on August 17, 2017,²⁶ and January 21, 2025,²⁷ the EPA proposed to act on changes to South Carolina’s minor source permitting provisions involving, in part, the State’s minor source permitting program regulations, including those involving minor source permitting public participation. The EPA’s analyses and rationales for those proposed actions are described in the respective 2017 and 2025 NPRMs. Information specific to the August 17, 2017, NPRM, including comments received, is available in Docket No. EPA-R04-OAR-2017-0359.²⁸ Docket No. EPA-R04-OAR-2024-0241 contains information specific to the January 21, 2025, NPRM, including comments received.²⁹

This proposed action is intended to supplement, and not replace, those prior proposed actions. In this NPRM, the EPA is proposing that the Agency would approve portions of South Carolina’s minor source permitting SIP revisions related to public participation if EPA were to finalize the Agency’s July 7, 2026, NPRM as proposed. Specifically, if the July 7, 2026, NPRM was finalized as proposed, the EPA is proposing that it would approve changes to Regulation 61-62.1, subsections II(D), II(E), II(F), II(G), II(I), and II(N) submitted by the State on the following dates: October 1, 2007; July 18, 2011; August 8, 2014; July 27, 2016; and April 24, 2020. The EPA’s analysis of the changes in the previously listed submittals is discussed below.³⁰

IV. Summary of South Carolina’s Submittals

This NPRM covers recodification of portions of the regulation, minor and administrative changes to the affected portions of the rule, and certain substantive changes, described below. Specifically, the following paragraphs describe the substantive changes to subsections II(D), II(E), II(F), II(G), II(I), and II(N) under consideration in this NPRM.

A. Subsection II(D)

²⁶ See 82 FR 39083.

²⁷ See 90 FR 6954.

²⁸ Available at <https://www.regulations.gov/docket/EPA-R04-OAR-2017-0359>.

²⁹ Available at <https://www.regulations.gov/docket/EPA-R04-OAR-2024-0241>.

³⁰ The changes to South Carolina’s minor source operating permit program are structurally affected by the revisions to the minor NSR permit program addressed in this NPRM. It is prudent to approve the changes to these programs concurrently for improved clarity of all requirements applicable to source owners and operators.

1. Summary of Subsection II(D) Revisions

The October 1, 2007, SIP revision adds new subsection II(D), “General Construction Permits.” In the 2007 SIP revision, subsection II(D), “Exceptions,” in the current SIP is renumbered to subsection II(K); however, the EPA is not proposing to act on subsection II(K) in this NPRM.³¹ New subsection II(D) allows the State to develop and issue general construction permits applicable to similar stationary sources for new construction projects or minor modifications to existing sources. In the 2007 SIP revision, subsection II(D) provides for the following: (1) general construction permits will incorporate all applicable requirements for construction of similar sources and identify criteria by which sources can qualify for the permit; (2) sources may submit construction permit applications to the State that request coverage under the general permit, the State will grant coverage to sources certifying qualification for and agreeing to the conditions and terms of a general construction permit, and sources later determined not to qualify for a general construction permit are subject to enforcement; (3) authorization to operate under a general construction permit is a final permit action for purposes of judicial review; (4) the application for coverage can deviate from the requirements of subsection II(C) if an application includes all information necessary to determine the source’s qualification for and assure compliance with a general construction permit; and (5) sources qualifying for coverage under a general construction permit can apply for an individual construction permit in lieu of coverage under a general permit.

The August 8, 2014, SIP revision makes minor edits to subsection II(D), including administrative and minor language changes and restructuring edits. In the 2014 SIP revision, some of the requirements in paragraph II(D)(1) are restructured into new paragraph II(D)(2), shifting the subsequent paragraphs. Similarly, some of the requirements in paragraph II(D)(3), renumbered from II(D)(2), are restructured into new paragraph II(D)(4), shifting the subsequent paragraphs again.

³¹ See *supra* note 3.

The April 24, 2020, SIP revision makes minor edits to subsection II(D), including administrative and minor language changes and additional restructuring edits. In the 2020 SIP revision, the requirements in paragraph II(D)(3) are restructured into new subparagraph II(D)(3)(a) under paragraph II(D)(3) and a new heading, “Coverage under a General Construction Permit.” Under that paragraph, new subparagraph II(D)(3)(b) states that a source that has submitted an individual construction permit application to the State that has not requested coverage under the conditions and terms of a general construction permit for similar sources but which is determined to qualify for coverage under a general permit can be granted coverage under the general permit at the State’s sole discretion. The April 24, 2020, SIP submittal notes that this change reflects current Department practices and clarifies and streamlines the permit application process.

2. The EPA’s Analysis of Subsection II(D) Revisions

Under minor NSR, general permitting programs can protect the NAAQS and be an effective method of streamlining permitting requirements and procedures for similar sources. General construction permits are preconstruction permits which establish a category of covered sources or modifications, criteria for such sources or modifications to qualify for coverage under the permit, and standardized requirements applicable to all such sources or modifications. General permits can apply to a number of similar emissions units or sources. The CAA offers states enhanced flexibility in designing their minor NSR programs, including the flexibility to use regulatory mechanisms such as general permits as part of such programs, as long as such programs assure attainment and maintenance of the NAAQS. Although the implementing regulations at 40 CFR 51.160-51.164 do not use the term “general permit” or expressly describe general construction permits, those regulations do not stipulate that programs to regulate construction must require individual construction permits for every regulated source. Rather, the minor NSR regulations require legally enforceable procedures that meet the requirements set

forth therein.³² The EPA interprets the relevant statutory and regulatory provisions to allow States to develop mechanisms including general construction permits to authorize construction for minor sources and modifications, provided such mechanisms assure that the NAAQS are achieved and meet other applicable requirements.³³ The legally enforceable procedures used by States to develop minor source construction general permits are established as components of the States' broader programs addressing CAA requirements for minor source preconstruction permitting, and, like other minor NSR permitting provisions, are submitted as SIP revisions to the EPA for review and incorporation into the SIP, as South Carolina has done here.

The addition of these general permitting provisions, applicable to the construction and modification of true minor sources, is consistent with applicable statutory and regulatory requirements with the exception of the current public participation requirements in 40 CFR 51.161, which the EPA proposed to revise in its July 7, 2026, NPRM. If that NPRM is finalized as proposed, subsection II(D), which does not require that the subject true minor source general permits undergo public participation, would be consistent with the revised requirements in 51.161.

Furthermore, in the current SIP, and as revised through the April 24, 2020, SIP revision, Regulation 61-62.1, Section II requires public participation for synthetic minor (construction permits) and conditional major (operating) permits, by which sources adopt federally enforceable limitations on PTE to avoid major source status and associated requirements. With the cumulative changes to Section II in the SIP revisions submitted through 2020, SC DES may, but is not required to, administer public participation for additional permitting activities, *i.e.*, true minor NSR permits. Therefore, with respect to public participation, the State's added general

³² See 40 CFR 51.160.

³³ As stated in 1995 guidance documents, the EPA noted that a State or local agency could submit a general permit program as a SIP submittal aimed at creating PTE limits for a group of sources; that guidance also noted that general permits could be issued under SIP-approved FESOP programs. See Seitz, John S., and Van Heuvelen, Robert I. (January 25, 1995), "Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act (Act)"; Stein, Kathie A. (January 25, 1995), "Guidance on Enforceability Requirements for Limiting Potential to Emit Through SIP and § 112 Rules and General Permits."

permitting provisions applicable to true minor sources, which streamline the permitting process for similar source types, are consistent with the level of public participation already required for other true minor source permits in the SIP. In other words, the addition of subsection II(D), where public participation is concerned, is a neutral change that does not result in the addition or removal of public participation requirements already applicable to the sources subject to the minor source permitting program.

B. Subsection II(E)

1. Summary of Subsection II(E) Revisions

The October 1, 2007, SIP revision revises the State's synthetic minor construction permit requirements. Subsection II(E) sets forth requirements for stationary sources requesting enforceable permit emission limits to restrict PTE to avoid qualifying as a major source under the major NSR programs. The 2007 SIP revision renumbers subsection II(H), "Synthetic Minor Plant Permits," to subsection II(E) and revises the subsection title to "Synthetic Minor Construction Permits." In the 2007 SIP revision, subsection II(E), "Transfer of Ownership/Operation," in the current SIP is renumbered to subsection II(M); however, the EPA is not proposing to act on subsection II(M) in this NPRM.³⁴ The October 1, 2007, SIP revision also makes minor edits to subsection II(E), including administrative and minor language changes (e.g., clarifying changes to indicate that subsection II(E) pertains to construction permits, to indicate that paragraph II(E)(4) pertains to general synthetic minor construction permits, as distinguished from the general construction permit provisions applicable to true minor sources in new subsection II(D), to further clarify general synthetic minor construction permitting procedures under paragraph II(E)(4), and to add or update cross-references).

Next, the October 1, 2007, SIP revision expands general synthetic minor construction permit applicability from major sources under PSD to any stationary source, which clarifies that sources can obtain synthetic minor construction permits to avoid triggering NNSR, in addition to

³⁴ See supra note 3.

PSD. This SIP revision adds language to subparagraph II(E)(2)(b) to require synthetic minor source owners or operators to record and notify the State of construction commencement and the actual date of initial startup and revises that subparagraph to provide that operating permit requests must be submitted within 15 days following, rather than prior to, startup, and to provide that the State may, rather than will, conduct a compliance inspection prior to operating permit issuance.

The changes further remove subparagraphs II(E)(2)(c)-(f), as these requirements are now redundant and covered by other portions of subsection E and Section II. Where the 2007 SIP revision removes subparagraphs II(E)(2)(c)-(f), the requirements referenced in those provisions have been shifted and/or are largely covered elsewhere in subsection II(E) or under Section II, revised through the 2020 SIP revision.

In the current SIP, subparagraph II(E)(2)(c) applies the enforceable permit conditions provisions at current paragraph II(G)(4) to synthetic minor permits, but those requirements now apply through new subparagraph II(E)(3)(a), and, in turn, paragraph II(J)(2), renumbered from paragraph II(G)(4) and revised through the 2020 SIP revision, and new subparagraphs II(E)(3)(b) and (c).³⁵ Subparagraph II(E)(3)(a) requires synthetic minor construction permits to contain the standard permit conditions listed in paragraph II(J)(1) and any special permit conditions required to verify a source's compliance with emission limitations and operational requirements.

In the current SIP, subparagraph II(E)(2)(d) applies the public participation procedures at current paragraph II(G)(5) to synthetic minor permits, but those requirements still apply through subparagraph II(E)(1)(c), and, in turn, subsection II(N), renumbered from paragraph II(G)(5) and revised through the 2020 SIP revision.³⁶

In the current SIP, subparagraph II(E)(2)(e) applies the emergency provision procedures at paragraph II(G)(6) to synthetic minor permits, but those requirements were renumbered to

³⁵ Please refer to the August 17, 2017, NPRM for a description of changes to paragraph II(J)(2) proposed for approval for reasons described therein. *See* 82 FR 39083, 39088.

³⁶ For a description of changes to subsection II(N), please see Section IV.F of this NPRM.

subsection II(L) and revised in SIP revisions submitted on October 1, 2007, August 8, 2014, and November 4, 2016, and approved on October 13, 2022,³⁷ and now apply generally to Section II in its entirety through subsection II(L).

In the current SIP, subparagraph II(E)(2)(f) applies the permit application provisions of paragraph II(G)(8) to synthetic minor permits, but construction permit application requirements now apply through new subparagraph II(E)(5)(a), and, in turn, new subparagraph II(C)(3), which includes renumbered subparagraphs II(A)(2)(a)-(g), revised through the 2020 SIP revision, and paragraph II(C)(1), renumbered from II(A)(2) and revised through the 2020 SIP revision, which applies generally for construction permit applications.³⁸ Subparagraph II(E)(5)(a) requires synthetic minor construction permit applications to include the information required in paragraph II(C)(3) and new subparagraphs II(E)(5)(a)(i)-(iii). Some of the changes to Regulation 61-62.1, Section II through the 2020 SIP revision result in comparable, not identical, requirements for synthetic minor construction permit applications.

The October 1, 2007, SIP revision then adds paragraph II(E)(3) to specify requirements for synthetic minor permit conditions, whereas these requirements were previously cross-referenced from provisions for “conditional major” permits under subsection II(G). Finally, the 2007 SIP revision adds paragraph II(E)(5) to specify requirements for general synthetic minor construction permit applications whereas these requirements were previously cross-referenced from provisions for “conditional major” permits under subsection II(G).

The August 8, 2014, SIP revision makes minor edits to subsection II(E), including administrative and restructuring edits. In the 2014 SIP revision, some of the requirements in subparagraph II(E)(4)(a) are restructured into subparagraphs II(E)(4)(b)-(d), shifting the subsequent paragraphs. The July 27, 2016, SIP revision makes minor language edits to subparagraph II(E)(2)(b).

³⁷ See 87 FR 62034.

³⁸ Please refer to the August 17, 2017, NPRM for a description of changes to paragraphs II(C)(1) and (3) proposed for approval for reasons described therein. See 82 FR 39083, 39086.

The April 24, 2020, SIP revision makes minor edits to subsection II(E), including administrative and minor language changes, *e.g.*, clarifying changes to further indicate that paragraph II(E)(4) pertains to general synthetic minor construction permits, and additional restructuring edits. In the 2020 SIP revision, the requirements in subparagraph II(E)(4)(c) are restructured into new subparagraph II(E)(4)(c)(i) under subparagraph II(E)(4)(c) and a new heading, “Coverage under a General Synthetic Minor Construction Permit.” Under that paragraph, new subparagraph II(E)(4)(c)(ii) states that a source that has submitted an individual synthetic minor construction permit application to the State that has not requested coverage under the conditions and terms of a general synthetic minor construction permit for similar sources but which is determined to qualify for coverage under a general synthetic minor construction permit can be granted coverage under the general synthetic minor construction permit at the State’s sole discretion. The April 24, 2020, SIP submittal notes that this change clarifies current Department work practices and streamlines the permit application process. The 2020 SIP revision also adds new subparagraph II(E)(4)(g), consistent with true minor source general permit requirements, which provides that sources qualifying for coverage under a general synthetic minor construction permit can apply for an individual synthetic minor construction permit in lieu of coverage under a general synthetic minor permit.³⁹

2. The EPA’s Analysis of Subsection II(E) Revisions

The changes to the State’s synthetic minor permitting provisions, applicable to the construction and modification of synthetic minor sources, are consistent with applicable statutory and regulatory requirements with the exception of the current public participation requirements in 40 CFR 51.161, which the EPA proposed to revise in its July 7, 2026, NPRM. If that NPRM is finalized as proposed, subsection II(N), which, as revised through the April 24, 2020, SIP revision, prescribes public participation requirements applicable to individual and general

³⁹ The EPA’s position on general permits, as explained in Section IV.A.2 of this NPRM and applied to South Carolina’s general construction permitting provisions for true minor sources, also applies to the State’s general synthetic minor construction permitting provisions.

synthetic minor construction permits, would be consistent with the revised requirements in 51.161. Subsection II(N), as revised through the 2020 SIP revision, provides for public participation for synthetic minor construction permits and conditional major operating permits, and allows, but does not require, the State to provide for public participation of additional permitting activities that the State determines are subject to its minor source permitting programs.

Furthermore, as previously noted, in the current SIP, and as revised through the April 24, 2020, SIP revision, Section II requires public participation for synthetic minor and conditional major permits, and, with cumulative changes to Section II through the 2020 SIP revision, allows that the State may, but is not required to, require public participation for additional permitting activities. Therefore, with respect to public participation, as it applies to individual and general synthetic minor permits, the State's changes to the provisions applicable to those permits do not revise the level of public participation already required, *i.e.*, 30-day public notice and comment, as described in subsection II(N).⁴⁰

C. Subsection II(F)

1. Summary of Subsection II(F) Revisions

The October 1, 2007, SIP revision revises the State's generally applicable minor source operating permit requirements, which also cover true minor source operating permit requirements. Subsection II(F), "Operating Permits," sets forth operating permit program requirements which are generally applicable, *e.g.*, the requirement to obtain an operating permit and administrative requirements related to requesting an operating permit and providing the State with notice of startup, and requirements for true minor stationary sources, *i.e.*, those sources smaller than major source thresholds and which do not need enforceable emission limits to restrict PTE to avoid major source status under subsection II(G), such as general operating

⁴⁰ For a description and the EPA's analysis of the changes to subsection II(N) through the April 24, 2020, SIP revision, see Section IV.F of this NPRM.

permit requirements applicable to non-conditional major sources. The 2007 SIP revision rennumbers subsection II(B), “Operating Permit” to subsection II(F) and corrects the subsection title.⁴¹ In the 2007 SIP revision, subsection II(F), “Exemptions,” in the current SIP is renumbered to subsection II(B); however, the EPA is not proposing to act on subsection II(B) in this NPRM.⁴² The October 1, 2007, SIP revision also makes a number of changes to subsection II(F) to clarify and add operating permit requirements, including administrative and minor language changes and (1) adds paragraph II(F)(1) to require source owners or operators to record and notify the State of the actual date of initial startup and clarify that any source required to obtain a construction permit must also obtain an operating permit and comply with the requirements in subsection II(F); (2) adds paragraph II(F)(2) to require certification that construction was completed in accordance with the specifications of the construction permit and provide that, if construction is so certified, the permittee may operate under the construction permit until operating permit issuance, to require any variances from the construction permit to be addressed, and to assert that construction variances that would trigger new requirements are considered construction without a permit; (3) adds language to clarify provisions related to requesting a new or revised operating permit and that title V sources may comply with subsection II(F) request to operate requirements by submitting a permit modification request pursuant to Regulation 61-62.70.7(e); (4) adds language to clarify that the current requirement to provide a written request to the State for a new or revised operating permit applies to minor sources and major sources not yet covered by a title V permit and to revise the timeframe for requesting an operating permit to provide that operating permit requests must be submitted within 15 days following, rather than prior to, startup; and (5) adds subparagraph II(F)(3)(c) to specify that the written request for a new or revised operating permit must include a list of sources placed into operation and their actual initial startup dates.

⁴¹ The October 1, 2007, SIP revision rennumbers paragraph II(B)(2), “Renewal,” to subsection II(H); the EPA is not proposing to act on subsection II(H) in this NPRM. *See supra* note 3.

⁴² *See supra* note 3.

The August 8, 2014, and July 27, 2016, SIP revisions make minor language edits in subsection II(F), which do not alter the meaning of the provisions. The April 24, 2020, SIP revision adds new paragraph II(F)(2), shifting the subsequent paragraphs, to provide that when a construction permit includes only emission limits, monitoring, reporting, and/or other requirements that do not establish engineering or construction specifications, a source may operate under the terms and conditions of a construction permit until operating permit issuance and makes minor clarifying changes to indicate that paragraph II(F)(3), renumbered from paragraph II(F)(2), applies when a construction permit includes engineering and/or construction specifications. These changes clarify which operating permits need engineering- and/or construction-related certification.

The April 24, 2020, SIP revision also adds new paragraph II(F)(5), “General Operating Permits,” which allows the State to develop and issue general operating permits applicable to similar true minor stationary sources and provides for the following: (1) general operating permits will incorporate all applicable requirements for operation of similar sources and identify criteria by which sources can qualify for the permit; (2) sources may submit operating permit applications to the State that request coverage under the general permit, the State will grant coverage to sources certifying qualification for and agreeing to the conditions and terms of a general operating permit; (3) a source that has submitted an individual operating permit application to the State that has not requested coverage under the conditions and terms of a general operating permit for similar sources but which is determined to qualify for coverage under a general permit can be granted coverage under the general permit at the State’s sole discretion; (4) sources later determined not to qualify for a general operating permit are subject to enforcement; (5) authorization to operate under a general operating permit is a final permit action for purposes of judicial review; and (6) sources qualifying for coverage under a general operating permit can apply for an individual operating permit in lieu of coverage under a general permit. The April 24, 2020, SIP submittal notes that the addition of the general operating permit

provisions in paragraph II(F)(5) reflects current Department practices and streamlines permit issuance.

2. The EPA's Analysis of Subsection II(F) Revisions

As previously noted, the State's minor source operating permit program applies to true minor sources, where emissions of any air pollutant are below major source thresholds without any enforceable limitations to constrain emissions, and conditional major (synthetic minor) sources, where emissions of any pollutant are at or above applicable major source thresholds and which voluntarily accept one or more enforceable limitations to constrain emissions below major source thresholds.

The EPA has generally not required minor sources to obtain operating permits,⁴³ and, as noted above, States are not required to include minor source operating permit programs in their SIP. A SIP-approved FESOP program is a voluntary mechanism by which States can create federally enforceable restrictions on PTE to avoid major source, *e.g.*, title V,⁴⁴ permitting requirements. If not for enforceable permit emission limits constraining their emissions, conditional major sources would be subject to applicable major source requirements. As discussed above, South Carolina's FESOP program for conditional major permits is a subset of the SIP-approved minor source operating permit.

The changes to the portion of the South Carolina's minor source operating permit program that comprises its FESOP program applicable to conditional major sources are discussed in Section IV.D of this NPRM. In this section, the EPA discusses the changes to the portion of the minor source operating permit program addressing true minor sources. These sources are not covered by the portion of the State's minor source operating permit program addressing FESOPs. The changes to the State's minor source operating permit program provisions in subsection II(F) are clarifying or strengthening in nature or otherwise streamline

⁴³ There are certain exceptions, *e.g.*, area sources subject to sections 111 or 112. *See* 40 CFR 70.3 and 71.3.

⁴⁴ As noted previously, the CAA contains more specific statutory requirements applicable to major source operating permits in title V, including public participation requirements under section 502(b)(6).

the State's process. There are no Federal statutory or regulatory provisions that require public participation for these types of operating permits, and the changes to these non-FESOP minor source operating permit provisions are not inconsistent with any applicable statutory and regulatory requirements. With respect to the added general operating permit requirements for true minor sources, States have broad discretion in developing their optional minor source operating permit programs for voluntary inclusion in their SIPs.⁴⁵

D. Subsection II(G)

1. Summary of Subsection II(G) Revisions

The October 1, 2007, SIP revision revises the FESOP portion of South Carolina's SIP-approved minor source operating permit program, which contains the State's conditional major operating permit requirements. As explained previously, subsection II(G) sets forth requirements for stationary sources requesting federally enforceable permit emission limits to restrict their PTE to avoid qualifying as a major source under applicable major source thresholds. The 2007 SIP revision revises the subsection title from "Conditional Major Source Permits" to "Conditional Major Operating Permits." The October 1, 2007, SIP revision also (1) makes minor edits to subsection II(G), including administrative and minor language changes, *e.g.*, changes to clarify subsection II(G) applicability and requirements, to clearly indicate that subsection II(G) pertains to conditional major operating permits and that paragraph II(G)(7) pertains to general conditional major operating permits, as distinguished from the general operating permit provisions applicable to true minor sources under subsection II(F), to further clarify general conditional major operating permitting procedures in paragraph II(G)(7), and to add or update cross-references;⁴⁶ (2) adds language to further clarify that subsection II(G) applies to sources

⁴⁵ Under major source operating permit statutory requirements, CAA section 504(d) gives the EPA the authority to issue general permits for title V sources, and the EPA has regulations in place to authorize the use of general permits covering numerous similar sources under title V programs. *See* 40 CFR 70.6(d) and 71.6(d).

⁴⁶ The 2007 SIP revision updates cross-references to information that sources must include when submitting a conditional major operating permit request, but these changes appear to contain typographical errors that are superseded in subsequent SIP revisions. The 2007 SIP revision updates cross-references to paragraph II(G)(8) to II(G)(5). Paragraph II(G)(5) sets forth conditional major operating permit conditions, and subsequent SIP revisions

requesting federally enforceable limits to restrict PTE below major source thresholds, including those that received a synthetic minor construction permit; (3) adds language to specify that sources that received synthetic minor construction permits and are not subject to title V will receive conditional major operating permits; (4) adds permit shield language to note that if a renewal request is submitted pursuant to subsection II(H), conditional major sources can continue operating under the most recent conditional major permit until the State processes the renewal request; (5) modifies language to provide that requests for synthetic minor construction permits “conditioned to constrain the operation of the source” must be submitted within 15 days following, rather than prior to, startup, to clarify that the request needs to include any additional information required in subparagraph II(G)(5), to provide that corresponding conditional major operating permits without substantive limit changes will be issued without further public notice, and to provide that the State may, rather than will, conduct a compliance inspection prior to conditional major operating permit issuance; (6) adds language requiring conditional major operating permits to contain the permit conditions listed in paragraph II(J)(1) and any special permit conditions required to verify a source’s compliance with emission limitations and operational requirements; removes subparagraphs II(G)(5)(a)-(e); (7) modifies current language to specify additional requirements for conditional major operating permit applications only and removes requirements pertaining to standard operating permit applications, including removing subparagraphs II(G)(6)(a) and (b), II(G)(6)(b)(i), (iii), (iv), (vii), and (viii), and II(G)(6)(d) and adding language to specify that the general information requirements applicable to construction permit applications in paragraph II(C)(3) also apply to conditional major operating permit applications; and (8) makes clarifying changes to subparagraph II(G)(7)(a) to indicate that sources may submit conditional major operating permit applications to the State that request coverage under the general permit and the State will grant coverage to sources certifying

show that the affected provisions require conditional major sources to include the information identified in paragraph II(G)(6)—which sets forth additional requirements for conditional major operating permit requests and contains the requirements formerly found in paragraph II(G)(8) in the current SIP--when submitting a request.

qualification for and agreeing to the conditions and terms of a general conditional major operating permit.

Where the 2007 SIP revision removes subparagraphs II(G)(5)(a)-(e), the requirements referenced in those provisions are covered elsewhere under Section II, revised through the 2020 SIP revision. The requirements in subparagraphs II(G)(5)(a)-(e) in the current SIP now apply through new subparagraph II(G)(5)(a), and, in turn, paragraph II(J)(2), renumbered from paragraph II(G)(4) and revised through the 2020 SIP revision.⁴⁷ As noted above, new subparagraph II(G)(5) requires conditional major operating permits to contain the standard permit conditions listed in paragraph II(J)(1) and any special permit conditions required to verify a source's compliance with emission limitations and operational requirements.

Where the 2007 SIP revision removes subparagraphs II(G)(6)(a) and (b), II(G)(6)(b)(i), (iii), (iv), (vii), and (viii), and II(G)(6)(d), the requirements referenced in those provisions pertain to construction, rather than operating, permit application requirements and/or are covered elsewhere under subsection II(F) or Section II. Those requirements now apply through new subparagraph II(G)(6)(a), and, in turn, new subparagraph II(C)(3), which, as previously noted, includes renumbered subparagraphs II(A)(2)(a)-(g), revised through the 2020 SIP revision, and paragraph II(G)(6)(a), revised through the 2020 SIP revision.⁴⁸ Subparagraph II(G)(6)(a) requires conditional major operating permit applications to include the information required in paragraph II(C)(3) and subparagraphs II(G)(6)(a)(i)-(iii), renumbered from subparagraphs II(G)(8)(b)(ii), (v), and (vi) and revised through the 2020 SIP revision. Some of the changes to section II through the 2020 SIP revision result in comparable, not identical, requirements for conditional major operating permit applications.

The July 18, 2011, SIP revision makes a minor edit to paragraph II(G)(4) to revise the paragraph title to "New or Modified Sources." Next, the August 8, 2014, SIP revision makes

⁴⁷ See *supra* note 32.

⁴⁸ See *supra* note 35.

minor edits to subsection II(G), including administrative and minor language changes and restructuring edits. In the 2014 SIP revision, some of the requirements in subparagraph II(G)(2)(c) are restructured into subparagraph II(G)(2)(d), shifting the subsequent subparagraphs. Similarly, some of the requirements in subparagraph II(G)(7)(a) are restructured into subparagraphs II(G)(7)(b)-(d), shifting the subsequent paragraphs. Additionally, in the August 8, 2014, SIP revision, a change to subparagraph II(G)(2)(c) removes the requirement for renewed conditional major operating permits to undergo public participation pursuant to the procedures in subsection II(N). The July 27, 2016, SIP revision makes a minor language edit in subparagraph II(G)(4)(b).

The April 24, 2020, SIP revision makes minor edits to subsection II(G), including administrative and minor language changes, *e.g.*, clarifying changes to clearly indicate that paragraph II(G)(7) pertains to general conditional major operating permits, as distinguished from other general permit provisions, *i.e.*, those applicable to true minor sources in subsection II(F), and removes permit shield language added in the 2007 SIP revision providing that conditional major sources can operate under the most recent conditional major permit, with a renewal request submitted pursuant to subsection II(H), until the State processes the renewal request, shifting the subsequent subparagraphs.⁴⁹

The April 24, 2020, SIP revision also makes restructuring edits. In the 2020 SIP revision, the requirements in subparagraph II(G)(7)(c) are restructured into subparagraph II(G)(7)(c)(i) under subparagraph II(G)(7)(c) and a new heading, “Coverage under a General Conditional Major Operating Permit.” Under that subparagraph, new subparagraph II(G)(7)(c)(ii) states that a source that has submitted an individual conditional major operating permit application to the State that has not requested coverage under the conditions and terms of a general conditional

⁴⁹ The April 24, 2020, SIP revision adds equivalent language providing that, by submitting a renewal request meeting requirements in paragraphs II(H)(2)-(5), a source owner or operator may continue operating in accordance with the most recent operating permit until the State takes final action on the renewal request. The EPA is not proposing to act on subsection II(H) in this NPRM. *See supra* note 3.

major operating permit for similar sources but which is determined to qualify for coverage under a general conditional major operating permit may be granted coverage under a general conditional major operating permit at the State's sole discretion. The April 24, 2020, SIP submittal notes that this change clarifies current Department work practices and was made to clarify and streamline the permit application process.

The 2020 SIP revision also adds new subparagraph II(G)(7)(g), consistent with true minor source general operating permit requirements in paragraph II(F)(5)(f), which provides that sources qualifying for coverage under a general conditional major operating permit may apply for an individual conditional major operating permit in lieu of coverage under a general conditional major operating permit. The April 24, 2020, SIP submittal notes that the addition of the general conditional major operating permit provisions in paragraph II(G)(7)(g) clarifies a source's ability to request an individual conditional major operating permit in lieu of coverage under a general conditional major operating permit.

2. The EPA's Analysis of Subsection II(G) Revisions

As described above, SIP-approved FESOP programs are voluntary mechanisms by which States can create federally enforceable restrictions on PTE to avoid major source requirements. The changes to the portion of the State's minor source operating permitting program covering FESOPs (conditional major permits) are clarifying or strengthening in nature or otherwise streamline the State's process. The EPA is proposing to determine that these changes are approvable. The SIP would continue to require public participation for individual and general conditional major permits.⁵⁰

E. Subsection II(I)

1. Summary of Subsection II(I) Revisions

The October 1, 2007, SIP revision adds new subsection II(I), "Registration Permits." New subsection II(I) allows the State to develop and issue registration permits, which are a

⁵⁰ See subparagraphs II(G)(2)(a) and II(G)(7)(a), as revised through the April 24, 2020, SIP revision.

subcategory of general permits that cover the construction and operation of true minor sources in certain industry categories, to streamline the permitting process for specific source categories. The new subsection streamlines the permitting process for those sources and provides for the following: (1) registration permits will be developed by the State and will specify all applicable requirements for construction and operation of sources subject to registration permits; (2) registration permits will be developed only for true minor sources; (3) sources can submit applications for coverage by certifying qualification for, and agreeing to the conditions of, registration permits, and sources later determined not to qualify for the registration permit are subject to enforcement; (4) approval to operate under a permit is a final permit action for the purposes of judicial review; and (5) sources will adhere to general requirements under paragraph II(J)(1) and any other special permit conditions necessary to verify compliance with operational requirements and emission limits.

The July 18, 2011, SIP revision (1) makes administrative edits to subparagraph II(I)(1)(b) to correct punctuation and a typographical error; (2) adds language to assert that, regardless of qualification for registration permits, the State reserves the right to require construction and operating permits on a case-by-case basis; and (3) makes minor language changes to clarify that registration permits shall contain any applicable permit conditions under subsection II(J) as the State finds appropriate, rather than all permit conditions listed in paragraph II(J)(1).

The August 8, 2014, SIP revision makes minor edits to subsection II(I), including administrative and minor language changes and restructuring edits. In the 2014 SIP revision, some of the requirements in subparagraph II(I)(2)(a) are restructured into subparagraph II(I)(2)(b), shifting the subsequent subparagraph. The 2014 SIP revision also adds language asserting that the State can reopen registration permits for cause or to include new standards or regulations that become applicable during the lifetime of the permit and removes language at subparagraph II(I)(1)(a) requiring the State to provide public notice and the opportunity for public participation prior to the development of new registration permits.

The April 24, 2020, SIP revision makes minor edits to subsection II(I), including administrative and minor language changes and restructuring edits. In the 2024 SIP revision, some of the requirements in II(I)(1)(a) are restructured into subparagraph II(I)(1)(b), shifting the subsequent subparagraph. Similarly, the requirements in II(I)(2)(a) are restructured into subparagraph II(I)(2)(a)(i) under subparagraph II(I)(2)(a) and a new heading, “Coverage under a Registration Permit.”⁵¹ Under that subparagraph, new subparagraph II(I)(2)(a)(ii) states that a source that has submitted an individual permit application to the State that has not requested coverage under the conditions and terms of a registration permit for similar sources but which is determined to qualify for coverage under a registration permit may be granted coverage under the registration permit at the State’s sole discretion. The April 24, 2020, SIP submittal notes that this change was made to clarify and streamline the permit application process. In the 2020 SIP revision, some of the requirements in subparagraph II(I)(2)(b) are restructured into subparagraph II(I)(2)(c), shifting the subsequent subparagraphs. The 2020 SIP revision also adds new subparagraph II(I)(2)(e), which provides that sources qualifying for coverage under a registration permit may apply for an individual permit in lieu of coverage under a general registration permit.

2. The EPA’s Analysis of Subsection II(I) Revisions

Section II, as revised through the April 24, 2020, SIP revision, allows the State to develop minor source general construction and operating permit programs. The State’s new registration permit requirements streamline the State’s general permitting process for the covered sources under specific source categories, which, pursuant to subparagraph II(I)(1)(c) “will be developed only for specific stationary source groups with uncontrolled potential to emit less than the threshold for major source groups” under the State’s title V, PSD, and NNSR programs, “where equipment similarities and simplicity remove the need for in depth, site-specific review.”

Where the State’s other minor source general construction and operating permit programs

⁵¹ In a letter dated May 14, 2026, received by the Agency on May 15, the State clarified that relevant changes submitted in the August 8, 2014, SIP revision were retained in subparagraph II(I)(2)(a) in the April 24, 2020, SIP revision.

potentially apply to any similar sources that meet certain criteria, *e.g.*, similar units or those with similar overall emissions thresholds, South Carolina's registration permit program applies to true minor stationary sources, *i.e.*, those not seeking to limit their PTE to avoid major source status, that fall within a specified industrial grouping or sector. In the October 1, 2007, SIP submittal, SC DES states that new subsection II(I) allows the State to develop and implement registration permits for various types of true minor sources applicable to the construction or operation of that specific category of stationary sources, thereby eliminating the requirement for such sources to submit typical construction permit applications. The within-grouping or -sector equipment similarities remove the need for in-depth, site-specific permitting review under the State's minor NSR program.

As with other minor source general permitting programs, the EPA interprets the relevant statutory and regulatory provisions to allow States to develop mechanisms such as registration permits to authorize construction and operation for true minor sources, as long as, where the subsection II(I) requirements cover the construction and modification of similar true minor sources for certain industry categories, such mechanisms assure that the NAAQS are achieved and meet other applicable requirements. Where the subsection II(I) requirements cover the construction and modification of similar true minor sources, the addition of these registration permitting provisions is consistent with applicable statutory and regulatory requirements with the exception of the current public participation requirements in 40 CFR 51.161, which the EPA proposed to revise in its July 7, 2026, NPRM. If that NPRM is finalized as proposed, subsection II(I), which does not require that the subject true minor source registration permits undergo public participation, would be consistent with the revised requirements in 51.161.

Similarly, as with other minor source general operating permitting programs, States have broad discretion in developing those optional programs for voluntary inclusion in SIPs. Where the subsection II(I) requirements cover the operation of similar true minor sources for certain industry categories, the addition of and changes to those requirements under the portion of the

State's minor source operating permit program covering true minor sources are not covered by the portion of South Carolina's minor operating permit program addressing FESOPs. There are no Federal statutory or regulatory provisions that require public participation for these types of operating permits.

Furthermore, in the current SIP, and as revised through the April 24, 2020, SIP revision, Regulation 61-62.1, Section II requires public participation for synthetic minor and conditional major permits, by which sources adopt federally enforceable limitations on PTE to avoid major source status and associated requirements. With the cumulative changes to Section II in the SIP revisions submitted through 2020, SC DES may, but is not required to, administer public participation for additional permitting activities, *i.e.*, true minor source permits. Therefore, with respect to public participation, the State's added registration permitting provisions applicable to true minor sources, which streamline the permitting process for similar sources for certain industry categories, are consistent with the level of public participation already required for other true minor source permits in the SIP. In other words, the addition of subsection II(I), where public participation is concerned, is a neutral change that does not result in the addition or removal of public participation requirements already applicable to the sources subject to the minor source permitting program.

F. Subsection II(N)

1. Summary of Subsection II(N) Revisions

The October 1, 2007, SIP revision revises the State's public participation requirements. Subsection II(N) sets forth public participation requirements for (1) stationary sources requesting synthetic minor construction permits; (2) general synthetic minor construction permits applicable to similar types of synthetic minor sources; (3) stationary sources requesting conditional major operating permits (FESOPs); and (4) general conditional major operating permits (general FESOPs) applicable to similar types of conditional major sources. The October 1, 2007, SIP revision (1) rennumbers the public participation requirements in paragraph II(G)(5) to standalone

subsection II(N); (2) makes minor edits to subsection II(N), including administrative edits, *e.g.*, updating a cross-reference at paragraph II(N)(6), from paragraph II(G)(5) to subsection II(N), and clarifying edits, *e.g.*, clarifying language changes to paragraph II(N)(1); (3) adds discretionary language at paragraph II(N)(1) clarifying that the State can, as it finds appropriate, require public notice and comment for additional permitting activities, even when not otherwise required by the State's regulations; and (4) adds language at paragraph II(N)(1) clarifying that, in addition to notice via a newspaper or the State Register, and mailing list correspondence, the State can use any other means of public notice, as it finds appropriate.

The July 18, 2011, SIP revision makes a minor clarifying edit to paragraph II(N)(5) to reflect that an approved construction permit is required prior to the commencement of construction, *i.e.*, removes a reference to operating permits since the section only involves construction permits. Additionally, the July 18, 2011, SIP submittal makes minor changes to the discretionary language added to paragraph II(N)(1) in the October 1, 2007, SIP revision; where the language added in the 2007 SIP revision provides that the State may use any other means of public notice, as it finds appropriate, in the 2011 SIP submittal, paragraph II(N)(1) states the State may use other means of public notice in addition to notice via a newspaper or the State Register, and mailing list correspondence.

The August 8, 2014, SIP revision makes minor edits to subsection II(N), including administrative, clarifying, and minor language changes and restructuring edits; the 2014 SIP revision also adds language to identify SC DES's website as another method of notifying the public of permitting activity. In the August 8, 2014, SIP revision, the required elements of public notice in paragraph II(N)(2) are restructured into new subparagraphs II(N)(2)(a)-(g) under paragraph II(N)(2) and revised. Similarly, some of the requirements that identify how the State will record and address comments in paragraph II(N)(3) are restructured into new subparagraphs II(N)(3)(a) and (b) under paragraph II(N)(3) and revised by removing the requirement that the State provide a written response to all written comments received by mail or during the public

hearing and broadening the State's procedures to note that the State will consider all comments received at any public hearing(s), not just those received in writing.

The April 24, 2020, SIP revision makes administrative changes to subsection II(N) and revises paragraph II(N)(1) to allow the State to provide public notice by posting to any public website identified by the State, rather than just SC DES's website, and to clarify that, in addition to notice via a newspaper or the State Register, and mailing list correspondence, the State can use "additional" (rather than "other") means of public notice, "including, but not limited to public meetings," clarifying that public notice via a newspaper, the public website, or the State Register, and mailing list correspondence, is required, and additional public notice options beyond those, *e.g.*, public meetings, are also available to the State.

2. The EPA's Analysis of Subsection II(N) Revisions

As noted previously in this NPRM, in the current SIP, and as revised through the April 24, 2020, SIP revision, Regulation 61-62.1, Section II requires public participation for synthetic minor and conditional major permits (FESOPs). With the changes to subsection II(N) in the SIP revisions submitted through 2020, SC DES may, but is not required to, administer public participation for additional permitting activities. Where the subsection II(N) public participation procedures cover the construction and modification of synthetic minor sources, that subsection and the changes to the State's public participation procedures within are consistent with applicable statutory and regulatory requirements with the exception of the current public participation requirements in 40 CFR 51.161, which the EPA proposed to revise in its July 7, 2026, NPRM. If that NPRM is finalized as proposed, subsection II(N), which does not require public participation procedures to permitting activities other than the issuance of synthetic minor and conditional major permits, would be consistent with the revised requirements in 51.161.

The requirements under the portion of the State's minor source operating permit program covering true minor sources are not covered by the portion of South Carolina's minor operating permit program addressing FESOPs, and therefore, the EPA is not evaluating the public

participation procedures in subsection II(N) as they relate to these non-FESOP permits under the 1989 Preamble. There are no Federal statutory or regulatory provisions that require the public participation procedures in subsection II(N) to cover these types of operating permits.

As noted above, in the current SIP, and as revised through the April 24, 2020, SIP revision, 61-62.1, Section II requires public participation for synthetic minor and conditional major permits. With the changes to subsection II(N) submitted through 2020, SC DES may, but is not required to, administer public participation for additional permitting activities, *i.e.*, true minor source permits. Therefore, with respect to public participation, the State's revised public participation requirements are consistent with the level of public participation already required for the minor source permits in the SIP. In other words, the changes to subsection II(N), where public participation is concerned, are a neutral change that does not result in the addition or removal of public participation requirements already applicable to the sources subject to the minor source permitting program, except that the State can now require public participation for additional permitting activities, if it determines public participation to be appropriate.

Furthermore, the changes in the SIP revisions through April 24, 2020, to allow for other methods of public notice, including changes to provide that the State may identify and use a public website to provide public notice, are consistent with the current regulations at 40 CFR 51.161. Through 2012 guidance to permitting authorities, the EPA clarified that the regulatory requirement for notice by prominent advertisement in 40 CFR 51.161(b)(3) is media neutral for true minor sources.⁵² In a subsequent October 18, 2016, rulemaking, the EPA revised its interpretation and determined that its media neutral interpretation of prominent advertisement also applied to synthetic minor sources.⁵³ In that 2016 rulemaking, the EPA also clarified that its interpretation of 40 CFR 51.161(b)(3) also applied to the requirement in 40 CFR 51.161(b)(1) and revised 40 CFR 51.161 to allow for e-notice of the draft permit and other information.

⁵² See "Minor New Source Review Program Public Notice Requirements under 40 CFR 51.161(b)(3)" (April 17, 2012), available at <https://www.epa.gov/sites/default/files/2015-07/documents/pubnot.pdf>.

⁵³ See 81 FR 71613, 71617.

V. Incorporation by Reference

In this document, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, and as discussed in Sections I-V of this preamble, the EPA is proposing to incorporate by reference South Carolina Regulation 61-62.1, Section II, *Permit Requirements*, subsections II(D), II(E), II(F), II(G), II(I), and II(N), State effective on April 24, 2020. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 4 office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

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 CAA and applicable Federal regulations.⁵⁴ Thus, in reviewing SIP submissions, the EPA’s role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely proposes to approve 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);
- Is not an Executive Order 14192 (90 FR 9065, February 6, 2025) regulatory action because this action is not significant under Executive Order 12866;
- 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

⁵⁴ See 42 U.S.C. 7410(k); 40 CFR 52.02(a).

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 subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- 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.

Because this proposed action merely proposes to approve State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law, this proposed action for the State of South Carolina does not have Tribal implications as specified by Executive Order 13175.⁵⁵ Therefore, this action will not impose substantial direct costs on Tribal governments or preempt Tribal law. The Catawba Indian Nation Reservation is located within the boundary of York County, South Carolina. Pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27-16-120 (Settlement Act), “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.” The Catawba Indian Nation also retains authority to impose regulations applying higher environmental standards to the Reservation than those imposed by State law or local governing bodies, in accordance with the Settlement Act.

⁵⁵ See 65 FR 67249, November 9, 2000.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, 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: August 14, 2026.

Kristy Eubanks,
Deputy Regional Administrator,
Performing the functions and duties of the Regional Administrator, Region 4.

[FR Doc. 2026-16930 Filed: 8/18/2026 8:45 am; Publication Date: 8/19/2026]