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 12, 2011. 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, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 30, 2011.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 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(e), is amended by adding a new entry ''South Carolina 110(a)(1) and (2) Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards'' at the end of the table to read as follows:

§ 52.2120 Identification of plan.

* * * * *

(e) * * *

Provision	State effective date	EPA approval date	Explanation
* * *	*	* * *	
South Carolina 110(a)(1) and (2) Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards.	12/13/2007	07/13/2011 [Insert citation of publication].	For the 1997 8-hour ozone NAAQS.

[FR Doc. 2011–17469 Filed 7–12–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2010–0722–201125 FRL–9436–6]

Approval and Promulgation of Implementation Plans; Mississippi; 110(a)(1) and (2) Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve the December 7, 2007, submission by the State of Mississippi, through the Mississippi Department of Environmental Quality (MDEQ) as demonstrating that the State meets the implementation plan (SIP) requirements of sections 110(a)(1) and (2) of the Clean Air Act (CAA or the Act) for the 1997 8-hour ozone national ambient air quality standards (NAAQS). Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by the EPA, which is commonly referred to as an ''infrastructure'' SIP. Mississippi certified that the Mississippi SIP contains provisions that ensure the 1997 8-hour ozone NAAQS is implemented, enforced, and maintained in Mississippi (hereafter referred to as ''infrastructure submission''). Mississippi's infrastructure submission, provided to EPA on December 7, 2007, addressed all the required infrastructure elements for the 1997 8-hour ozone NAAQS. Additionally, EPA is responding to adverse comments received on EPA's March 17, 2011, proposed approval of Mississippi's December 7, 2007, infrastructure submission.

DATES: *Effective Date:* This rule will be effective August 12, 2011.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2010–0722. All documents in the docket are listed on the *http://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 *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning 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 to 4:30 excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Nacosta C. Ward, Regulatory Development Section, Air Planning 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.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

Upon promulgation of a new or revised NAAQS, sections 110(a)(1) and (2) of the CAA require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance for that new NAAQS. On July 18, 1997, EPA promulgated a new NAAQS for ozone based on 8-hour average concentrations, thus states were required to provide submissions to address sections 110(a)(1) and (2) of the CAA for this new NAAQS. Mississippi provided its infrastructure submission for the 1997 8-hour ozone NAAQS on

December 7, 2007. On March 17, 2011, EPA proposed to approve Mississippi's December 7, 2007, infrastructure submission for the 1997 8-hour ozone NAAQS. *See* 76 FR 14631. A summary of the background for today's final action is provided below. See EPA's March 17, 2011, proposed rulemaking at 76 FR 14631 for more detail.

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 1997 8-hour ozone NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous ozone 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 ''infrastructure'' SIP requirements related to a newly established or revised NAAQS. As mentioned above, these requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. The requirements that are the subject of this final rulemaking are listed below [1] and in EPA's October 2, 2007, memorandum entitled ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards.''

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.[2]
- 110(a)(2)(D): Interstate transport.[3]
- 110(a)(2)(E): Adequate resources.
- 110(a)(2)(F): Stationary source monitoring system.
- 110(a)(2)(G): Emergency power.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(I): Areas designated nonattainment and meet the applicable requirements of part D.[4]
- 110(a)(2)(J): Consultation with government officials; public notification; and PSD and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

II. Scope of Infrastructure SIPs

EPA is currently acting upon SIPs that address the infrastructure requirements of CAA section 110(a)(1) and (2) for ozone and PM2.5 NAAQS for various states across the country. Commenters on EPA's recent proposals for some states raised concerns about EPA statements that it was not addressing certain substantive issues in the context of acting on the infrastructure SIP submissions.[5] The Commenters specifically raised concerns involving provisions in existing SIPs and with EPA's statements that it would address two issues separately and not as part of actions on the infrastructure SIP submissions: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction (''SSM'') at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions; and (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that purport to permit revisions to SIP approved emission limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA. EPA notes that there are two other substantive issues for which EPA likewise stated that it would respond separately: (i) Existing provisions for minor source new source review programs that may be inconsistent with the requirements of the CAA and EPA's regulations that pertain to such programs (''minor source NSR''); and (ii) existing provisions for Prevention of Significant Deterioration programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (''NSR Reform''). In light of the comments, EPA now believes that its statements in various proposed actions on infrastructure SIPs with respect to these four individual issues should be explained.

EPA intended the statements in the proposals concerning these four issues merely to be informational, and to provide general notice of the potential existence of provisions within the existing SIPs of some states that might require future corrective action. EPA did not want states, regulated entities, or members of the public to be under the misconception that the Agency's approval of the infrastructure SIP submission of a given state should be interpreted as a reapproval of certain types of provisions that might exist buried in the larger existing SIP for such state. Thus, for example, EPA explicitly noted that the Agency believes that some states may have existing SIP-approved SSM provisions that are contrary to the CAA and EPA policy, but that ''in this rulemaking, EPA is not proposing to approve or disapprove any

[1] Two elements identified in section 110(a)(2) are not governed by the three-year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA, and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. Today's final rulemaking does not address infrastructure elements related to section 110(a)(2)(I) but does provide detail on how Mississippi's SIP addresses 110(a)(2)(C).

[2] This rulemaking only addresses requirements for this element as they relate to attainment areas.

[3] Today's final rule does not address element 110(a)(2)(D)(i) (Interstate Transport) for the 1997 8-hour ozone NAAQS. Interstate transport requirements were formerly addressed by Mississippi consistent with the Clean Air Interstate Rule (CAIR). On December 23, 2008, CAIR was remanded by the DC Circuit Court of Appeals, without vacatur, back to EPA. *See North Carolina* v. *EPA,* 531 F.3d 896 (DC Cir. 2008). Prior to this remand, EPA took final action to approve Mississippi's SIP revision, which was submitted to comply with CAIR. *See* 72 FR 56268 (October 3, 2007). In so doing, Mississippi's CAIR SIP revision addressed the interstate transport provisions in Section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS. In response to the remand of CAIR, EPA has since proposed a new rule to address the interstate transport of NO_X and SO_X in the eastern United States. *See* 75 FR 45210 (Aug. 2, 2010) (''the Transport Rule''). However, because this rule has yet to be finalized, EPA's action on element 110(a)(2)(D)(i) will be addressed in a separate action.

[4] This requirement was inadvertently omitted from EPA's October 2, 2007, memorandum entitled ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' but as previously discussed is not relevant to today's final rulemaking.

[5] *See,* Comments of Midwest Environmental Defense Center, dated May 31, 2011. Docket #EPA–R05–OAR–2007–1179 (adverse comments on proposals for three states in Region 5). EPA notes that these public comments on another proposal are not relevant to this rulemaking and do not have to be directly addressed in this rulemaking. EPA will respond to these comments in the appropriate rulemaking action to which they apply.

existing State provisions with regard to excess emissions during SSM of operations at facilities.'' EPA further explained, for informational purposes, that ''EPA plans to address such State regulations in the future.'' EPA made similar statements, for similar reasons, with respect to the director's discretion, minor source NSR, and NSR Reform issues. EPA's objective was to make clear that approval of an infrastructure SIP for these ozone and $PM_{2.5}$ NAAQS should not be construed as explicit or implicit reapproval of any existing provisions that relate to these four substantive issues.

Unfortunately, the Commenters and others evidently interpreted these statements to mean that EPA considered action upon the SSM provisions and the other three substantive issues to be integral parts of acting on an infrastructure SIP submission, and therefore that EPA was merely postponing taking final action on the issue in the context of the infrastructure SIPs. This was not EPA's intention. To the contrary, EPA only meant to convey its awareness of the potential for certain types of deficiencies in existing SIPs, and to prevent any misunderstanding that it was reapproving any such existing provisions. EPA's intention was to convey its position that the statute does not require that infrastructure SIPs address these specific substantive issues in existing SIPs and that these issues may be dealt with separately, outside the context of acting on the infrastructure SIP submission of a state. To be clear, EPA did not mean to imply that it was not taking a full final agency action on the infrastructure SIP submission with respect to any substantive issue that EPA considers to be a required part of acting on such submissions under section 110(k) or under section 110(c). Given the confusion evidently resulting from EPA's statements, however, we want to explain more fully the Agency's reasons for concluding that these four potential substantive issues in existing SIPs may be addressed separately.

The requirement for the SIP submissions at issue arises out of CAA section 110(a)(1). That provision requires that states must make a SIP submission ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)'' and that these SIPs are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must meet. EPA has historically referred to these particular submissions that states must make after the promulgation of a new or revised NAAQS as ''infrastructure SIPs.'' This specific term does not appear in the statute, but EPA uses the term to distinguish this particular type of SIP submission designed to address basic structural requirements of a SIP from other types of SIP submissions designed to address other requirements, such as ''nonattainment SIP'' submissions required to address the nonattainment planning requirements of part D, ''regional haze SIP'' submissions required to address the visibility protection requirements of CAA section 169A, new source review permitting program submissions required to address the requirements of part D, and a host of other specific types of SIP submissions that address other specific matters.

Although section 110(a)(1) addresses the timing and general requirements for these infrastructure SIPs, and section 110(a)(2) provides more details concerning the required contents of these infrastructure SIPs, EPA believes that many of the specific statutory provisions are facially ambiguous. In particular, the list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive provisions, and some of which pertain to requirements for both authority and substantive provisions.[6] Some of the elements of section 110(a)(2) are relatively straightforward, but others clearly require interpretation by EPA through rulemaking, or recommendations through guidance, in order to give specific meaning for a particular NAAQS.[7]

Notwithstanding that section 110(a)(2) states that ''each'' SIP submission must meet the list of requirements therein, EPA has long noted that this literal reading of the statute is internally inconsistent, insofar as section 110(a)(2)(I) pertains to nonattainment SIP requirements that could not be met on the schedule provided for these SIP submissions in section 110(a)(1).[8] This illustrates that EPA must determine which provisions of section 110(a)(2) may be applicable for a given infrastructure SIP submission. Similarly, EPA has previously decided that it could take action on different parts of the larger, general ''infrastructure SIP'' for a given NAAQS without concurrent action on all subsections, such as section 110(a)(2)(D)(i), because the Agency bifurcated the action on these latter ''interstate transport'' provisions within section 110(a)(2) and worked with states to address each of the four prongs of section 110(a)(2)(D)(i) with substantive administrative actions proceeding on different tracks with different schedules.[9] This illustrates that EPA may conclude that subdividing the applicable requirements of section 110(a)(2) into separate SIP actions may sometimes be appropriate for a given NAAQS where a specific substantive action is necessitated, beyond a mere submission addressing basic structural aspects of the state's SIP. Finally, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS and the attendant infrastructure SIP submission for that NAAQS. For example, the monitoring requirements that might be necessary for purposes of section 110(a)(2)(B) for one NAAQS could be very different than what might be necessary for a different pollutant. Thus, the content of an infrastructure SIP submission to meet this element from a state might be very different for an entirely new NAAQS, versus a minor revision to an existing NAAQS.[10]

[6] For example, section 110(a)(2)(E) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a substantive program to address certain sources as required by part C of the CAA; section 110(a)(2)(G) provides that states must have both legal authority to address emergencies and substantive contingency plans in the event of such an emergency.

[7] For example, section 110(a)(2)(D)(i) requires EPA to ensure that each state's SIP contains adequate provisions to prevent significant contribution to nonattainment of the NAAQS in other states. This provision contains numerous terms that require substantial rulemaking by EPA in order to determine such basic points as what constitutes significant contribution. *See, e.g.,* ''Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call; Final Rule,'' 70 FR 25162 (May 12, 2005) (defining, among other things, the phrase ''contribute significantly to nonattainment'').

[8] *See, e.g., id.,* 70 FR 25162, at 25163–25165 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[9] EPA issued separate guidance to states with respect to SIP submissions to meet section 110(a)(2)(D)(i) for the 1997 ozone and 1997 $PM_{2.5}$ NAAQS. *See,* ''Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director Air Quality Policy Division OAQPS, to Regional Air Division Director, Regions I–X, dated August 15, 2006.

[10] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of

Continued

Similarly, EPA notes that other types of SIP submissions required under the statute also must meet the requirements of section 110(a)(2), and this also demonstrates the need to identify the applicable elements for other SIP submissions. For example, nonattainment SIPs required by part D likewise have to meet the relevant subsections of section 110(a)(2) such as section 110(a)(2)(A) or (E). By contrast, it is clear that nonattainment SIPs would not need to meet the portion of section 110(a)(2)(C) that pertains to part C (*i.e.,* the PSD requirement applicable in attainment areas). Nonattainment SIPs required by part D also would not need to address the requirements of section 110(a)(2)(G) with respect to emergency episodes, as such requirements would not be limited to nonattainment areas. As this example illustrates, each type of SIP submission may implicate some subsections of section 110(a)(2) and not others.

Given the potential ambiguity of the statutory language of section 110(a)(1) and (2), EPA believes that it is appropriate for EPA to interpret that language in the context of acting on the infrastructure SIPs for a given NAAQS. Because of the inherent ambiguity of the list of requirements in section 110(a)(2), EPA has adopted an approach in which it reviews infrastructure SIPs against this list of elements ''as applicable.'' In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the purpose of the submission or the NAAQS in question, would meet each of the requirements, or meet each of them in the same way. EPA elected to use guidance to make recommendations for infrastructure SIPs for these NAAQS.

On October 2, 2007, EPA issued guidance making recommendations for the infrastructure SIP submissions for both the 1997 8-hour ozone NAAQS and the 1997 PM2.5 NAAQS.[11] Within this guidance document, EPA described the duty of states to make these submissions to meet what the Agency characterized as the ''infrastructure'' elements for SIPs, which it further described as the ''basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards.'' [12] As further identification of these basic structural SIP requirements, ''attachment A'' to the guidance document included a short description of the various elements of section 110(a)(2) and additional information about the types of issues that EPA considered germane in the context of such infrastructure SIPs. EPA emphasized that the description of the basic requirements listed on attachment A was not intended ''to constitute an interpretation of'' the requirements, and was merely a ''brief description of the required elements.'' [13] EPA also stated its belief that with one exception, these requirements were ''relatively self explanatory, and past experience with SIPs for other NAAQS should enable States to meet these requirements with assistance from EPA Regions.'' [14] For the one exception to that general assumption—how states should proceed with respect to the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS—EPA gave much more specific recommendations. But for other infrastructure SIP submittals, and for certain elements of the submittals for the 1997 $PM_{2.5}$ NAAQS, EPA assumed that each State would work with its corresponding EPA regional office to refine the scope of a State's submittal based on an assessment of how the requirements of section 110(a)(2) should reasonably apply to the basic structure of the State's SIP for the NAAQS in question.

Significantly, the 2007 Guidance did not explicitly refer to the SSM, director's discretion, minor source NSR, or NSR Reform issues as among specific substantive issues EPA expected states to address in the context of the infrastructure SIPs, nor did EPA give any more specific recommendations with respect to how states might address such issues even if they elected to do so. The SSM and director's discretion issues implicate section 110(a)(2)(A), and the minor source NSR and NSR Reform issues implicate section 110(a)(2)(C). In the 2007 Guidance, however, EPA did not indicate to states that it intended to interpret these provisions as requiring a substantive submission to address these specific issues in the context of the infrastructure SIPs for these NAAQS. Instead, EPA's 2007 Guidance merely indicated its belief a state's submission should establish that the state has the basic SIP structure necessary to implement, maintain, and enforce the NAAQS. EPA believes that states can establish that they have the basic SIP structure, notwithstanding that there may be potential deficiencies within the existing SIP. Thus, EPA's proposals mentioned these issues not because the Agency considers them issues that must be addressed in the context of an infrastructure SIP as required by section 110(a)(1) and (2), but rather because EPA wanted to be clear that it considers these potential existing SIP problems as separate from the pending infrastructure SIP actions.

EPA believes that this approach to the infrastructure SIP requirement is reasonable, because it would not be feasible to read sections 110(a)(1) and (2) to require a top to bottom, stem to stern, review of each and every provision of an existing SIP for purposes of assuring that the State in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts that, while not fully up to date, nevertheless may not pose a significant problem for the purposes of ''implementation, maintenance, and enforcement'' of a new or revised NAAQS when EPA considers the overall effectiveness of the SIP. To the contrary, EPA believes that a better approach is for EPA to determine which specific SIP elements from section 110(a)(2) are applicable to an infrastructure SIP for a given NAAQS, and to focus attention on those elements that are most likely to need a specific SIP revision in light of the new or revised NAAQS. Thus, for example, EPA's 2007 Guidance specifically directed states to focus on the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS because of the absence of underlying EPA regulations for emergency episodes for this NAAQS and an anticipated absence of relevant provisions in existing SIPs.

Finally, EPA believes that its approach is a reasonable reading of sections 110(a)(1) and (2) because the statute provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow the

---

new monitors to measure ambient levels of that new indicator species for the new NAAQS.

[11] *See,* ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director Air Quality Policy Division, to Air Division Directors, Regions I–X, dated October 2, 2007 (the ''2007 Guidance''). EPA issued comparable guidance for the 2006 $PM_{2.5}$ NAAQS entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS),'' from William T, Harnett, Director Air Quality Policy Division, to Regional Air Division Directors, Regions I–X, dated September 25, 2009 (the ''2009 Guidance'').

[12] 2007 Guidance at page 2.

[13] *Id.,* at attachment A, page 1.

[14] *Id.,* at page 4. In retrospect, the concerns raised by the Commenters with respect to EPA's approach to some substantive issues indicates that the statute is not so ''self explanatory,'' and indeed is sufficiently ambiguous that EPA needs to interpret it in order to explain why these substantive issues do not need to be addressed in the context of infrastructure SIPs and may be addressed at other times and by other means.

Agency to take appropriate tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a ''SIP call'' whenever the Agency determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or otherwise to comply with the CAA.[15] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[16] Significantly, EPA's determination that an action on the infrastructure SIP is not the appropriate time and place to address all potential existing SIP problems does not preclude the Agency's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on the infrastructure SIP, EPA believes that section 110(a)(2)(A) may be among the statutory bases that the Agency cites in the course of addressing the issue in a subsequent action.[17]

III. This Action

EPA is taking final action to approve Mississippi's infrastructure submission as demonstrating that the State meets the applicable requirements of sections 110(a)(1) and (2) of the CAA for the 1997 8-hour ozone NAAQS. Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by the EPA, which is commonly referred to as an ''infrastructure'' SIP. Mississippi, through MDEQ, certified that the Mississippi SIP contains provisions that ensure the 1997 8-hour ozone NAAQS is implemented, enforced, and maintained in Mississippi.

Mississippi's infrastructure submission, provided to EPA on December 7, 2007, addressed all the required infrastructure elements for the 1997 8-hour ozone NAAQS. EPA has determined that Mississippi's December 7, 2007, infrastructure submission is consistent with section 110 of the CAA. Additionally, EPA is responding to adverse comments received on EPA's March 17, 2011, proposed approval of Mississippi's December 7, 2007, infrastructure submission. The responses to comments are found in Section IV below.

IV. EPA's Response to Comments

EPA received one set of comments on the March 17, 2011, proposed rulemaking to approve Mississippi's December 7, 2007, infrastructure submission as meeting the requirements of sections 110(a)(1) and (2) of the CAA for the 1997 8-hour ozone NAAQS. Generally, the Commenter's concerns relate to whether EPA's approval of Mississippi's December 7, 2007, infrastructure submission is in compliance with section 110(l) of the CAA, and whether EPA's approval will interfere with the State's compliance with the CAA's prevention of significant deterioration (PSD) requirements. A full set of the comments provided on behalf of the Kentucky Environmental Foundation (hereinafter referred to as ''the Commenter'') is provided in the docket for today's final action. A summary of the comments and EPA's responses are provided below.

Comment 1: Under the header ''No Clean Air Act Section 110(l) analysis,'' the Commenter states, ''Before providing the technical analysis for why finalizing this proposed rule would be contrary to the Clean Air Act, I wish to point out that it is 2011 and EPA has yet to ensure that these areas have plans to meet the 1997 National Ambient Air Quality Standard (NAAQS) for ozone.'' The Commenter goes on to state that ''EPA acknowledged that the science indicates that the 1997 NAAQS, which is effectively 85 parts per billion (ppb), does not protect people's health or welfare when in 2008, EPA set a new ozone NAAQS at 75 ppb.''

Response 1: As noted in EPA's proposed rulemaking on Mississippi's December 7, 2007, infrastructure submission and in today's final rulemaking, the very action that EPA is undertaking is a determination that Mississippi has a plan to ensure compliance with the 1997 8-hour ozone NAAQS. Mississippi's submission was provided on December 7, 2007, for the 1997 8-hour ozone NAAQS, thus the State's submission predates the release of the revision to the 8-hour ozone NAAQS on March 12, 2008, and is distinct from any plan that Mississippi would have to provide to ensure compliance of the 2008 NAAQS. This action is meant to address, and EPA is approving, the 1997 ozone infrastructure requirements under section 110 of the Act. In today's action EPA is not addressing the 110 infrastructure requirements for the 2008 ozone NAAQS as they will be addressed in a separate rulemaking.

EPA notes that the 1997 8-hour ozone standard as published in a July 18, 1997, final rulemaking notice (62 FR 38856) and effective September 18, 1997, are 0.08 parts per million (ppm), which is effectively 0.084 ppm or 84 ppb due to the rounding convention and not ''effectively 85 parts per billion (ppb)'' as the Commenter stated. Further, EPA agrees that the Agency has made the determination that the 1997 8-hour ozone NAAQS is not as protective as needed for public health and welfare, and as the Commenter mentioned, the Agency established a new ozone NAAQS at 75 ppb. However, the Agency is currently reconsidering the 2008 8-hour ozone NAAQS, and has not yet designated areas for any subsequent NAAQS.

Finally, while it is not clear which areas the Commenter refers to in stating ''EPA has yet to ensure these areas have plans to meet'' the 1997 ozone NAAQS, EPA believes this concern is addressed by the requirements under section 172, Part D, Title I of the Act for states with nonattainment areas for the 1997 ozone NAAQS to submit nonattainment plans. As discussed in EPA's notice proposing approval of the Mississippi infrastructure SIP, submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA are outside the scope of this action, as such plans are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to section 172.[18]

[15] EPA has recently issued a SIP call to rectify a specific SIP deficiency related to the SSM issue. *See* ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision,'' 74 FR 21639 (April 18, 2011).

[16] EPA has recently utilized this authority to correct errors in past actions on SIP submissions related to PSD programs. See, ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule,'' 75 FR 82536 (December 30, 2010). EPA has previously used its authority under CAA 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. *See, e.g.,* 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[17] EPA has recently disapproved a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). *See, e.g.,* 75 FR 42342 at 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (January 26, 2011) (final disapproval of such provisions).

[18] There were no areas in Mississippi designated nonattainment for the 1997 8-hour ozone NAAQS. The entire state was designated Unclassifiable/Attainment. Currently, Mississippi has no areas violating the 1997 8-hour ozone NAAQS and the

Continued

Comment 2: Also under the header ''No Clean Air Act Section 110(l) analysis,'' the Commenter cites the section 110(l) CAA requirement, and states ''Clean Air Act § 110(l) requires 'EPA to evaluate whether the plan as revised will achieve the pollution reductions required under the Act, and the absence of exacerbation of the existing situation does not assure this result.' *Hall* v. *EPA,* 273 F.3d 1146, 1152 (9th Cir. 2001).'' The Commenter goes on to state that ''* * * the **Federal Register** notices are devoid of any analysis of how these rule makings will or will not interfere with attaining, making reasonable further progress on attaining and maintaining the 75 ppb ozone NAAQS as well as the 1-hour 100 ppb nitrogen oxides NAAQS.''

Response 2: EPA agrees with the Commenter's assertion that consideration of section 110(l) of the CAA is necessary for EPA's action with regard to approving the State's submission. However, EPA disagrees with the Commenter's assertion that EPA did not consider 110(l) in terms of the March 17, 2011, proposed action. Further, EPA disagrees with the Commenter's assertion that EPA's proposed March 17, 2011, action does not comply with the requirements of section 110(l). Section 110(l) provides in part: ''[t]he Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress * * *, or any other applicable requirement of this chapter.''

EPA has consistently interpreted section 110(l) as not requiring a new attainment demonstration for every SIP submission. The following actions are examples of where EPA has addressed 110(l) in previous rulemakings: 70 FR 53, 57 (January 3, 2005); 70 FR 17029, 17033 (April 4, 2005); 70 FR 28429, 28431 (May 18, 2005); and 70 FR 58119, 58134 (October 5, 2005). Mississippi's December 7, 2007, infrastructure submission does not revise or remove any existing emissions limit for any NAAQS, or any other existing substantive SIP provisions relevant to the 1997 8-hour ozone NAAQS. Simply put, it does not make any substantive revision that could result in any change in emissions. As a result, the submission does not relax any existing requirements or alter the status quo air quality. Therefore, approval of Mississippi's December 7, 2007, infrastructure submission will not interfere with attainment or maintenance of any NAAQS.

Comment 3: Under the header ''No Clean Air Act Section 110(l) analysis,'' the Commenter states that ''We are not required to guess what EPA's Clean Air Act 110(l) analysis would be. Rather, EPA must approve in part and disapprove in part these action and re-propose to approve the disapproved part with a Clean Air Act § 110(l) analysis.'' Further, the Commenter states that ''EPA cannot include its analysis in its response to comments and approve the actions without providing the public with an opportunity to comment on EPA's Clean Air Act § 110(l) analysis.''

Response 3: Please see Response 2 for a more detailed explanation regarding EPA's response to the Commenter's assertion that EPA's action is not in compliance with section 110(l) of the CAA. EPA does not agree with the Commenter's assertion that EPA's analysis did not consider section 110(l) and so therefore ''EPA must approve in part and disapprove in part these action and re-propose to approve the disapproved part with a Clean Air Act § 110(l) analysis.'' Every action that EPA takes to approve a SIP revision is subject to section 110(l) and thus EPA's consideration of whether a state's submission ''would interfere with any applicable requirement concerning attainment and reasonable further progress * * *, or any other applicable requirement of this chapter'' is inherent in EPA's action to approve or disapprove a submission from a state. In the ''Proposed Action'' section of the March 17, 2011, rulemaking, EPA notes that ''EPA is proposing to approve Mississippi's infrastructure submission for the 1997 8-hour ozone NAAQS because this submission is consistent with section 110 of the CAA.'' Section 110(l) is a component of section 110, so EPA believes that this provides sufficient notice that EPA considered section 110(l) for the proposed action and concluded that section 110(l) was not violated.

Further, EPA does not agree with the Commenter's assertion that the Agency cannot provide additional clarification in response to a comment concerning section 110(l) and take a final approval action without ''providing the public with an opportunity to comment on EPA's Clean Air Act § 110(l) analysis.'' Clearly such a broad proposition is incorrect where the final rule is a logical outgrowth of the proposed rule. In fact, the proposition that providing an analysis for the first time in response to a comment on a rulemaking per se violates the public's opportunity to comment has been rejected by the DC Circuit Court of Appeals. *See Int'l Harvester Co.* v. *Ruckelshaus,* 478 F.2d 615, 632 n.51 (DC Cir. 1973).

Finally, as previously mentioned, EPA's approval of Mississippi's December 7, 2007, infrastructure submission does not make any substantive revision that could result in any change in emissions, so there is no further ''analysis'' beyond whether the state has adequate provisions in its SIP to address the infrastructure requirements for the 1997 8-hour ozone NAAQS. EPA's March 17, 2011, proposed rulemaking goes through each of the relevant infrastructure requirements and provides detailed information on how Mississippi's SIP addresses the relevant infrastructure requirements. Beyond making a general statement indicating that Mississippi's submission is not in compliance with section 110(l) of the CAA, the Commenter does not provide comments on EPA's detailed analysis of each infrastructure requirement to indicate that Mississippi's infrastructure submission for the 1997 8-hour ozone NAAQS is deficient in meeting these individual requirements. Therefore, the Commenter has not provided a basis to question the Agency's determination that Mississippi's December 7, 2007, infrastructure submission meets the requirements for the infrastructure submission for the 1997 8-hour ozone NAAQS, including section 110(l) of the CAA.

Comment 4: Under the header ''No Clean Air Act Section 110(l) analysis,'' the Commenter further asserts that ''EPA's analysis must conclude that this proposed action would [violate] § 110(l) if finalized.'' An example given by the Commenter is as follows: ''For example, a 42 U.S.C. 7502(a)(2)(J) public notification program based on a 85 [parts per billion (ppb)] ozone level interferes with a public notification program that should exist for a 75 ppb ozone level. At its worst, the public notification system would be notifying people that the air is safe when in reality, based on the latest science, the air is not safe. Thus, EPA would be condoning the states providing information that can physical[ly] hurt people.''

Response 4: EPA disagrees with the Commenter's statement that EPA's analysis must conclude that this proposed action would be in violation of section 110(l) if finalized. As mentioned above, Mississippi's December 7, 2007, infrastructure submission does not revise or remove any existing emissions limit for any NAAQS, nor does it make any substantive revision that could result in

State does not contain any nonattainment areas for this NAAQS.

any change in emissions. EPA has concluded that Mississippi's December 7, 2007, infrastructure submission does not relax any existing requirements or alter the status quo air quality. Therefore, approval of Mississippi's December 7, 2007, infrastructure submission will not interfere with attainment or maintenance of any NAAQS. See Response 2 and Response 3 above for a more detailed discussion.

EPA also disagrees with the specific example provided by the Commenter that the section 110(a)(2)(J) requirement for public notification for the 1997 8-hour ozone NAAQS based on 85 ppb interferes with a public notification program that should exist for a 75 ppb ozone level, and ''EPA would be condoning the states providing information that can physical[ly] hurt people.'' As noted in Response 1, Mississippi's December 7, 2007, infrastructure submission was provided to address the 1997 8-hour ozone NAAQS and was submitted prior to EPA's promulgation of the 2008 8-hour ozone in March 2008. Thus, Mississippi provided sufficient information at that time to meet the requirement for the 1997 8-hour ozone NAAQS which is the subject of this action.

Finally, EPA notes that members of the public do get information related to the more recent NAAQS via the Air Quality Index (AQI) for ozone. When EPA promulgated the 2008 NAAQS, (73 FR 16436, March 27, 2008) EPA revised the AQI for ozone to show that at the level of the 2008 ozone NAAQS the AQI is set to 100, which indicates unhealthful ozone levels. It is this revised AQI that EPA uses to both forecast ozone levels and to provide notice to the public of current air quality. The EPA AIRNOW system uses the revised AQI as its basis for ozone. In addition, when Mississippi forecasts ozone and provides real-time ozone information to the public, either through the AIRNOW system or through its own Internet based system, the State uses the revised ozone AQI keyed to the 2008 revised ozone NAAQS. EPA believes this should address the Commenter's legitimate assertion.

Comment 5: Under the header ''No Clean Air Act Section 110(l) analysis,'' the Commenter asserts that ''if a SIP provides an ozone NAAQS of 85 ppb for PSD purposes, this interferes with the requirement that PSD programs require sources to demonstrate that they will not cause or contribute to a violation of a NAAQS because this requirement includes the current 75 ppb ozone NAAQS.''

Response 5: EPA believes that this comment gives no basis for concluding that approval of the Mississippi infrastructure SIP violates the requirements of section 110(l). EPA assumes that the comment refers to the requirement that owners and operators of sources subject to PSD demonstrate that the allowable emissions from the proposed source or emission increases from a proposed modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions) will not cause or contribute to a violation of any NAAQS. 40 CFR 51.166(k)(1).

EPA further assumes that the Commenter's statement ''if a SIP provides an ozone NAAQS of 85 ppb for PSD purposes'' refers to a hypothetical SIP-approved PSD program that only requires owners and operators of sources subject to PSD to make the demonstration discussed above for the 1997 ozone NAAQS, and not for the 2008 ozone NAAQS. However, the Commenter gives no indication that Mississippi's SIP-approved PSD program suffers from this alleged defect. EPA has examined the relevant provision in Mississippi's SIP, Regulation APC–S–5—Regulations for the Prevention of Significant Deterioration for Air Quality, and has determined that it satisfies the requirements of 51.166(k)(1) as the State has incorporated by reference 51.166 in its entirety.

Furthermore, as discussed in detail above, the infrastructure SIP makes no substantive change to any provision of Mississippi's SIP-approved PSD program, and therefore does not violate the requirements of section 110(l). Had Mississippi submitted a SIP revision that substantively modified its PSD program to limit the required demonstration to just the 1997 ozone NAAQS, then the comment might have been relevant to a 110(l) analysis of that hypothetical SIP revision. However, in this case, the comment gives no basis for EPA to conclude that the Mississippi infrastructure SIP would interfere with any applicable requirement of the Act.

EPA concludes that approval of Mississippi's December 7, 2007, infrastructure submission will not make the status quo air quality worse and is in fact consistent with the development of an overall plan capable of meeting the Act's requirements. Accordingly, when applying section 110(l) to this submission, EPA finds that approval of Mississippi's December 7, 2007, infrastructure submission is consistent with section 110 (including section 110(l)) of the CAA.

Comment 6: The Commenter provided comments on opposing the proposed approval of the infrastructure submission because it did not identify a specific model to be used to demonstrate that a PSD source will not cause or contribute to a violation of the ozone NAAQS. Specifically, the commenter stated: ''[t]he SIP submittals do not comply with Clean Air Act 110(a)(2)(J), (K), and (D)(i)(II) because the SIP submittals do not identify a specific model to use in PSD permitting to demonstrate that a proposed source of modification will not cause or contribute to a violation [or] the ozone NAAQS.''

The commenter asserted that because EPA does not require the use of a specific model, states use no modeling or use deficient modeling to evaluate these impacts. Specifically, the commenter alleged: ''Many states abuse this lack of an explicitly named model by claiming that because no model is explicitly named, no modeling is required or use of completely irrelevant modeling (*e.g.* Kentucky using modeling from Georgia for the J.K. Smith proposed facility) is allowed.''

To support the argument that EPA should designate a particular model and require states to use it, the Commenter attached and incorporated by reference a prior petition for rulemaking requesting that EPA designate such a model.[19] The petition in question was submitted by Robert Ukeiley on behalf of the Sierra Club on July 28, 2010, requesting EPA to designate air quality models to use for PSD permit applications with regard to ozone and $PM_{2.5}$. As supporting documentation for that petition for rulemaking, the Commenter also resubmitted 15 attachments in the comment on EPA's proposed approval of the infrastructure submission. These attachments were as follows:

1. Exhibit 1: Comments from Camille Sears on the Ninth Conference on Air Quality Modeling (Docket ID: EPA–HQ–OAR–2008–0604) (November 10, 2008);

2. Exhibit 2: ''Response to Petitions for Review, Supplemental Briefs, and Amicus Brief'' regarding the Desert Rock Energy Company, LLC from Ann Lyons, EPA Region 9—Office of Regional Counsel and Brian L. Doster/Elliot Zenick, EPA Headquarters—Office of General Counsel (January 8, 2009);

3. Exhibit 3: Report, The Kentucky Natural Resources and Environmental Protection Cabinet, A Cumulative Assessment of the Environmental Impacts Caused by Kentucky Electric Generating Units, (December 17, 2001);

4. Exhibit 4: Letter from Richard A. Wayland, Director of the Air Quality

[19] The Commenter attached the July 28, 2010, ''Petition for Rulemaking to Designate Air Quality Models to use for PSD Permit Applications with Regard to Ozone and $PM_{2.5}$,'' from Robert Ukeiley on behalf of the Sierra Club.

Assessment Division, EPA Office Air Quality and Planning Standards to Robert Ukeiley regarding Mr. Ukeiley's Freedom of Information Act (FOIA) request on behalf of the Sierra Club for documents related to EPA development of a modeling protocol for $PM_{2.5}$ (October 1, 2008);

5. Exhibit 5: Expert Report of Lyle R. Chinkin and Neil J. M. Wheeler, Analysis of Air Quality Impacts, prepared for Civil Action No. IP99–1693 C–M/S *United States* v. *Cinergy Corp.,* (August 28, 2008);

6. Exhibit 6: Illinois Environmental Protection Agency, Bureau of Air, Assessing the impact on the St. Louis Ozone Attainment Demonstration from the proposed electrical generating units in Illinois'' (September 25, 2003);

7. Exhibit 7: Memorandum from Stephen D. Page, Director, EPA Office Air Quality and Planning Standards entitled, ''Modeling Procedures for Demonstrating Compliance with the $PM_{2.5}$ NAAQS'' (March 23, 2010);

8. Exhibit 8: E-mail from Scott B. (Title and Affiliation not provided), to Donna Lucchese, (Title and Affiliation not provided), entitled, ''Ozone impact of point source'' (Date described as ''Early 2000'');

9. Exhibit 9: E-mail from Mary Portanova, EPA, Region 5, to Noreen Weimer, EPA, Region 5, entitled ''FOIA—Robert Ukeiley—RIN–02114–09'' (October 20, 2009, 10:05 CST);

10. Exhibit 10: Synopsis from PSD Modeling Workgroup—EPA/State/Local Workshop, New Orleans (May 17, 2005);

11. Exhibit 11: Letter from Carl E. Edlund, P.E., Director, EPA, Region 6 Multimedia Planning and Permitting Division to Richard Hyde, P.E. Deputy Director of the Office of Permitting and Registration, Texas Commission on Environmental Quality regarding ''White Stallion Energy Center, PSD Permit Nos. PSD–TX–1160, PAL 26, and HAP 28'' (February 10, 2010);

12. Exhibit 12: Memorandum from John S. Seitz, Director, EPA Office of Air Quality Planning & Standards entitled, ''Interim Implementation of New Source Review Requirements for $PM_{2.5}$'' (October 23, 1997);

13. Exhibit 13: Presentation by Erik Snyder and Bret Anderson (Titles and Affiliations not provided), to R/S/L Workshop, Single Source Ozone/$PM_{2.5}$ Impacts in Regional Scale Modeling & Alternate Methods, (May 18, 2005);

14. Exhibit 14: Letter from Richard D. Scheffe, PhD, Senior Science Advisor, EPA, Office of Air Quality Planning & Standards to Abigail Dillen in response to an inquiry regarding the applicability of the Scheffe Point Source Screening Tables (July 28, 2000);

15. Exhibit 15: Presentation by Gail Tonnesen, Zion Wang, Mohammad Omary, Chao-Jung Chien (University of California, Riverside); Zac Adelman (University of North Carolina); Ralph Morris *et al.* (ENVIRON Corporation Int., Novato, CA) to the Ozone MPE, TAF Meeting, Review of Ozone Performance in WRAP Modeling and Relevance to Future Regional Ozone Planning, (July 30, 2008).

Finally, the Commenter stated that ''EPA has issued guidance suggesting [that] PSD sources should use the ozone limiting method for NO_X modeling.'' The Commenter referred to EPA's March 2011 NO_X modeling guidance to support this position.[20] The Commenter then asserts that this ''ozone modeling'' helps sources demonstrate compliance and that sources should also do ozone modeling that may inhibit a source's permission to pollute. The Commenter argued that EPA's guidance supports the view that EPA must require states to require a specific model in their SIPs to demonstrate that proposed PSD sources do not cause or contribute to a violation of the ozone NAAQS.

Response 6: EPA disagrees with the Commenter's views concerning modeling in the context of acting upon the infrastructure submission. The Commenter raised four primary interrelated arguments: (1) The state's infrastructure SIP must specify a required model; (2) the failure to specify a model leads to inadequate analysis; (3) the attached petition for rulemaking explains why EPA should require states to specify a model; and (4) a recent guidance document concerning modeling for NO_X sources recommends using ozone limit methods for NO_X sources and EPA could issue comparable guidance for modeling ozone from a single source.

At the outset, EPA notes that although the Commenter sought to incorporate by reference the prior petition for rulemaking requesting EPA to designate a particular model for use by states for this purpose, the Agency is not required to respond to that petition in the context of acting upon the infrastructure submission. In reviewing the infrastructure submission, EPA is evaluating the state's submission in light of current statutory and regulatory requirements, not in light of potential future requirements that EPA has been requested to establish in a petition. Moreover, the petition arose in a different context, requests different relief, and raises other issues unrelated to those concerning ozone modeling raised by the Commenter in this action. EPA believes that the appropriate place to respond to the issues raised in the petition is in a petition response. Accordingly, EPA is not responding to the July 28, 2010 petition, in this action. The issues raised in that petition are under separate consideration.

EPA believes that the comment concerning the approvability of the infrastructure submission based upon whether the SIP specifies the use of a particular model are germane to this action, but EPA disagrees with the Commenter's conclusions. The Commenter stated that the SIP submittals ''do not comply with Clean Air Act 110(a)(2)(J), (K), and (D)(i)(II) because the SIP submittals do not identify a specific model to use in PSD permitting to demonstrate that a proposed source [or] modification will not cause or contribute to a violation of the ozone NAAQS.'' EPA's PSD permitting regulations are found at 40 CFR 51.166 and 52.21. PSD requirements for SIPs are found in 40 CFR 51.166. Similar PSD requirements for SIPs that have been disapproved with respect to PSD and for SIPs incorporating EPA's regulations by reference are found in 40 CFR 52.21. The PSD regulations require an ambient impact analysis for ozone for proposed major stationary sources and major modifications to obtain a PSD permit (40 CFR 51.166(b)(23)(i), (i)(5)(i)(f),[21] (k), (l) and (m) and 40 CFR 52.21(b)(23)(i), (i)(5)(i)(f),[22] (k), (l) and (m)). The regulations at 40 CFR 51.166(l) state that for air quality models the SIP shall provide for procedures which specify that:

(1) All applications of air quality modeling involved in this subpart shall be based on the applicable models, data bases, and other requirements specified in Appendix W of this part (Guideline on Air Quality Models).

(2) Where an air quality model specified in Appendix W of this part (Guideline on Air Quality Models) is inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis for a specific State program. Written approval of the Administrator must be obtained for any modification or substitution. In addition, use of a modified or substituted model must be subject to notice and opportunity for public comment under procedures set forth in § 51.102.

These parts of 40 CFR Part 51 and 52 are the umbrella SIP components that states have either adopted by reference or the states have approved or been delegated authority to incorporate the PSD requirements of the CAA. As

[20] The Commenter attached an EPA memorandum dated March 1, 2011: ''Additional Clarification Regarding Application of Appendix W Modeling Guidance for the 1-hour NO_2 National Ambient Air Quality Standard,'' from Tyler Fox, Leader, Air Quality Modeling Group, Office of Air Quality Planning and Standards.

[21] Citation includes a footnote: ''No de minimis air quality level is provided for ozone. However, any net emissions increase of 100 tons per year or more of volatile organic compounds or nitrogen oxides subject to PSD would be required to perform an ambient impact analysis, including the gathering of ambient air quality data.''

[22] *Id.*

discussed above, these CFR part 51 and 52 PSD requirements refer to 40 CFR Part 51, Appendix W for the appropriate model to utilize for the ambient impact assessment. 40 CFR Part 51, Appendix W is the Guideline on Air Quality models and Section 1.0.a. states:

The *Guideline* recommends air quality modeling techniques that should be applied to State Implementation Plan (SIP) revisions for existing sources and to new source review (NSR), including prevention of significant deterioration (PSD) [footnotes not included]. Applicable only to criteria air pollutants, it is intended for use by EPA Regional Offices in judging the adequacy of modeling analyses performed by EPA, State and local agencies, and by industry * * * The *Guideline* is not intended to be a compendium of modeling techniques. Rather, it should serve as a common measure of acceptable technical analysis when supported by sound scientific judgment.

Appendix W Section 5.2.1. includes the *Guideline* recommendations for models to be utilized in assessing ambient air quality impacts for ozone. Specifically, Section 5.2.1.c states: ''Estimating the Impact of Individual Sources. Choice of methods used to assess the impact of an individual source depends on the nature of the source and its emissions. Thus, model users should consult with the Regional Office to determine the most suitable approach on a case-by-case basis (subsection 3.2.2).''

Appendix W Section 5.2.1.c provides that the model users (state and local permitting authorities and permitting applicants) should work with the appropriate EPA Regional Office on a case-by-case basis to determine an adequate method for performing an air quality analysis for assessing ozone impacts. Due to the complexity of modeling ozone and the dependency on the regional characteristics of atmospheric conditions, EPA believes this is an appropriate approach rather than specifying one particular preferred model nationwide, which may not be appropriate in all circumstances. Instead, the choice of method ''depends on the nature of the source and its emissions. Thus, model users should consult with the Regional Office * * * .'' Appendix W Section 5.2.1.c. Therefore, EPA continues to believe it is appropriate for permitting authorities to consult and work with EPA Regional Offices as described in Appendix W, including section 3.0.b and c, 3.2.2, and 3.3, to determine the appropriate approach to assess ozone impacts for each PSD required evaluation.[23] [24] [25] [26]

Although EPA has not selected one particular preferred model in Appendix A of Appendix W (Summaries of Preferred Air Quality Models) for conducting ozone impact analyses for individual sources, state/local permitting authorities must comply with the appropriate PSD FIP or SIP requirements with respect to ozone.

The current SIP meets the requirements of 40 CFR 52.21 and 40 CFR 51.166(l)(1). Specifically, the Mississippi SIP states at Regulation APC–S–2 (V) (B)—*Air Quality Models:*

''1. All estimates of ambient concentrations of air pollutants shall be based on the applicable air quality models, data bases, and other requirements specified in the ''Guideline on Air Quality Models (Revised)'' 40 CFR, Part 52,[27] Appendix W, which are incorporated herein and adopted by reference.

2. Where an air quality impact model specified in the ''Guideline on Air Quality Models (Revised)'' 40 CFR, Part 52,[28] Appendix W, is inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis. Written approval of the DEQ and the Administrator of EPA must be obtained for any modification or substitution. In addition, use of a modified or substituted model shall be subject to public notice and opportunity for public comment.''

Additionally, the Mississippi SIP states at Regulation APC–S–5(1):

The purpose of this regulation is to implement a program for the prevention of significant deterioration of air quality as required by 40 CFR 52.21 and 51.166. This regulation supersedes and replaces the previous adoption by reference of 40 CFR 52.21 and 40 CFR 51.166. 40 CFR 52.21 and 51.166 as used in this regulation refer to the federal regulations as amended and promulgated by July 1, 2004 * * *

These statements in the Federally approved Mississippi SIP provide a reference to 40 CFR Part 51, Appendix W. The commitment in Mississippi's SIP to implement and adopt air quality models utilizing 40 CFR part 51, Appendix W as a basis is appropriate and consistent with Federal regulations.

Mississippi requires that PSD permit applications contain an analysis of ozone impacts from the proposed project. As recommended by Appendix W, the methods used for the ozone impacts analysis for individual PSD permit actions are determined on a case-by-case basis. Mississippi consults with EPA Region 4 on a case-by-case basis for evaluating the adequacy of the ozone impact analysis. When appropriate, EPA Region 4 provides input/comments on the analysis. As stated in Section 5.2.1.c. of Appendix W, the ''[c]hoice of methods used to assess the impact of an individual source depends on the nature of the source and its emissions.'' Therefore, based on an evaluation of the source, its emissions and background ozone concentrations, an ozone impact analysis other than modeling may be required. While in others cases a

[23] 40 CFR part 51 Appendix W, Section 3.0.b. states: ''In this guidance, when approval is required for a particular modeling technique or analytical procedure, we often refer to the 'appropriate reviewing authority'. In some EPA regions, authority for NSR and PSD permitting and related activities have been delegated to State and even local agencies. In these cases, such agencies are 'representatives' of the respective regions. Even in these circumstances, the Regional Office retains authority in decisions and approvals. Therefore, as discussed above and depending on the circumstances, the appropriate reviewing authority may be the Regional Office, Federal Land Manager(s), State agency(ies), or perhaps local agency(ies). In cases where review and approval comes solely from the Regional Office (sometimes stated as 'Regional Administrator'), this will be stipulated. If there is any question as to the appropriate reviewing authority, you should contact the Regional modeling contact (*http://www.epa.gov/scram001/tt28.htm#regionalmodelingcontacts*) in the appropriate EPA Regional Office, whose jurisdiction generally includes the physical location of the source in question and its expected impacts.''

[24] 40 CFR part 51 Appendix W, Section 3.0.c. states: ''In all regulatory analyses, especially if other-than-preferred models are selected for use, early discussions among Regional Office staff, State and local control agencies, industry representatives, and where appropriate, the Federal Land Manager, are invaluable and encouraged. Agreement on the data base(s) to be used, modeling techniques to be applied and the overall technical approach, prior to the actual analyses, helps avoid misunderstandings concerning the final results and may reduce the later need for additional analyses. The use of an air quality analysis checklist, such as is posted on EPA's Internet SCRAM Web site (subsection 2.3), and the preparation of a written protocol help to keep misunderstandings at a minimum.''

[25] 40 CFR part 51 Appendix W, Section 3.2.2.a. states: ''Determination of acceptability of a model is a Regional Office responsibility. Where the Regional Administrator finds that an alternative model is more appropriate than a preferred model, that model may be used subject to the recommendations of this subsection. This finding will normally result from a determination that (1) a preferred air quality model is not appropriate for the particular application; or (2) a more appropriate model or analytical procedure is available and applicable.''

[26] 40 CFR part 51 Appendix W, Section 3.3.a. states: ''The Regional Administrator has the authority to select models that are appropriate for use in a given situation. However, there is a need for assistance and guidance in the selection process so that fairness and consistency in modeling decisions is fostered among the various Regional Offices and the States. To satisfy that need, EPA established the Model Clearinghouse and also holds periodic workshops with headquarters, Regional Office, State, and local agency modeling representatives.'' Section 3.3.b. states ''The Regional Office should always be consulted for information and guidance concerning modeling methods and interpretations of modeling guidance, and to ensure that the air quality model user has available the latest most up-to-date policy and procedures. As appropriate, the Regional Office may request assistance from the Model Clearinghouse after an initial evaluation and decision has been reached concerning the application of a model, analytical technique or data base in a particular regulatory action.'' (footnote omitted).

[27] This reference to part 52 is a typographical error and should reference part 51.

[28] This reference to part 52 is a typographical error and should reference part 51.

complex photochemical grid type modeling analysis, as discussed below, may be warranted. As noted, the appropriate methods are determined in consultation with EPA Region 4 on a case-by-case basis.

As a second point, the Commenter asserted that states abuse this lack of an explicitly named model by claiming that because no model is explicitly named, no modeling is required or the use of completely irrelevant modeling is allowed.

EPA agrees that States should not be using inappropriate analytical tools in this context. For example, the Commenter's Exhibit 14 does discuss the inappropriateness of using a screening technique referred to as the ''Scheffe Tables.'' The Commenter is correct that the use of ''Scheffe Tables'' and other particular screening techniques, which involve ratios of nitrogen oxides (NO_X) to volatile organic compounds (VOC) that do not consider the impact of biogenic emissions, or that use other outdated or irrelevant modeling, is inappropriate to evaluate a single source's ozone impacts on an air quality control region. More scientifically appropriate screening and refined tools are available and should be considered for use. Therefore, EPA continues to believe States should consult and work with EPA Regional Offices as described in Appendix W on a case-by-case basis to determine the appropriate method for estimating the impacts of these ozone precursors from individual sources.

For ozone, a proposed emission source's impacts are dependent upon local meteorology and pollution levels in the surrounding atmosphere. Ozone is formed from chemical reactions in the atmosphere. The impact a new or modified source can have on ozone levels is dependent, in part, upon the existing atmospheric pollutant loading already in the region with which emissions from the new or modified source can react. In addition, meteorological parameters such as wind speed, temperature, wind direction, solar radiation influx, and atmospheric stability are also important factors. The more sophisticated analyses consider meteorology and interactions with emissions from surrounding sources. EPA has not identified an established modeling system that would fit all situations and take into account all of the additional local information about sources and meteorological conditions. The Commenter submitted a number of exhibits (including Exhibits 10, 11, and 13) in which EPA has previously indicated a preference for using a photochemical grid model when appropriate modeling databases exist and when it is acceptable to use the photochemical grid modeling to assess a specific source.

Commenter's Exhibit 13 includes a list of issues to evaluate, which aid in considering if the existing photochemical grid modeling databases are acceptable, and discusses the need for permitting authorities to consult with the EPA Regional Office in determining if photochemical grid modeling would be appropriate for conducting an ozone impacts analysis. In these documents EPA has indicated that photochemical grid modeling (*e.g.,* CAMx or CMAQ) is generally the most sophisticated type of modeling analysis for evaluating ozone impacts, and it is usually conducted by adding a source into an existing modeling system to determine the change in impact from the source. The analysis is done by comparing the photochemical grid modeling results which include the new or modified source under evaluation with the results from the original modeling analysis that does not contain the source. Photochemical grid modeling is often an excellent modeling exercise for evaluating a single source's impacts on an air quality control region when such models are available and appropriate to utilize because they take into account the important parameters and the models have been used in regional modeling for attainment SIPs.

There are also reactive plume models, however, that may also be appropriate. EPA has approved the use of plume models in some instances, but these models are not always appropriate because of the difficulty in obtaining the background information to make an appropriate assessment of the photochemistry and meteorology impacts.

The use of reactive plume models may also be appropriate under certain circumstances. EPA has approved the use of plume models in some instances, but these models are not always appropriate because of the difficulty in obtaining the background information to make an appropriate assessment of the photochemistry and meteorology impacts.

EPA has not selected a specific ''preferred'' model for conducting an ozone impact analysis. Model selection normally depends upon the details about the modeling systems available and if they are appropriate for assessing the impacts from a proposed new source or modification. Considering that a photochemical modeling system with inputs, including meteorological and emissions data, that would also have to be evaluated for model performance, could potentially be costly and time consuming to develop, EPA has taken a case-by-case evaluation approach. Such photochemical modeling databases are typically developed so that impacts of regulatory actions across multiple sources can be evaluated, and therefore the time and financial costs can be absorbed by the regulatory body. It is these types of databases that have the potential to be used to assess single source ozone impacts after they have been developed as part of a regional modeling demonstration to support a SIP. From a cost and time requirement standpoint, EPA would generally not expect a single source to develop an entire photochemical modeling system just to evaluate its individual impacts on an air quality region, as long as other methods of analyzing ozone impacts are available and acceptable to EPA.

When an existing photochemical modeling system is deemed appropriate, it is an excellent tool to evaluate the ozone impact that a single source's emissions can have on an air quality region in the context of PSD modeling and should be evaluated for potential use. More often now than 10 or 15 years ago, a photochemical modeling system may be available that covers the geographic area of concern. EPA notes that even where photochemical modeling is readily available, it should be evaluated as part of the development of a modeling protocol, in consultation with the Regional Office to determine its appropriateness for conducting an impact analysis for a particular proposed source or modification.[29] Factors to consider when evaluating the appropriateness of a particular photochemical modeling system include, but are not limited to, meteorology, year of emissions projections, model performance issues in the area of concern or in areas that might impact projections in the area of concern. Therefore, even where photochemical modeling systems exist, there may be circumstances where their use is inappropriate for estimating the ozone impacts of a proposed source or modification. Because of these scientific issues and the need for appropriate case-by-case technical considerations, EPA has not designated a single ''Preferred Model'' for conducting single source impact analyses for ozone in Appendix A or Appendix W.

In summary, the Commenter states that many States abuse this lack of an explicitly named model by claiming that because no model is explicitly named, no modeling is required or use of

[29] 40 CFR part 51 Appendix W, Sections 3.0, 3.2., 3.3, 5.2.1.c and commenter Exhibit 13.

completely irrelevant modeling is allowed. For the reasons described in this response to comment, we do not believe that one modeling system is presently appropriate to designate for all situations, yet that does not relieve proposed sources and modifications from the obligation of making the required demonstration under the applicable PSD rules. The Mississippi SIP contains a reference for use of the procedures specified in EPA's ''Guideline on Air Quality Models'' (40 CFR part 51 Appendix W) for estimating ambient concentrations of criteria pollutants, including ozone (Regulation APC–S–2 (V)(B)—*Air Quality Models*). As such, Mississippi requires that PSD permit applications contain an analysis of ozone impacts from the proposed project. As recommended by Appendix W, the methods used for the ozone impacts analysis are determined on a case-by-case basis. Mississippi consults with EPA Region 4 on a case-by-case basis for evaluating the adequacy of the ozone impact analysis. When appropriate, EPA Region 4 provides input/comments on the analysis. Because EPA has not designated one particular model as being appropriate in all situations for evaluating single source ozone impacts, EPA Region 4 concurs with Mississippi's proposed approach.

In conclusion, for the reasons stated it is difficult to identify and implement a specific standardized national model for ozone. EPA has had a standard approach in its PSD SIP and FIP rules of not mandating the use of a particular model for all circumstances, instead treating the choice of a particular method for analyzing ozone impacts as circumstance-dependent. EPA then determines whether the State's implementation plan revision submittal meets the PSD SIP requirements. For purposes of review for this infrastructure SIP, Mississippi has an EPA-approved PSD SIP that meets the EPA PSD requirements under 40 CFR 51.166.

Finally, the Commenter argued that EPA's March 2011 guidance concerning modeling for the 1-hour nitrogen dioxide (NO_2) NAAQS demonstrates that similar single source modeling could be conducted for sources for purposes of the ozone NAAQS. Specifically, the commenter argued that the model used for other criteria pollutants (AERMOD), incorporates ozone chemistry for modeling NO_2 and therefore is modeling ozone chemistry for a single source. The Commenter stated that this guidance suggested that PSD sources should use the ozone limiting method for NO_X modeling.[30] Further, the Commenter noted that this technique ''is modeling of ozone chemistry for a single source.'' and therefore that this modeling with ozone chemistry allows a source to be permitted. The commenter concludes with the assertion that EPA must require the SIPs to include a model to use to demonstrate that proposed PSD sources do not cause or contribute to a violation of an ozone NAAQS.

EPA's recent March 2011 guidance for the NO_2 NAAQS does discuss using two different techniques to estimate the amount of conversion of NO_X emissions to NO_2 ambient NO_2 concentrations as part of the NO_2 modeling guidance. NO_X emissions are composed of NO and NO_2 molecules. These two techniques, which have been available for years, are the Ozone Limiting Method (OLM), which was mentioned by the Commenter, and the Plume Volume Molar-Ratio-Method (PVMRM). Both of these techniques are designed and formulated based on the principle of assuming available atmospheric ozone mixes with NO/NO_2 emissions from sources. This ''mixing'' results in ozone molecules reacting with the NO molecules to form NO_2 and O_2. This is a simple one-direction chemical reaction that is used to determine how much NO is converted to NO_2 for modeling of the NO_2 standard. Thus, these techniques do not predict ozone concentrations, rather they take ambient ozone data as model inputs to determine the calculation of NO conversion to NO_2. These techniques are not designed to calculate the amount of ozone that might be generated as the NO_X emissions traverses downwind of the source and potentially reacts with other pollutants in the atmosphere. Rather, these two techniques rely on a one-way calculation based on an ozone molecule (O_3) reacting with an NO molecule to generate an NO_2 molecule and an O_2 molecule.[31] [32]

As previously mentioned, these two techniques do not attempt to estimate the amount of ozone that might be generated, and the models in which these techniques are applied are not designed or formulated to even account for the potential generation of ozone from emissions of NO/NO_2. Ozone chemistry has many cycles of destruction and generation and is dependent upon a large number of variables, including VOC concentrations and the specific types of VOC molecules present, other atmospheric pollutant concentrations, meteorological conditions, and solar radiation levels as already discussed in this response. Since OLM and PVMRM do not include any of these scientific principles and do not account for any chemical mechanisms that would generate ozone, these techniques cannot be used for determining potential changes in ozone levels from a proposed source or modification.

In summary, the Commenter asserts that the OLM technique models of ozone chemistry for a single source and that this modeling helps a source demonstrate compliance with the NO_2 standard. The Commenter is concerned that EPA has not designated a single specific OLM technique is not also used to determine ozone impacts and believes that EPA should rectify this concern. To do so the Commenter concludes that EPA must require the SIPs to include a model to demonstrate that proposed PSD sources do not cause or contribute to a violation of an ozone NAAQS. As previously discussed, EPA disagrees and reiterates that the OLM (and PVMRM) are simple chemistry techniques that are not formulated to be capable to determine potential ozone impacts from a proposed source or modification.

For the reasons discussed above, EPA does not believe that the comments provide a basis for not approving the infrastructure submission. In short, EPA has not modified the Guidelines in Appendix W for ozone impacts analysis for a single source (Appendix W Part 5.2.1.c.) to require use of a specific model as the Commenter requests. EPA finds that the State has the appropriate regulations to operate the PSD program consistent with Federal requirements. Furthermore, we disagree that states are required to designate a specific model in the SIP, because App. W states that state and local agencies should consult with EPA on a case-by-case basis to determine what analysis to require.

V. Final Action

As described above, MDEQ has addressed the elements of the CAA 110(a)(1) and (2) SIP requirements pursuant to EPA's October 2, 2007, guidance to ensure that the 1997 8-hour ozone NAAQS are implemented, enforced, and maintained in Mississippi. EPA is taking final action to

[30] The Commenter attached EPA memorandum dated March 1, 2011: ''Additional Clarification Regarding Application of Appendix W Modeling Guidance for the 1-hour NO_2 National Ambient Air Quality Standard,'' from Tyler Fox, Leader, Air Quality Modeling Group, Office of Air Quality Planning and Standards.

[31] ''AERMOD: Model Formulation Document'', *http://www.epa.gov/scram001/7thconf/aermod/aermod_mfd_addm_rev.pdf.*

[32] Hanrahan, P.L., 1999a. ''The plume volume molar ratio method for determining NO_2/NO_X ratios in modeling. Part I: Methodology,'' J. Air & Waste Manage. Assoc., 49, 1324–1331.

approve Mississippi's December 7, 2007, infrastructure submission for the 1997 8-hour ozone NAAQS because this submission is consistent with section 110 of the CAA.

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. 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 Order 12866 (58 FR 51735, October 4, 1993);
- 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 (Pub. L. 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).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it 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 September 12, 2011. 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, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 30, 2011.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 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(e) is added to read as follows:

§ 52.1270 Identification of plan.

* * * * *

(e) *EPA approved Mississippi non-regulatory provisions.*

EPA APPROVED MISSISSIPPI NON-REGULATORY PROVISIONS

Name of non-regulatory SIP provision	Applicable geographic or non-attainment area	State submittal date/effective date	EPA approval date	Explanation
110(a)(1) and (2) Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards.	Mississippi	12/7/2007	7/13/2011 [Insert citation of publication].	For the 1997 8-hour ozone NAAQS.

[FR Doc. 2011–17467 Filed 7–12–11; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2011–0327; FRL–8878–4]

2-Propenoic acid, 2-methyl-, phenylmethyl ester, polymer with 2-propenoic acid and sodium 2-methyl-2-[(1-oxo-2-propen-1-yl)amino]-1-propanesulfonate (1:1), peroxydisulfuric acid ([HO)S(O)2]202) sodium salt (1:2)-initiated; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of 2-Propenoic acid, 2-methyl-, phenylmethyl ester, polymer with 2-propenoic acid and sodium 2-methyl-2-[(1-oxo-2-propen-1-yl)amino]-1-propanesulfonate (1:1), peroxydisulfuric acid ([HO)S(O)2]202) sodium salt (1:2)-initiated (also known here as: ''the Polymer''); when used as an inert ingredient in a pesticide chemical formulation under 40 CFR 180.960. Akzo Nobel Surface Chemistry LLC, 909 Mueller Avenue, Chattanooga, TN 37406 submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of ''the Polymer'' on food or feed commodities.

DATES: This regulation is effective July 13, 2011. Objections and requests for hearings must be received on or before September 12, 2011, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2011–0327. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (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 in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Mark Dow, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (703) 305–5533; *e-mail address: dow.mark@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. Can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2011–0327 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before September 12, 2011. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2011–0327, by one of the following methods.

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of April 20, 2011 (76 FR 22069) (FRL–8869–7), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, announcing the receipt of a pesticide petition (PP 1E7834) filed by Akzo Nobel Surface Chemistry LLC, 909 Mueller Avenue, Chattanooga, TN 37406. The petition requested that 40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of 2-Propenoic acid, 2-methyl-,phenylmethyl ester, polymer with 2-propenoic acid and sodium 2-methyl-2-[(1-oxo-2-propen-1-yl)amino]-1-propanesulfonate (1:1), peroxydisulfuric acid ([HO)S(O)2]202) sodium salt (1:2)-