

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

CHAPTER 61

Statutory Authority: S.C. Code Section 48-1-10 *et seq.*

Notice of Drafting:

The Department is proposing to amend South Carolina Air Pollution Control Regulation 61-62, *Air Pollution Control Regulations and Standards*, and the State Implementation Plan (SIP). Specifically, the Department proposes to amend R.61-62.96, *Nitrogen Oxides (NO_x) and Sulfur Dioxide (SO₂) Budget Trading Program General Provisions*. The proposed amendments are necessary to meet requirements of the United States Environmental Protection Agency (EPA). Interested persons are invited to present their views in writing to Alan Hancock, Regulatory Development Section, Bureau of Air Quality, 2600 Bull Street, Columbia, SC 29201. Comments may also be submitted by email to hancocam@dhec.sc.gov. To be considered, comments must be received by October 26, 2009, the close of the drafting comment period.

Synopsis:

On March 10, 2005, the EPA finalized the “Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule),” (also referred to as the CAIR).

The CAIR was published in the *Federal Register* on May 12, 2005 [70 FR 25162]. This rule affects 28 states and the District of Columbia. In the CAIR, the EPA found that South Carolina is one of the 28 states that contribute significantly to nonattainment of the National Ambient Air Quality Standards (NAAQS) for fine particles (PM_{2.5}) and/or 8-hour ozone in downwind States. The EPA required these states to revise their SIPs to reduce emissions of SO₂ and/or NO_x. Sulfur dioxide is a precursor to PM_{2.5} formation, and NO_x is a precursor to both PM_{2.5} and ozone formation. The EPA has determined that electric generating units (EGUs) in South Carolina contribute to nonattainment of PM_{2.5} and 8-hour ozone in downwind states.

On August 14, 2007, the Department submitted to the EPA its revision to the SIP and R. 61-62.96, *Nitrogen Oxides (NO_x) and Sulfur Dioxide (SO₂) Budget Trading Program General Provisions*.

Based upon EPA recommendation, the Department requested on September 19, 2007 that EPA act only on a portion of the August 14, 2007, submittal. This request for abbreviated SIP approval included a list of additional changes that the Department would make to R. 61-62.96 and the SIP in order to address EPA comments.

On October 9, 2007, the EPA published a direct final rule [72 FR 57209] approving the abbreviated CAIR SIP for South Carolina, effective December 10, 2007.

Via a letter dated February 20, 2008, the EPA required certain additional changes to R. 61-62.96 to receive full SIP approval. The Department revised R.61-62.96 and the SIP in order to address the comments contained in the September letter, effective October 24, 2008.

On July 11, 2008, the U.S. Court of Appeals for the D.C. Circuit (Court of Appeals) vacated the CAIR. Following petitions filed by parties in the litigation the Court of Appeals issued a subsequent opinion on December 23, 2008, wherein it remanded the CAIR to the EPA without vacatur. The CAIR is now in effect while the EPA develops a replacement rule.

The Department now proposes to amend R. 61-62.96, *Nitrogen Oxides (NO_x) and Sulfur Dioxide (SO₂)*

Budget Trading Program and the SIP to address the outstanding requests made by EPA in order to obtain full SIP approval. These proposed revisions will address the requirements of the CAIR NO_x Annual Allowance Allocations, the requirements of recordation of the CAIR NO_x Annual Allowance Allocations, the definition of “fossil-fuel-fired,” the definition of “Non-EGU Applicability,” the timing requirements of the CAIR NO_x Ozone Season Allocations, the requirements of the CAIR NO_x Ozone Seasons Allowance Allocations, and the requirements of recordation of the CAIR NO_x Ozone Season Allowances.

The Department also proposes to make typographical corrections and clarifications to R.61-62.96, as necessary.

The proposed amendments in this Notice will not be more stringent than the current Federal requirements and thus do not require legislative review.