



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2019-0391; FRL-10005-22-Region 4]

Air Plan Approval; MS; Revisions to the State Implementation Plan Approved by EPA

Through Letter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notification of administrative change.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action on administrative changes to the Mississippi State Implementation Plan (SIP). The changes consist of recodification of Mississippi's regulations, which EPA previously approved through Letter Notices. EPA has determined that this action falls under the "good cause" exemption in the Administrative Procedure Act (APA). This exemption in the APA authorizes agencies to dispense with public participation and to make an action effective immediately, thereby avoiding the 30-day delayed effective date otherwise provided for in the APA.

DATES: This action is effective [Insert date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket Identification No.

EPA-R04-OAR-2019-0391. All documents in the docket are listed on the www.regulations.gov

web site. 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 are available

either electronically through 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: Tiereny Bell, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Ms. Bell's telephone number is (404) 562-9088. Ms. Bell can also be reached via electronic mail at bell.tiereny@epa.gov.

SUPPLEMENTARY INFORMATION:

I. What is being addressed in this document?

EPA is taking final action on administrative changes to the Mississippi SIP. On May 23, 2016¹ and November 21, 2016, Mississippi submitted SIP revisions that recodify the State of Mississippi's Air Pollution Control (APC) Regulations formerly known as APC-S-1, APC-S-2, APC-S-3 and APC-S-5 to 11 Mississippi Administrative Code (MAC), Part 2, Chapter 1, 11 MAC, Part 2, Chapter 2, 11 MAC, Part 2, Chapter 3 and 11 MAC, Part 2, Chapter 5, respectively. EPA has determined that the revisions are minor SIP changes without any

¹ On May 23, 2016, MDEQ submitted a SIP revision that included the renumbering and reformatting of Mississippi's PSD regulations. On May 9, 2017, MDEQ submitted a supplemental letter to the May 23, 2016 SIP revision requesting EPA to recodify Mississippi's Air Pollution Control Regulation APC-S-5 to Mississippi Administrative Code (MAC), Title 11, Part 2, Chapter 5. This regulation was renamed on July 22, 2013.

substantive changes, and that they comply with all applicable requirements of the Clean Air Act (CAA) and EPA regulations concerning such SIP revisions. EPA approved these revisions through Letter Notices to the Mississippi Department of Environmental Quality (MDEQ) dated June 14, 2017 and July 20, 2017, consistent with the procedures outlined in both EPA's Notice of Procedural Changes on SIP processing published on January 19, 1989 at 54 FR 2214 and a memorandum dated April 6, 2011 entitled "Regional Consistency for the Administrative Requirements of State Implementation Plan Submittals and the Use of Letter Notices" from Janet McCabe, Former Deputy Assistant Administrator for the Office of Air and Radiation to the EPA Regional Administrators.

II. What action is EPA taking?

This action merely recodifies in 40 CFR 52.1270(c) the administrative amendments approved by EPA through its June 14, 2017 and July 20, 2017 Letter Notices to MDEQ.² EPA has determined that this action falls under the "good cause" exemption in section 553(b)(3)(B) of the APA. This exemption authorizes agencies to dispense with public participation when the agency for good cause finds that notice and public procedure would be impracticable, unnecessary, or contrary to the public interest. In addition, section 553(d)(3) allows an agency to, for good cause, make an action effective immediately, thereby avoiding the 30-day delayed effective date otherwise provided in the APA.

With respect to the SIP revision described above, this administrative action simply

² EPA did not act on the following rules in the State's November 21, 2016, submittal because they are not approved into the SIP: Rule 1.6, "New Sources," paragraphs B and C; Rule 1.8, "Provisions for Hazardous Air Pollutants"; and, Rule 1.12, "Provisions for Existing Hospital/Infectious Waste Incinerators." In addition, EPA did not act on changes included in the submittal that the State did not request be incorporated into the SIP, specifically changes to: Rule 1.1, subparagraphs (C)(1) and (2); Rule 1.2, definition of "Air Quality Action Day"; Rule 1.3, subparagraphs (G)(4) and (5); Rule 1.6, paragraphs (2) and (3); and the removal of language from the "Emergency" level for coal or oil-fired process steam generating facilities under Rule 3.5, Table 1, Section 2.

recodifies provisions which are already in effect as a matter of law in Federal and approved state programs. Public comment for this administrative action is “unnecessary” because the revisions are administrative and non-substantive in nature. Immediate notice of this action in the Federal Register benefits the public by providing the public notice of the updated Mississippi SIP.

Approval of these revisions will ensure consistency between state and federally-approved rules.

EPA has determined that these changes will not relax the SIP or adversely impact air quality.

III. Incorporation by Reference

In this document, 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 State of Mississippi’s APC Regulations formerly known as APC-S-1, APC-S-2, APC-S-3 and APC-S-5 to: 11 MAC, Part 2, Chapter 1, 11 MAC, Part 2, Chapter 2, 11 MAC, Part 2, Chapter 3 and, 11 MAC, Part 2, Chapter 5, respectively. These regulations were state effective July 25, 2013. 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, 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 in the next update to the SIP compilation.³

IV. Final Action

³ 62 FR 27968 (May 22, 1997).

EPA is taking final action on administrative changes to the Mississippi SIP. The changes consist of recodification of Mississippi's regulations, which EPA previously approved through Letter Notices. On May 23, 2016 and November 21, 2016, Mississippi submitted SIP revisions that recodify the State of Mississippi's Air Pollution Control (APC) Regulations formerly known as APC-S-1, APC-S-2, APC-S-3 and APC-S-5 to 11 Mississippi Administrative Code (MAC), Part 2, Chapter 1, 11 MAC, Part 2, Chapter 2, 11 MAC, Part 2, Chapter 3 and 11 MAC, Part 2, Chapter 5, respectively.

V. 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. 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 an information collection burden 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 mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 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
- 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).

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 [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: January 28, 2020.

Mary S. Walker,
Regional Administrator,
Region 4.

Title 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart Z—Mississippi

2. In § 52.1270, paragraph (c) is revised to read as follows:

§ 52.1270 Identification of plan.

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(c) *EPA Approved Mississippi regulations.*

EPA-Approved Mississippi Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanation
11 MAC—Part 1—Chapter 5 Mississippi Environmental Quality Permit Board: Regulations Regarding Administrative Procedures Pursuant to the Mississippi Administrative Procedures Act				
Rule 5.1	Description of Mississippi	5/11/2018	10/4/2018, 83 FR 50014	

	Environmental Quality Permit Board			
11 MAC Part 2–Chapter 1 Air Emission Regulations for the Prevention, Abatement, and Control of Air Contaminants				
Rule 1.1	General	6/25/2018	10/4/2018, 83 FR 50014	Except paragraphs (C)(1) and (2), which EPA has not approved into the SIP.
Rule 1.2	Definitions	7/25/2013	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	Except the definition of “Air Quality Action Day,” which EPA has not approved into the SIP.
Rule 1.3	Specific Criteria for Sources of Particulate Matter	7/25/2013	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	Except paragraph (G)(4), which is state effective February 9, 2009, and paragraph (G)(5), which is not approved into the SIP.
Rule 1.4	Specific Criteria for Sources of Sulfur Compounds	7/25/2013	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	
Rule 1.5	Specific Criteria for Sources of Chemical Emissions	7/25/2013	[Insert date of publication in <u>Federal</u>	

			<u>Register</u>], [Insert citation of publication]	
Rule 1.6	New Sources	7/25/2013	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	Except paragraphs (2) and (3), which EPA has not approved into the SIP.
Rule 1.7	Exceptions	7/25/2013	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	
Rule 1.9	Stack Height Considerations.	7/25/2013	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	
Rule 1.10	Provisions for Upsets, Startups, and Shutdowns	7/25/2013	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	
Rule 1.11	Severability	7/25/2013	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	

Rule 1.14	Provision for the Clean Air Interstate Rule	7/25/2013	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	
11 MAC Part 2–Chapter 2 Permit Regulations for the Construction and/or Operation of Air Emissions Equipment				
Rule 2.1	General Requirements	7/25/2013	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	
Rule 2.2	General Standards Applicable to All Permits	7/25/2013	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	
Rule 2.3	Application For Permit To Construct and State Permit To Operate New Stationary Source	7/25/2013	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	
Rule 2.4	Public Participation and Public Availability of Information	7/25/2013	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	

Rule 2.5	Application Review	7/25/2013	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	
Rule 2.6	Compliance Testing	7/25/2013	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	
Rule 2.7	Emission Evaluation Report	7/25/2013	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	
Rule 2.8	Procedures for Renewal of State Permit To Operate	7/25/2013	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	
Rule 2.9	Reporting and Recordkeeping	7/25/2013	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	
Rule 2.10	Emission Reduction Schedule	7/25/2013	[Insert date of	

			publication in <u>Federal Register</u>], [Insert citation of publication]	
Rule 2.11	General Permits	7/25/2013	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	
Rule 2.12	Multi-Media Permits	7/25/2013	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	
Rule 2.13	Exclusions	7/25/2013	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	
Rule 2.14	CAFOs	7/25/2013	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	
Rule 2.15	Options	7/25/2013	[Insert date of publication in <u>Federal Register</u>],	

			[Insert citation of publication]	
Rule 2.16	Permit Transfer	7/25/2013	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	
Rule 2.17	Severability	7/25/2013	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	
11 MAC Part 2–Chapter 3 Regulations for the Prevention of Air Pollution Emergency Episodes				
Rule 3.1	General	7/25/2013	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	
Rule 3.2	Definitions	7/25/2013	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	
Rule 3.3	Episode Criteria	7/25/2013	[Insert date of publication in <u>Federal Register</u>],	

			[Insert citation of publication]	
Rule 3.4	Emission Control Action Programs	7/25/2013	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	
Rule 3.5	Emergency Orders	7/25/2013	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	Except the removal of language from the “Emergency” level for coal or oil-fired process steam generating facilities under Rule 3.5, Table 1, Section 2, which is state effective June 3, 1988.
11 MAC Part 2–Chapter 5 Regulations for Prevention of Significant Deterioration for Air Quality				
Rule 5.1	Purpose of this Regulation	5/28/2016	8/8/17 (82 FR 37015)	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 § 52.21(b)(1)(i)(a) and (b)(1)(iii)(t), or (2) the provisions at § 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).
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Rule 5.2	Adoption of Federal Rules by Reference	5/28/2016	8/8/17 (82 FR 37015)	<p>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 § 52.21(b)(1)(i)(a) and (b)(1)(iii)(t), or (2) the provisions at § 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).</p>
11-MAC-Part 2-11 Regulations for Ambient Air Quality Nonattainment Areas				

Rule 11.1	General	9/26/2015	1/12/2016, 81 FR 1321	
Rule 11.2	Definitions	9/26/2015	1/12/2016, 81 FR 1321	
Rule 11.3	Emissions Statement	9/26/2015	1/12/2016, 81 FR 1321	
Mississippi State Constitution				
Article 4 Section 109	Interest of Public Officers in Contracts	9/27/2012	4/8/2013 78 FR 20795	
Mississippi Code				
Section 25-4-25	Persons required to file statement of economic interest	9/27/2012	4/8/2013 78 FR 20795	
Section 25-4-27	Contents of statement of economic interest	9/27/2012	4/8/2013 78 FR 20795	
Section 25-4-29	Filing dates for statement	9/27/2012	4/8/2013 78 FR 20795	
Section 25-4-101	Declaration of public policy	9/27/2012	4/8/2013 78 FR 20795	

Section 25-4-103	Definitions	9/27/2012	4/8/2013 78 FR 20795	
Section 25-4-105	Certain actions, activities and business relationships prohibited or authorized; contacts in violation of section voidable; penalties	9/27/2012	4/8/2013 78 FR 20795	
Section 49-2-5	Commission on Environmental Quality	7/1/2016	10/4/2018, 83 FR 50014	

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