



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2017-0188; FRL-9965-70-Region 4]

Air Plan Approval;

Mississippi: Prevention of Significant Deterioration Updates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a portion of the State Implementation Plan (SIP) revision submitted by Mississippi, through the Mississippi Department of Environmental Quality (MDEQ), Office of Pollution Control, on June 7, 2016. Specifically, this action approves the portion of the SIP revision making changes to Mississippi's Prevention of Significant Deterioration (PSD) program by modifying the incorporation by reference (IBR) date for the Federal PSD regulations promulgated by EPA. By changing this date, approval of the SIP revision modifies the existing Greenhouse Gas (GHG) PSD permitting program and incorporates PSD provisions related to the 1997, 2006, and 2012 fine particulate matter (PM_{2.5}) and 2015 8-hour ozone National Ambient Air Quality Standards (NAAQS). This action is being taken pursuant to the Clean Air Act (CAA or Act) and its implementing regulations.

DATES: This direct final rule is effective **[Insert date 60 days after publication in the Federal Register]** without further notice, unless EPA receives adverse comment by **[Insert date 30 days after publication in the Federal Register]**. If EPA receives such comments, it will

publish a timely withdrawal of the direct final rule in the Federal Register and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2017-0188 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Andres Febres of 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. Mr. Febres can be reached via telephone at (404) 562-8966 or via electronic mail at febres-martinez.andres@epa.gov.

SUPPLEMENTARY INFORMATION:

I. What Action is the Agency Taking?

On June 7, 2016, MDEQ submitted a SIP revision for EPA's approval that includes changes to Mississippi's regulations to make them consistent with Federal requirements for the

New Source Review (NSR) permitting program, in particular for PSD permitting.¹ Additionally, the submittal renames the State's PSD regulations in the SIP from APC-S-5 to Mississippi Administrative Code, Title 11, Part 2, Chapter 5 (hereinafter referred to as Regulation 11-MAC-Part 2-5), and makes formatting changes to these regulations. EPA approved these administrative changes to the PSD regulations in a Letter Notice dated July 20, 2017.²

EPA is approving the portion of Mississippi's submittal that makes changes to the State's PSD program, as established in MDEQ's Regulation 11-MAC-Part 2-5, which applies to the construction or modification of any major stationary source in areas designated as attainment or unclassifiable as required by part C of title I of the CAA. This SIP revision is intended to make Mississippi's state PSD permitting rule consistent with the Federal requirements, as promulgated by EPA. The June 7, 2016 submittal updates the IBR date at 11-MAC-Part 2-5 Rule 5.1 and Rule 5.2 from November 4, 2011, to February 17, 2016, for the Federal PSD permitting regulations at 40 CFR 52.21 and 51.166.³ By modifying the IBR date of 40 CFR 52.21, Mississippi is making four changes to its PSD rules: 1) adopting provisions for GHG plantwide applicability limitations (PALs); 2) removing permitting requirements for certain GHG sources; 3) incorporating grandfathering provisions for the 2012 primary annual PM_{2.5}⁴ NAAQS and the

¹ EPA's regulations governing the implementation of NSR permitting programs are contained in 40 CFR sections 51.160 - 51.166; 52.21, 52.24; and part 51, Appendix S. The CAA NSR program is composed of three separate programs: PSD, NNSR, and Minor NSR. PSD is established in part C of title I of the CAA and applies in areas that meet the NAAQS – "attainment areas" – as well as areas where there is insufficient information to determine if the area meets the NAAQS – "unclassifiable areas." The NNSR program is established in part D of title I of the CAA and applies in areas that are not in attainment of the NAAQS – "nonattainment areas." The Minor NSR program addresses construction or modification activities that do not qualify as "major" and applies regardless of the designation of the area in which a source is located. Together, these programs are referred to as the NSR programs.

² Mississippi submitted a supplemental letter on May 7, 2017, clarifying its intent to incorporate these renaming and reformatting changes of APC-S-5 into the SIP.

³ 11-MAC-Part 2-5 incorporates by reference 40 CFR 52.21 with the exceptions noted in Rule 5.2 and incorporates by reference 40 CFR 51.166(f) and (q) with the exceptions noted in Rule 5.4.

⁴ Airborne particulate matter (PM) with a nominal aerodynamic diameter of 2.5 micrometers or less (a micrometer is one-millionth of a meter, and 2.5 micrometers is less than one-seventh the average width of a human hair) are considered to be "fine particles" and are also known as PM_{2.5}. Fine particles in the atmosphere are made up of a complex mixture of components including sulfate; nitrate; ammonium; elemental carbon; a great variety of organic

2015 8-hour ozone NAAQS; and 4) incorporating a correction to the definition of “regulated NSR pollutant” for PSD.⁵ These changes are discussed below.

II. Background

A. Greenhouse Gases and Plantwide Applicability Limits

On January 2, 2011, GHG emissions were, for the first time, covered by the PSD and title V operating permit programs.⁶ To establish a process for phasing in the permitting requirements for stationary sources of GHGs under the CAA PSD and title V programs, on June 3, 2010, the EPA published a final rule entitled “Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule” (hereinafter referred to as the GHG Tailoring Rule). *See* 75 FR 31514. In Step 1 of the GHG Tailoring Rule, which began on January 2, 2011, the EPA limited application of PSD and title V requirements to sources of GHG emissions only if they were

compounds; and inorganic material (including metals, dust, sea salt, and other trace elements) generally referred to as “crustal” material, although it may contain material from other sources. On July 18, 1997, EPA revised the NAAQS for PM to add new standards for fine particles, using PM_{2.5} as the indicator. Previously, EPA used PM₁₀ (inhalable particles smaller than or equal to 10 micrometers in diameter) as the indicator for the PM NAAQS. EPA established health-based (primary) annual and 24-hour standards for PM_{2.5}, setting an annual standard at a level of 15.0 micrograms per cubic meter (µg/m³) and a 24-hour standard at a level of 65 µg/m³ (62 FR 38652). At the time the 1997 primary standards were established, EPA also established welfare-based (secondary) standards identical to the primary standards. The secondary standards are designed to protect against major environmental effects of PM_{2.5}, such as visibility impairment, soiling, and materials damage. On October 17, 2006, EPA revised the primary and secondary 24-hour NAAQS for PM_{2.5} to 35 µg/m³ and retained the existing annual PM_{2.5} NAAQS of 15.0 µg/m³ (71 FR 61236). On January 15, 2013, EPA published a final rule revising the annual PM_{2.5} NAAQS to 12 µg/m³ (78 FR 3086).

⁵ EPA has not acted on, and is not currently acting on, the portion of Mississippi’s November 28, 2007 SIP revision that seeks to incorporate into the SIP, through a revision to APC-S-5 (state effective on September 24, 2007), the provisions amended in the Ethanol Rule (72 FR 24060) to exclude facilities that produce ethanol through a natural fermentation process from the definition of “chemical process plants” in the major NSR source permitting program found at 40 CFR 52.21(b)(1)(i)(a) and (b)(1)(iii)(t). Therefore, today’s action does not IBR this provision into the SIP. Additionally, today’s action does not incorporate into the SIP the provisions at 40 CFR 52.21(b)(2)(v) and (b)(3)(iii)(c) that were initially stayed for an 18-month period on March 31, 2010, and stayed indefinitely by the Fugitive Emissions Interim Rule, 76 FR 17548 (March 30, 2011). These provisions were not incorporated into Mississippi’s SIP through EPA’s December 29, 2010, September 26, 2012, and March 5, 2015 actions approving IBR updates to APC-S-5 (September 14, 2010, May 12, 2011, and February 10, 2012 SIP revisions, respectively) because the provisions were stayed and because Mississippi never requested that EPA incorporate the provisions into the SIP.

⁶ See the rule entitled “Reconsideration of Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs,” Final Rule, 75 FR 17004 (April 2, 2010).

subject to PSD or title V “anyway” due to their emissions of pollutants other than GHGs. These sources are referred to as “anyway sources.”

In Step 2 of the GHG Tailoring Rule, which applied as of July 1, 2011, the PSD and title V permitting requirements applied to some sources that were classified as major sources based solely on their GHG emissions or potential to emit GHGs. Step 2 also applied PSD permitting requirements to modifications of otherwise major sources that would increase only GHG emissions above the level in the EPA regulations. EPA generally described the sources covered by PSD during Step 2 of the GHG Tailoring Rule as “Step 2 sources” or “GHG-only sources.”

Subsequently, EPA published the GHG Step 3 Rule on July 12, 2012. *See* 77 FR 41051. In this rule, EPA decided against further phase-in of the PSD and title V requirements for sources emitting lower levels of GHG emissions. Thus, the thresholds for determining PSD applicability based on emissions of GHGs remained the same as established in Step 2 of the Tailoring Rule.

The GHG PALs portion of the July 12, 2012 final rule revised EPA regulations under 40 CFR part 52 for establishing PALs for GHG emissions. A PAL establishes a site-specific plantwide emission level for a pollutant that allows the source to make changes at the facility without triggering the requirements of the PSD program, provided that emissions do not exceed the PAL level. Under EPA’s interpretation of the Federal PAL provisions, such PALs are already available under PSD for non-GHG pollutants and for GHGs on a mass basis. EPA revised the PAL regulations to allow for GHG PALs to be established on a carbon dioxide equivalent (CO₂e)⁷ basis as well. *See* 77 FR 41051 (July 12, 2012). EPA finalized these changes in an effort to streamline Federal and SIP PSD permitting programs by allowing sources and

⁷ CO₂ equivalent (CO₂e) emissions refers to emissions of six recognized GHGs other than CO₂ which are scaled to equivalent CO₂ emissions by relative global warming potential values, then summed with CO₂ to determine a total equivalent emissions value. *See* 40 CFR 51.166(b)(48)(ii) and 52.21(b)(49)(ii).

permitting authorities to address GHGs using PALs in a manner similar to the use of PALs for non-GHG pollutants.

On June 23, 2014, the U.S. Supreme Court addressed the application of stationary source permitting requirements to GHG emissions in *Utility Air Regulatory Group (UARG) v. EPA*, 134 S. Ct. 2427 (2014). The Supreme Court upheld EPA’s regulation of Step 1 – or “anyway” sources – but held that EPA may not treat GHGs as air pollutants for the purposes of determining whether a source is a major source (or a modification thereof) and thus require the source to obtain a PSD or title V permit. Therefore, the Court invalidated PSD and title V permitting requirements for Step 2 sources.

In accordance with the Supreme Court decision, on April 10, 2015, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) issued an Amended Judgment vacating the regulations that implemented Step 2 of the GHG Tailoring Rule, but not the regulations that implement Step 1 of the GHG Tailoring Rule. *Coalition for Responsible Regulation, Inc. v. EPA*, 606 Fed. Appx. 6, 7 (D.C. Cir. 2015). With respect to Step 2 sources, the D.C. Circuit’s Judgment vacated the EPA regulations under review (including 40 CFR 51.166(b)(48)(v) and 40 CFR 52.21(b)(49)(v)) “to the extent they require a stationary source to obtain a PSD permit if greenhouse gases are the only pollutant (i) that the source emits or has the potential to emit above the applicable major source thresholds, or (ii) for which there is a significant emissions increase from a modification.” *Id.* at 7-8.

EPA promulgated a good cause final rule on August 19, 2015, entitled “Prevention of Significant Deterioration and Title V Permitting for Greenhouse Gases: Removal of Certain Vacated Elements.” *See* 80 FR 50199 (August 19, 2015) (hereinafter referred to as the Good Cause GHG Rule). The rule removed from the Federal regulations the portions of the PSD

permitting provisions for Step 2 sources that were vacated by the D.C. Circuit (i.e., 40 CFR 51.166(b)(48)(v) and 52.21(b)(49)(v)). EPA therefore no longer has the authority to conduct PSD permitting for Step 2 sources, nor can EPA approve provisions submitted by a state for inclusion in its SIP providing this authority. In addition, on October 3, 2016, EPA proposed to revise provisions in the PSD permitting regulations applicable to GHGs to fully conform with *UARG* and the Amended Judgment, but those revisions have not been finalized. *See* 81 FR 68110.

By revising the IBR date of 40 CFR 52.21 to February 17, 2016, Mississippi's June 7, 2016 SIP revision incorporates the GHG Step 3 Rule and removes permitting requirements for Step 2 sources.

B. Grandfather Provisions for 2012 Primary Annual PM_{2.5} and 2015 Ozone NAAQS

Pursuant to section 165(a)(3)(B) of the CAA and the implementing PSD regulations at 40 CFR 52.21(k)(1) and 51.166(k)(1), EPA requires that PSD permit applications include a demonstration that emissions from the proposed facility will not cause or contribute to a violation of any NAAQS that is in effect on the date the PSD permit is issued. On January 15, 2013 (78 FR 3086), and October 26, 2015 (80 FR 65292), EPA published new primary annual PM_{2.5} NAAQS and 8-hour ozone NAAQS, respectively. In these two revisions to the NAAQS, EPA established limited grandfathering provisions for certain PSD permit applications pending on the effective date of these revised NAAQS. Additionally, the revisions to both standards included the option to allow states and other air agencies that issue PSD permits under SIP-approved PSD programs to adopt a comparable grandfathering provision, as long as the provision is at least as stringent as that added to 40 CFR 51.166.

For the 2012 primary annual PM_{2.5} NAAQS, sources with PSD permit applications that

meet one of the following conditions would be allowed to give a demonstration that the source requesting the permit does not cause or contribute to a violation of the NAAQS based on the previous 1997 primary annual PM_{2.5} standard instead of the revised 2012 standard: (1) applications that have been determined to be complete on or before December 14, 2012; or (2) applications for which public notice of a draft permit or preliminary determination has been published as of the effective date of the revised 2012 PM_{2.5} NAAQS (March 18, 2013).

For the 2015 8-hour ozone NAAQS revision, sources with PSD permit applications that meet one of the following conditions would be allowed to give a demonstration that the source requesting the permit does not cause or contribute to a violation of the NAAQS based on the previous 2008 8-hour ozone standard, instead of the revised 2015 standard: (1) applications for which the reviewing authority has formally determined that the application is complete on or before October 1, 2015; or (2) applications for which the reviewing authority has first published a public notice of the draft permit or preliminary determination before the effective date of the revised 2015 8-hour ozone NAAQS (December 28, 2015).

By revising the IBR date of 40 CFR 52.21 to February 17, 2016, Mississippi's June 7, 2016 SIP revision incorporates both the 2012 annual PM_{2.5} and 2015 8-hour ozone grandfathering provisions for the PSD program.

C. PM_{2.5} Condensables Correction Rule

On May 16, 2008, EPA finalized a rule titled "Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5})," Final Rule, 73 FR 28321 (May 16, 2008) (hereinafter referred to as the 2008 NSR PM_{2.5} Rule). The 2008 NSR PM_{2.5} Rule revised the Federal NSR program requirements to establish the framework for implementing preconstruction permit review for the PM_{2.5} NAAQS in both attainment and

NAAAs. Among other things, the rule revised the definition of “regulated NSR pollutant” for PSD to add a paragraph providing that “particulate matter (PM) emissions, PM_{2.5} emissions and PM₁₀ emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures” and that on or after January 1, 2011, “such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM, PM_{2.5} and PM₁₀ in permits.” *See* 73 FR 28321 at 28348. A similar paragraph added to the nonattainment new source review (NNSR) rule does not include “particulate matter (PM) emissions.” *See* 40 CFR 51.165(a)(1)(xxxvii)(D).

On October 25, 2012, EPA took final action to amend the definition of “regulated NSR pollutant” promulgated in the 2008 NSR PM_{2.5} Rule regarding the PM condensable provision at 40 CFR 51.166(b)(49)(vi), 52.21(b)(50)(i) and Appendix S to 40 CFR 51. *See* 77 FR 65107. The PM_{2.5} Condensables Correction Rule removed the inadvertent requirement in the 2008 NSR PM_{2.5} Rule that the measurement of condensable particulate matter be included as part of the measurement and regulation of “particulate matter emissions” under the PSD program. The term “particulate matter emissions” includes filterable particles that are larger than PM_{2.5} or PM₁₀ and is an indicator measured under various New Source Performance Standards (NSPS). *See* 40 CFR part 60.⁸

By revising the IBR date of 40 CFR 52.21 to February 17, 2016, Mississippi’s June 7, 2016 SIP revision captures the PM_{2.5} Condensables Correction Rule promulgated by EPA on October 25, 2012. *See* 77 FR 65107.

III. Analysis of State’s Submittal

⁸ In addition to the NSPS, states regulated “particulate matter emissions” for many years in their SIPs for PM, and the same indicator has been used as a surrogate for determining compliance with certain standards contained in 40 CFR part 63, regarding National Emission Standards for Hazardous Air Pollutants.

Mississippi currently has a SIP-approved NSR program for PSD at 11-MAC-Part 2-5, including the regulation of GHGs under Step 1 and Step 2 of the GHG Tailoring Rule. The June 7, 2016 submittal revises the PSD regulations by changing the incorporation by reference date of 40 CFR 52.21 and 40 CFR 51.166 at 11-MAC-Part 2-5 Rule 5.1 and Rule 5.2 from November 4, 2011, to February 17, 2016.⁹ The effect of changing this incorporation by reference date at 40 CFR 52.21 is to include four changes to the PSD rules: 1) the adoption of GHG PAL provisions pursuant to the GHG Step 3 Rule; 2) the removal of permitting requirements for Step 2 sources; 3) the incorporation of 2012 PM_{2.5} and 2015 8-hour ozone NAAQS grandfathering provisions; and 4) the incorporation of the correction to the PM_{2.5} condensables provision as promulgated in the PM_{2.5} Condensables Correction Rule.

Mississippi's June 7, 2016 SIP revision seeks to add to the SIP elements of the EPA's July 12, 2012 rule implementing Step 3 of the phase-in of PSD permitting requirements for GHGs described in the GHG Step 3 Rule. Specifically, the incorporation of the GHG Step 3 Rule provisions will allow GHG-emitting sources to obtain PALs for their GHG emissions on a CO₂e basis. As explained in Section II.A above, a PAL establishes a site-specific plantwide emission level for a pollutant, which allows the source to make changes to individual units at the facility without triggering the requirements of the PSD program, provided that facility-wide emissions do not exceed the PAL.

The Federal GHG PAL regulations include provisions that apply solely to GHG-only, or Step 2, sources. Some of these provisions may no longer be applicable in light of the Supreme Court's decision in *UARG* and the D.C. Circuit's Amended Judgment. Since the Supreme Court has determined that sources and modifications may not be defined as "major" solely on the basis

⁹ As noted above, 11-MAC-Part 2-5 incorporates by reference 40 CFR 52.21 with the exceptions noted in Rule 5.2 and incorporates by reference 40 CFR 51.166(f) and (q) with the exceptions noted in Rule 5.4.

of GHGs emitted or increased, PALs for GHGs may no longer have value in some situations where a source might have triggered PSD based on GHG emissions alone. EPA has proposed action in an October 3, 2016 proposed rule to clarify the GHG PAL rules. *See* 81 FR 68110. However, PALs for GHGs may still have a role to play in determining whether a source that is already subject to PSD for a pollutant other than GHGs should also be subject to PSD for GHGs.

Moreover, the existing GHG PALs regulations do not add new requirements for sources or modifications that only emit or increase greenhouse gases above the major source threshold or the 75,000 ton per year GHG level in 40 CFR 52.21(b)(49)(iv). Rather, the PALs provisions provide increased flexibility to sources that wish to address their GHG emissions in a PAL. Since this flexibility may still be valuable to sources in at least one context described above, the Agency believes that it is appropriate to approve these provisions into the Mississippi SIP at this time.

Mississippi's June 7, 2016 submittal incorporates the Federal PSD provisions as of February 17, 2016, which is after the *UARG* decision, the D.C. Circuit's Amended Judgment, and EPA's August 19, 2015 Good Cause GHG Rule. Therefore, Mississippi incorporates fixes to the Federal rules to discontinue regulation of GHG-only, or Step 2, sources with this SIP revision. EPA is approving the removal of the regulation of Step 2 sources with this action.

EPA has concluded that approving these changes into the SIP will not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the CAA. Step 2 of the GHG Tailoring Rule was invalidated. EPA discussed the effects of PALs in the Supplemental Environmental Analysis of the Impact of the 2002 Final NSR Improvement Rules (November 21, 2002) (Supplemental Analysis). The Supplemental Analysis explained, "[t]he EPA expects that the adoption of PAL

provisions will result in a net environmental benefit. Our experience to date is that the emissions caps found in PAL-type permits result in real emissions reductions, as well as other benefits.” Supplemental Analysis at 6; *see also* 76 FR 49313, 49315 (August 10, 2011). EPA is therefore approving the PALs provisions into the Mississippi SIP, as incorporated by reference.

Mississippi’s June 7, 2016 SIP revision also incorporates revisions to the PSD permitting requirements for both the 2012 primary annual PM_{2.5} (*See* 78 FR 3086 (January 15, 2013)) and the 2015 ozone 8-hour (*See* 80 FR 65292 (October 26, 2015)) NAAQS. The new incorporation by reference date adds limited grandfathering provisions for both standards that allows sources who are eligible to meet the previous standard for these NAAQS instead of the newly promulgated standards. EPA is approving these grandfathering provisions of the 2012 primary annual PM_{2.5} and the 2015 8-hour ozone NAAQS, as incorporated by reference. EPA has concluded that this change will not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the CAA. The rationale for allowing states to include these grandfathering provisions into their SIPs is discussed in detail at 78 FR 3086 (January 15, 2013) (2012 primary annual PM_{2.5} NAAQS) and 80 FR 65292 (October 26, 2015) (2015 8-hour ozone NAAQS). EPA is therefore approving these grandfathering provisions into the Mississippi SIP, as incorporated by reference.

Finally, by changing the incorporation by reference date for 11-MAC-Part 2-5 in the SIP revision, Mississippi also adopts changes made by EPA in the PM_{2.5} Condensables Correction Rule. *See* 77 FR 65107 (October 25, 2012). As explained in Section II.C, the Federal rule corrected an inadvertent error in the definition of “regulated NSR pollutant” at 40 CFR 52.21(b)(50). EPA has concluded that this change will not interfere with any applicable

requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the CAA, and is approving this revision to the Mississippi SIP.

IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of Rule 5.1 and Rule 5.2 at Mississippi Administrative Code, Title 11, Part 2, Chapter 5, entitled “Regulations for the Prevention of Significant Deterioration of Air Quality,” effective May 28, 2016, which revises PSD rules.¹⁰ Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA’s approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.¹¹ EPA has made, and will continue to make, these materials generally available through www.regulations.gov and/or at the EPA Region 4 Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

V. Final Action

EPA is taking a direct final action to approve the portion of Mississippi’s June 7, 2016 SIP revision to update the IBR date for the Federal requirements of the PSD program. This SIP revision is intended to make Mississippi’s state permitting rule consistent with the Federal requirements, as promulgated by EPA. The June 7, 2016 SIP submission updates the IBR date at 11-MAC-Part 2-5 to February 17, 2016, for the Federal PSD permitting regulations at 40 CFR

¹⁰ See footnotes 3 and 5 for additional detail.

¹¹ 62 FR 27968 (May 22, 1997).

52.21 and 51.166. By revising the IBR date, this SIP revision modifies the existing GHG PSD permitting program and incorporates PSD provisions related to the 2012 primary annual PM_{2.5} and 2015 8-hour ozone NAAQS.

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

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All adverse comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on [**Insert date 60 days after publication in the Federal Register**] and no further action will be taken on the proposed rule.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those

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

- is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is 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.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's Federal Register, rather than file an immediate petition for judicial review

of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

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

Dated: July 25, 2017.

V. Anne Heard.

Acting Regional Administrator,

Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart Z - Mississippi

2. Section 52.1270(c) is amended by adding in alphanumerical order the undesignated heading “11-MAC-Part 2-5 Regulations for the Prevention of Significant Deterioration of Air Quality” and entries for “Rule 5.1” and “Rule 5.2” to read as follows:

§52.1270 Identification of plan.

* * * * *

(c) * * *

EPA-Approved Mississippi Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanation
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11-MAC-Part 2-5 Regulations for the Prevention of Significant Deterioration of Air Quality				

Rule 5.1	Purpose of this regulation	5/28/2016	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	The version of Rule 5.1 in the SIP does not incorporate by reference: 1) the provisions amended in the Ethanol Rule (published in the Federal Register May 1, 2007) to exclude facilities that produce ethanol through a natural fermentation process from the definition of “chemical process plants” in the major NSR source permitting program found at 40 CFR 52.21(b)(1)(i)(a) and (b)(1)(iii)(t), or 2) the provisions at 40 CFR 52.21(b)(2)(v) and (b)(3)(iii)(c) that were stayed indefinitely by the Fugitive Emissions Interim Rule (published in the Federal Register March 30, 2011). As discussed in [Insert citation of publication], EPA approved renaming and reformatting changes to the State’s SIP-approved PSD regulations via a July 20, 2017, Letter Notice.
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Rule 5.2	Adoption of Federal Rules by Reference	5/28/2016	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	The version of Rule 5.2 in the SIP does not incorporate by reference: 1) the provisions amended in the Ethanol Rule (published in the Federal Register May 1, 2007) to exclude facilities that produce ethanol through a natural fermentation process from the definition of “chemical process plants” in the major NSR source permitting program found at 40 CFR 52.21(b)(1)(i)(a) and (b)(1)(iii)(t), or 2) the provisions at 40 CFR 52.21(b)(2)(v) and (b)(3)(iii)(c) that were stayed indefinitely by the Fugitive Emissions Interim Rule (published in the Federal Register March 30, 2011). As discussed in [Insert citation of publication], EPA approved renaming and reformatting changes to the State’s SIP-approved PSD regulations via a July 20, 2017 Letter Notice.
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