EPA APPROVED FLORIDA REGULATIONS

State citation (section)	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	* * *
Chapter 62–210 Stationary Sources—General Requirements				
*	*	*	*	* * *
62–210.350	Public Notice and Comment.	10/12/2008	07/29/2020 [Insert citation of publication].	Except for 62–210.350(1)(c) which was withdrawn from EPA consideration on June 28, 2017.
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[FR Doc. 2020–15700 Filed 7–28–20; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2019–0612; FRL–10012–02–Region 4]

Air Plan Approval; SC; NO_X SIP Call and Removal of CAIR

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving State Implementation Plan (SIP) revisions submitted by the State of South Carolina through letters dated April 12, 2019, and July 11, 2019, to establish a SIP-approved state control program to comply with the Nitrogen Oxides (NO_X) SIP call obligations for electric generating units (EGUs) and large non-EGUs. EPA is also approving the removal of the SIP-approved portions of the State's Clean Air Interstate Rule (CAIR) Program rules from the South Carolina SIP. In addition, EPA is approving into the SIP state regulations that establish an alternative monitoring option for certain sources.

DATES: This rule is effective August 28, 2020.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2019–0612. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials can either be retrieved electronically via *www.regulations.gov* or in hard copy at the Air Regulatory Management 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. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Gobeail McKinley, Air Regulatory Management 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) 562–9230. Ms. McKinley can also be reached via electronic mail at *mckinley.gobeail@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Under Clean Air Act (CAA or Act) section 110(a)(2)(D)(i)(I), which EPA has traditionally termed the good neighbor provision, states are required to address the interstate transport of air pollution. Specifically, the good neighbor provision requires that each state's implementation plan contain adequate provisions to prohibit air pollutant emissions from within the state that will significantly contribute to nonattainment of the national ambient air quality standards (NAAQS), or that will interfere with maintenance of the NAAQS, in any other state.

In October 1998 (63 FR 57356), EPA finalized the ''Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone'' (''NO_X SIP Call''). The NO_X SIP Call required eastern states, including South Carolina, to submit SIPs that prohibit excessive emissions of ozone season NO_X by implementing statewide emissions budgets.[1] The NO_X SIP Call addressed the good neighbor provision for the 1979 ozone NAAQS and was designed to mitigate the impact of transported NO_X emissions, one of the precursors of ozone. EPA developed the NO_X Budget Trading Program, an allowance trading program that states could adopt to meet their obligations under the NO_X SIP Call. This trading program allowed the following sources to participate in a regional cap and trade program: Generally EGUs with capacity greater than 25 megawatts (MW); and large industrial non-EGUs, such as boilers and combustion turbines, with a rated heat input greater than 250 million British thermal units per hour (MMBtu/hr). The NO_X SIP Call also identified potential reductions from cement kilns and stationary internal combustion engines.

To comply with the NO_X SIP Call requirements, South Carolina Department of Health and Environmental Control (SC DHEC) promulgated provisions at Regulation 61–62.96, Subparts A through I. EPA approved the provisions into South Carolina's SIP in 2002.[2] The provisions required EGUs and large non-EGUs in the State to participate in the NO_X Budget Trading Program.

In 2005, EPA published CAIR, which required eastern states, including South Carolina, to submit SIPs that prohibited

[1] *See* 63 FR 57356 (October 27, 1998). As originally promulgated, the NO_X SIP Call also addressed good neighbor obligations under the 1997 8-hour ozone NAAQS, but EPA subsequently stayed and later rescinded the rule's provisions with respect to that standard. *See* 65 FR 56245 (September 18, 2000); 84 FR 8422 (March 8, 2019).

[2] *See* 67 FR 43546 (June 28, 2002).

emissions consistent with ozone season (and annual) NO_X budgets. *See* 70 FR 25162 (May 12, 2005). CAIR addressed the good neighbor provision for the 1997 ozone NAAQS and 1997 fine particulate matter ($PM_{2.5}$) NAAQS and was designed to mitigate the impact of transported NO_X emissions with respect to not only ozone but also $PM_{2.5.}$ CAIR established several trading programs that EPA implemented through Federal implementation plans (FIPs) for EGUs greater than 25 MW in each affected state, but not large non-EGUs; states could submit SIPs to replace the FIPs that achieved the required emission reductions from EGUs and/or other types of sources.[3] When the CAIR trading program for ozone season NO_X was implemented beginning in 2009, EPA discontinued administration of the NO_X Budget Trading Program; however, the requirements of the NO_X SIP Call continued to apply.

On October 9, 2007, EPA approved an ''abbreviated SIP'' for South Carolina, consisting of regulations governing allocation of NO_X allowances to EGUs for use in the trading programs established pursuant to CAIR, and related rules allowing additional sources to opt into the CAIR programs. *See* 72 FR 57209. The abbreviated SIP was implemented in conjunction with a FIP for South Carolina that specified requirements for emissions monitoring, permit provisions, and other elements of CAIR programs.

On October 16, 2009, EPA approved a ''full SIP'' for South Carolina, through which various CAIR implementation provisions became governed by State rules rather than Federal rules.[4] Consistent with CAIR's requirements, EPA approved a SIP revision in which South Carolina regulations: (1) Sunsetted its NO_X Budget Trading Program requirements, (2) removed NO_X SIP Call implementation requirements (*i.e.,* South Carolina Regulation 61–62.96, Subparts A through I, ''Nitrogen Oxides (NO_X) Budget Program''), and (3) incorporated CAIR (*i.e.,* South Carolina Regulation 61–62.96, Subparts AA through II, AAA through III, and AAAA through IIII, ''Nitrogen Oxides (NO_X) and Sulfur Dioxide (SO_2) Budget Trading Program''). *See* 74 FR 53167 (October 16, 2009). Participation of EGUs in the CAIR ozone season NO_X trading program addressed the State's obligation under the NO_X SIP Call for those units, and South Carolina also chose to require non-EGUs subject to the NO_X SIP Call to participate in the same CAIR trading program. In this manner, South Carolina's CAIR rules incorporated into the SIP addressed the State's obligations under the NO_X SIP Call with respect to both EGUs and non-EGUs.

The United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) initially vacated CAIR in 2008, but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR. *See North Carolina* v. *EPA,* 531 F.3d 896, *modified on rehearing,* 550 F.3d 1176 (D.C. Cir. 2008). The ruling allowed CAIR to remain in effect temporarily until a replacement rule consistent with the court's opinion was developed. While EPA worked on developing a replacement rule, the CAIR program continued to be implemented with the NO_X annual and ozone season trading programs beginning in 2009 and the SO_2 annual trading program beginning in 2010.

Following on the D.C. Circuit's remand of CAIR, EPA promulgated the Cross-State Air Pollution Rule (CSAPR) to replace CAIR and address the good neighbor provisions for the 1997 ozone NAAQS, the 1997 $PM_{2.5}$ NAAQS, and the 2006 $PM_{2.5}$ NAAQS. *See* 76 FR 48208 (August 8, 2011). Through FIPs, CSAPR required EGUs in eastern states, including South Carolina, to meet annual and ozone season NO_X emission budgets and annual SO_2 emission budgets implemented through new trading programs. Implementation of CSAPR began in January 1, 2015.[5] CSAPR also contained provisions that would sunset CAIR-related obligations on a schedule coordinated with the implementation of the CSAPR compliance requirements. Participation by a state's EGUs in the CSAPR trading program for ozone season NO_X generally addressed the state's obligation under the NO_X SIP Call for EGUs. CSAPR did not initially contain provisions allowing states to incorporate large non-EGUs into that trading program to meet the requirements of the NO_X SIP Call for non-EGUs. EPA also stopped administering CAIR trading programs with respect to emissions occurring after December 31, 2014.[6]

After litigation that reached the Supreme Court, the D.C. Circuit generally upheld CSAPR but remanded several state budgets to EPA for reconsideration, including the Phase 2 ozone season NO_X budget for South Carolina. *EME Homer City Generation, L.P.* v. *EPA,* 795 F.3d 118, 129–30 (D.C. Cir. 2015). EPA addressed the remanded ozone season NO_X budgets in the CSAPR Update, which also partially addressed eastern states' good neighbor obligations for the 2008 ozone NAAQS. *See* 81 FR 74504 (October 26, 2016). The air quality modeling for the CSAPR Update projected that South Carolina would not contribute significantly to nonattainment or interfere with maintenance in downwind areas for either the 1997 ozone NAAQS or the 2008 ozone NAAQS as of 2017, and the EGUs in the state therefore are no longer subject to a NO_X ozone season trading program under either CSAPR or the CSAPR Update.[7] The CSAPR Update also reestablished an option for most states to meet their ongoing obligations for non-EGUs under the NO_X SIP Call by including the units in the CSAPR Update trading program, but since South Carolina's EGUs do not participate in that trading program, the option is not available to South Carolina. Because South Carolina's EGUs and non-EGUs no longer participate in any CSAPR or CSAPR Update trading program for ozone season NO_X emissions, the NO_X SIP Call regulations at 40 CFR 51.121(r)(2) as well as anti-backsliding provisions at 40 CFR 51.905(f) and 40 CFR 51.1105(e) require these sources to maintain compliance with NO_X SIP Call requirements in some other way.

Under 40 CFR 51.121(i)(4) of the NO_X SIP Call regulations as originally promulgated, where a state's SIP contains control measures for EGUs and large non-EGUs, the SIP must also require these sources to monitor emissions according to the provisions of 40 CFR part 75, which generally entail the use of continuous emission monitoring systems (CEMS). South

[3] CAIR had separate trading programs for annual sulfur dioxide emissions, seasonal NO_X emissions and annual NO_X emissions.

[4] *See* 74 FR 53167.

[5] *See* 79 FR 71663 (December 3, 2014) and 81 FR 13275 (March 14, 2016).

[6] *See* 79 FR 71663 (December 3, 2014) and 81 FR 13275 (March 14, 2016).

[7] In the CSAPR Update, EPA relieved EGUs in South Carolina from the obligation to participate in the original CSAPR NO_X ozone season trading program for purposes of addressing the good neighbor requirements for the 1997 ozone NAAQS and did not require the EGUs to participate in the new CSAPR Update trading program for purposes of addressing the 2008 ozone NAAQS. *See* 40 CFR 52.38(b)(2)(ii)–(iii). EGUs in South Carolina remain subject to CSAPR state trading programs for annual NO_X and SO_2 emissions for purposes of addressing the $PM_{2.5}$ NAAQS under the state trading program rules codified in South Carolina regulation 61–62.97 that were adopted into the State's SIP. *See* 82 FR 47936. EPA acknowledges the D.C. Circuit's decision in *Wisconsin* v. *EPA,* 938 F.3d 303 (Sept. 13, 2019), remanding the CSAPR Update with respect to the adequacy of the rulemaking to address the good neighbor obligations with respect to the 2008 ozone NAAQS; however, the court's decision does not address the determinations made in the CSAPR Update regarding state's obligations with respect to the 1997 ozone NAAQS as those determinations were not challenged in the course of the litigation.

Carolina triggered this requirement by including control measures in their SIP for these types of sources, and the requirement has remained in effect despite the discontinuation of the NO_X Budget Trading Program after the 2008 ozone season. On March 8, 2019, EPA revised some of the regulations that were originally promulgated in 1998 to implement the NO_X SIP Call.[8] The revision gave states covered by the NO_X SIP Call greater flexibility concerning the form of the NO_X emissions monitoring requirements that the states must include in their SIPs for certain emissions sources. The revision amends 40 CFR 51.121(i)(4) to make part 75 monitoring, recordkeeping, and reporting optional, such that SIPs may establish alternative monitoring requirements for NO_X SIP Call budget units that meet the general requirements of 40 CFR 51.121(f)(1) and (i)(1). Under the updated provision, a state's implementation plan would still need to include some form of emissions monitoring requirements for these types of sources, consistent with the NO_X SIP Call's general enforceability and monitoring requirements at § 51.121(f)(1) and (i)(1), respectively, but states would no longer be required to satisfy these general NO_X SIP Call requirements specifically through the adoption of 40 CFR part 75 monitoring requirements.

On April 12, 2019, and July 11, 2019,[9] SC DHEC's letters requested that EPA update South Carolina's SIP to reflect the reinstated NO_X SIP Call requirements at Regulation 61–62, ''Air Pollution Control Regulations and Standards,'' provide additional monitoring flexibilities for certain units subject to the State's NO_X SIP Call regulations, and remove CAIR requirements. Additionally, the July 11, 2019, submission includes a demonstration under CAA section 110(l) intended to show that the April 12, 2019 SIP revision does not interfere with any applicable CAA requirements. On May 5, 2020 (85 FR 26635), EPA published a notice of proposed rulemaking (NPRM) proposing to establish a SIP-approved state control program to comply with NO_X SIP call obligations for EGUs and large non-EGUs. EPA also proposed approving the removal of the SIP-approved portions of the CAIR Program rules from the South Carolina SIP and approve into the SIP state regulations that establish an alternative monitoring option for certain sources.

See EPA's May 5, 2020 (85 FR 26635), NPRM for further detail on these changes and EPA's rationale for approving them. EPA did not receive public comments on the May 5, 2020, NPRM.

II. Incorporation by Reference

In this rule, the 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 South Carolina Regulation 61–62.96 titled, ''Nitrogen Oxides (NO_X) Budget Program,'' effective January 25, 2019, which reinstates applicable portions of EPA's 40 CFR part 96 NO_X SIP Call regulations and establishes alternative emission monitoring requirements for certain units. Also, in this rule, EPA is finalizing the removal of South Carolina Regulation 61–62.96 Subparts AA through II, AAA through III, and AAAA through IIII entitled, ''Nitrogen Oxides (NO_X) and Sulfur Dioxide (SO_2) Budget Trading Program,'' from the South Carolina State Implementation Plan, which is incorporated by reference in accordance with the requirements of 1 CFR part 51. 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). Therefore, the 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.[10]

III. Final Actions

EPA is approving South Carolina's SIP April 12, 2019, and July 11, 2019, SIP revisions and incorporating Regulation 61–62.96 entitled, ''Nitrogen Oxides (NO_X) Budget Program,'' and Regulation 61–62.96, Subpart H, Section 96.70 into the SIP. In addition, EPA is approving removal of the State's CAIR regulations at Regulation 61–62.96 Subparts AA through II, AAA through III, and AAAA through IIII entitled, ''Nitrogen Oxides (NO_X) and Sulfur Dioxide (SO_2) Budget Trading Program,'' from the SIP. EPA has concluded that these revisions will not interfere with attainment and maintenance of the NAAQS, reasonable further progress, or any other applicable requirement of the CAA.

IV. 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. 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, these actions merely approve state law as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law. For that reason, these actions:

- Are not significant regulatory actions 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);
- Are not Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory actions because SIP approvals are exempted under Executive Order 12866;
- Do not impose information collection burdens under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having significant economic impacts on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandates or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Do not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are 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

[8] *See* ''Emissions Monitoring Provisions in State Implementation Plans Required Under the NO_X SIP Call,'' 84 FR 8422.

[9] This submission also includes amended regulations which are not part of the federally-approved SIP and are not addressed in this notice such as: Amended Regulation 61–62.61, ''South Carolina Designated Facility Plan and New Source Performance Standards;'' amended Regulation 61–62.63, ''National Emission Standards for Hazardous Air Pollutants (''NESHAP'') for Source Categories;'' amended Regulation 61–62.68, ''Chemical Accident Prevention Provisions;'' and amended Regulation 61–62.70, ''Title V Operating Permit Program.''

[10] *See* 62 FR 27968 (May 22, 1997).

• Do 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).

Because these actions merely approve state law as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law, this action for the State of South Carolina does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Therefore, this action will not impose substantial direct costs on Tribal governments or preempt Tribal law. The Catawba Indian Nation (CIN) 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 CIN 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.

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 September 28, 2020. 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. 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, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: July 13, 2020.

Mary Walker,

Regional Administrator, Region 4.

Accordingly, 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 the entry for ''Regulation No. 62.96'' to read as follows:

§ 52.2120 Identification of plan.

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(c) * * *

EPA-APPROVED SOUTH CAROLINA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
Regulation No. 62.96	Nitrogen Oxides (NO_X) Budget Program	1/25/2019	7/29/2020, [Insert citation of publication].	
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[FR Doc. 2020–15534 Filed 7–28–20; 8:45 am]

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