



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2015-0177; FRL-9932-30-Region 4]

Approval and Promulgation of Implementation Plans; Alabama, Mississippi and South Carolina; Certain Visibility Requirements for the 2008 Ozone Standards

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve portions of submissions from Alabama, Mississippi, and South Carolina for inclusion into each State's implementation plan. This action pertains to the Clean Air Act (CAA or Act) infrastructure requirements for the 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS). The CAA requires that each state adopt and submit a state implementation plan (SIP) for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA. These submissions are commonly referred to as "infrastructure SIP submissions". Specifically, EPA is approving the portions of the submissions from Alabama, Mississippi, and South Carolina that pertain to a certain visibility requirement related to the 2008 8-hour ozone infrastructure SIPs for each state. All other applicable infrastructure requirements for the 2008 8-hour ozone NAAQS associated with these States' infrastructure submissions have been or will be addressed in separate rulemakings.

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

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2015-0177, by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
2. E-mail: R4-ARMS@epa.gov.
3. Fax: 404-562-9019.
4. Mail: “EPA-R04-OAR-2015-0177,” Air Regulatory Management Section , Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960.
5. Hand Delivery or Courier: Lynorae Benjamin, Chief, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office’s normal hours of operation. The Regional Office’s official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. “EPA-R04-OAR-2015-0177”. EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through www.regulations.gov or e-mail, information that you consider to be CBI or otherwise protected. The www.regulations.gov website is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA’s public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other

information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. 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: Nacosta Ward, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9140. Ms. Ward can be reached via electronic mail at ward.nacosta@epa.gov.

SUPPLEMENTAL INFORMATION:

I. Background

By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) are to be submitted by states within three years after promulgation of a new or revised NAAQS to provide for the implementation, maintenance, and enforcement of the new or revised NAAQS. EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as "infrastructure SIP" submissions. Sections

110(a)(1) and (2) require states to address basic SIP elements such as for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the newly established or revised NAAQS. More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for the “infrastructure” SIP requirements related to a newly established or revised NAAQS. The contents of an infrastructure SIP submission may vary depending upon the data and analytical tools available to the state, as well as the provisions already contained in the state's implementation plan at the time in which the state develops and submits the submission for a new or revised NAAQS.

On March 27, 2008, EPA promulgated a revised NAAQS for ozone based on 8-hour average concentrations. EPA revised the level of the 8-hour ozone NAAQS to 0.075 parts per million. *See* 77 FR 16436. States were required to submit infrastructure SIP submissions for the 2008 8-hour ozone NAAQS to EPA by March 2011. Infrastructure SIPs for the 2008 8-hour ozone NAAQS were provided on August 20, 2012, for Alabama; on May 29, 2012, and resubmitted July 26, 2012, for Mississippi; and on July 17, 2012, for South Carolina. Through this action, EPA is proposing approval of the visibility requirements of section 110(a)(2)(J) for the infrastructure SIP submissions from the states of Alabama, Mississippi, and South Carolina for the 2008 8-hour ozone NAAQS. All other applicable infrastructure requirements for the 2008 8-hour ozone NAAQS associated with these States have been or will be addressed in separate rulemakings.¹

¹ With the exception of provisions pertaining to prevention of significant deterioration (PSD) permitting, interstate transport, and visibility protection requirements, EPA took action on the infrastructure SIP submissions for Alabama, Mississippi and South Carolina for the 2008 8-hour ozone NAAQS on 80 FR 17689 (April 2, 2015), 80 FR 11131 (March 2, 2015), and 80 FR 11136 (March 2, 2015), respectively. EPA took action for the PSD portions of the Alabama, Mississippi and South Carolina infrastructure submissions on March 18, 2015. *See* 80 FR 14019.

II. What is EPA’s Analyses of Submittals From Alabama, Mississippi and South Carolina for Section 110(a)(2)(J) in Relation to Visibility?

EPA’s September 13, 2013, memorandum entitled “Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)” notes that EPA does not treat the visibility protection aspects of section 110(a)(2)(J) as applicable for purposes of the infrastructure SIP approval process. EPA recognizes that states are subject to visibility protection and regional haze program requirements under Part C of the Act (which includes sections 169A and 169B). However, in the event of the establishment of a new primary NAAQS, the visibility protection and regional haze program requirements under part C of the CAA do not change. Thus, EPA does not expect state infrastructure SIP submittals to address the visibility component of this element. Below provides more detail on how Alabama, Mississippi and South Carolina addressed the visibility requirements of section 110(a)(2)(J).

a. Alabama

As noted above, there are no newly applicable visibility protection obligations after the promulgation of a new or revised NAAQS. Thus, EPA has determined that states do not need to address the visibility component of 110(a)(2)(J) in infrastructure SIP submittals. In accordance with EPA’s guidance, Alabama did not address the section 110(a)(2)(J) visibility element in its infrastructure SIP submission. Because states do not need to address this element, EPA has

made the determination that Alabama's infrastructure SIP submission for the section 110(a)(2)(J) visibility element related to the 2008 8-hour ozone NAAQS is approvable.

b. Mississippi

Mississippi referenced its regional haze program as germane to the visibility component of section 110(a)(2)(J). As noted above, EPA has determined that states do not need to address the visibility component of 110(a)(2)(J) in infrastructure SIP submittals so Mississippi does not need to rely on its regional haze program to fulfill its obligations under section 110(a)(2)(J). As such, EPA has made the preliminary determination that it does not need to address the visibility protection element of section 110(a)(2)(J) in Mississippi's infrastructure SIP submission related to the 2008 8-hour ozone NAAQS.

c. South Carolina

South Carolina referenced its regional haze program as germane to the visibility component of section 110(a)(2)(J). As noted above, EPA has determined that states do not need to address the visibility component of 110(a)(2)(J) in infrastructure SIP submittals so South Carolina does not need to rely on its regional haze program to fulfill its obligations under section 110(a)(2)(J). As such, EPA has made the preliminary determination that it does not need to address the visibility protection element of section 110(a)(2)(J) in South Carolina's infrastructure SIP submission related to the 2008 8-hour ozone NAAQS.

III. Final Action

Today, EPA is approving the portions of the submissions from Alabama, Mississippi, and South Carolina that relate visibility requirements of 110(a)(2)(J) for the 2008 8-hour ozone infrastructure SIPs for each state. EPA is approving of these portions of these submissions because they are consistent with section 110 of the CAA.

EPA is publishing this rule without prior proposal because the Agency views this as a non-controversial revision and anticipates no adverse comments. However, in the proposed rules section of this Federal Register publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comment be filed. This rule will be effective on [Insert date 60 days from date of publication] without further notice unless the Agency receives relevant adverse comment by [Insert date 30 days from date of publication]. If EPA receives such comments, EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. EPA will address all relevant adverse comment received during the comment period in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so by [insert date 30 days from the date of publication of this direct final rule]. If no such comments are received, this rule will be effective on [Insert date 60 days from date of publication] and no further action will be taken on the proposed rule.

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 Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely

approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

With the exception of South Carolina, the SIPs involved in this action are not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law. With respect to today's action as it relates to South Carolina, this direct final rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because it does not have substantial direct effects on an Indian Tribe. The Catawba Indian Nation Reservation is located in the York County, South Carolina Area. Pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27-16-120, "all state and local environmental laws and regulations apply to the [Catawba Indian Nation] and Reservation and are fully enforceable by all relevant state and local agencies and authorities." EPA notes that today's action will not impose substantial direct costs on Tribal governments or preempt Tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to

publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [**FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register**]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. 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, Particulate Matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 30, 2015.

Heather McTeer Toney

Regional Administrator,

Region 4.

40 CFR part 52 is amended as follows:

PART 52-[APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS]

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

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

Subpart B—Alabama

2. Section 52.50(e), is amended by adding a new entry for

“110(a)(1) and (2) Infrastructure Requirements for the 2008 Ozone NAAQS” at the end of the table to read as follows:

§ 52.50 Identification of plan.

* * * * *

(e) * * *

EPA Approved Alabama Non-Regulatory Provisions

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
**	**	*	*	*
110(a)(1) and (2) Infrastructure Requirements for the 2008 Ozone NAAQS	Alabama	8/20/2012	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	Addressing the visibility requirements of 110(a)(2)(J) only

Subpart Z—Mississippi

3. Section 52.1270(e), is amended by adding a new entry for “110(a)(1) and (2) Infrastructure Requirements for the 2008 Ozone NAAQS” at the end of the table to read as follows:

§ 52.1270 Identification of plan.

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(e) * * *

EPA-Approved Mississippi Non-Regulatory Provisions

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
**	**	*	*	*
110(a)(1) and (2) Infrastructure Requirements for the 2008 Ozone NAAQS	Mississippi	7/26/2012	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	Addressing the visibility requirements of 110(a)(2)(J) only

Subpart PP—South Carolina

4. Section 52.2120(e), is amended by adding a new entry for “110(a)(1) and (2) Infrastructure Requirements for the 2008 Ozone NAAQS” at the end of the table to read as follows:

§ 52.2120 Identification of plan.

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(e) * * *

EPA-Approved South Carolina Non-Regulatory Provisions

Provision	State effective date	EPA approval date	Explanation
**	**	**	*
110(a)(1) and (2) Infrastructure Requirements for the 2008 Ozone NAAQS	7/17/2012	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	Addressing the visibility requirements of 110(a)(2)(J) only

[FR Doc. 2015-19840 Filed: 8/11/2015 08:45 am; Publication Date: 8/12/2015]