

consideration, the Commission establishes a period for filing reply comments in this proceeding, which will run to and including November 12, 2010.

Any interested person may file a reply to initial comments made by other interested persons in this proceeding. Reply comments should not raise new arguments that are not directly responsive to arguments presented in initial comments, nor should a reply be repetitive of arguments that an interested person made in its initial comments.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2010-24976 Filed 10-6-10; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

#### 30 CFR Parts 56 and 57

**RIN 1219-AB70**

#### Metal and Nonmetal Dams

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Extension of comment period.

**SUMMARY:** The Mine Safety and Health Administration (MSHA) is extending the comment period for its Advance Notice of Proposed Rulemaking (ANPRM) published on August 13, 2010. This extension gives commenters additional time to develop responses to questions the Agency asked in the ANPRM concerning the design, construction, operation, and maintenance of safe dams which can assure miners are protected from the hazards of dam failures.

**DATES:** The comment period will close midnight, Eastern Standard Time, December 13, 2010.

**ADDRESSES:** Comments must be clearly identified and may be submitted by any of the following methods:

(1) *Federal Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

(2) *Electronic mail:* [zzMSHA-Comments@dol.gov](mailto:zzMSHA-Comments@dol.gov). Include "RIN 1219-AB56" in the subject line of the message.

(3) *Telefax:* (202) 693-9441. Include "RIN 1219-AB56" in the subject.

(4) *Regular Mail:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2350, Arlington, Virginia, 22209-3939.

(5) *Hand Delivery or Courier:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room

2350, Arlington, Virginia 22209-3939. Sign in at the receptionist's desk on the 21st floor.

(6) *Docket:* Comments can be accessed electronically at <http://www.msha.gov/reginfo.htm>. MSHA will post all comments on the Internet without change, including any personal information provided. Comments may also be reviewed at the Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2350, Arlington, Virginia. Sign in at the receptionist's desk on the 21st floor.

MSHA maintains a list that enables subscribers to receive e-mail notification when the Agency publishes rulemaking documents in the **Federal Register**. To subscribe, go to <http://www.msha.gov/subscriptions/subscribe.aspx>.

#### FOR FURTHER INFORMATION CONTACT:

Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209-3939. Ms. Silvey can be reached at [Silvey.Patricia@dol.gov](mailto:Silvey.Patricia@dol.gov) (Internet E-mail), (202) 693-9440 (voice), or (202) 693-9441 (facsimile). This notice is available on the Internet at <http://www.msha.gov/REGSINFO.HTM>.

**SUPPLEMENTARY INFORMATION:** On August 13, 2010, MSHA published an Advance Notice of Proposed Rulemaking (75 FR 49429) asking interested parties to comment on measures to assure that metal and nonmetal mine operators design, construct, operate and maintain dams in a safe manner to protect miners against the hazards of a dam failure.

In response to requests, MSHA is extending the comment period from October 12, 2010 to December 13, 2010. This allows commenters additional time to review the questions and submit responses. All comments and other appropriate data must be submitted by midnight, Eastern Standard Time, December 13, 2010.

Dated: October 1, 2010.

**Joseph A. Main,**

*Assistant Secretary for Mine Safety and Health.*

[FR Doc. 2010-25248 Filed 10-6-10; 8:45 am]

**BILLING CODE 4510-43-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2009-0041-200902; FRL-9211-4]

#### Approval and Promulgation of Implementation Plans; State of Mississippi: Prevention of Significant Deterioration Rules: Nitrogen Oxide as a Precursor to Ozone

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a portion of a revision to the Mississippi State Implementation Plan (SIP), submitted by the Mississippi Department of Environmental Quality (MDEQ), to EPA on November 28, 2007. The revision modifies Mississippi's prevention of significant deterioration (PSD) permitting regulations in the SIP to address permit requirements promulgated in the 1997 8-Hour Ozone National Ambient Air Quality Standards (NAAQS) Implementation Rule-Phase II (hereafter referred to as the "Ozone Implementation New Source Review (NSR) Update"). The Ozone Implementation NSR Update revised permit requirements relating to the implementation of the 1997 8-hour ozone NAAQS specifically incorporating nitrogen oxides (NO<sub>x</sub>) as a precursor to ozone. Specifically, this SIP revision incorporates by reference the Ozone Implementation NSR Update federal regulations into the Mississippi SIP through Air Pollution Control Section 5 (APC-S-5) "Regulations for the Prevention of Significant Deterioration of Air Quality." EPA's approval of Mississippi's incorporation by reference of the Ozone Implementation NSR Update federal regulations, including provisions to recognize NO<sub>x</sub> as an ozone precursor, into the Mississippi SIP, is based on EPA's determination that Mississippi's revision related to these provisions complies with current Federal requirements and section 110 of the Clean Air Act (CAA).

EPA is not taking action on two portions of Mississippi's November 28, 2007 submittal. The first is regarding Mississippi's incorporation by reference of provisions promulgated by EPA on May 1, 2007, which exclude from the NSR major source permitting requirements "chemical process plants" that produce ethanol through a natural fermentation process (hereafter referred to as the "Ethanol Rule"). See 72 FR 24060. EPA may consider further action

for the aforementioned provision in a future rulemaking. The second is Mississippi's compliance with Section 110(a)(2)(D)(i) of the CAA regarding interstate air pollution transport for the 1997 8-hour ozone and fine particulate matter NAAQS as it pertains to the prevention of significant deterioration of air quality and visibility. EPA is also not addressing Mississippi's submission regarding interstate transport in today's action.

**DATES:** Comments must be received on or before November 8, 2010.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2009-0041, by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

2. *E-mail:* [benjamin.lynora@epa.gov](mailto:benjamin.lynora@epa.gov).

3. *Fax:* (404) 562-9019.

4. *Mail:* EPA-R04-OAR-2009-0041, 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.

5. *Hand Delivery or Courier:* Ms. Lynora Benjamin, Chief, 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. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No. "EPA-R04-OAR-2009-0041." EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through <http://www.regulations.gov> or e-mail, information that you consider to be CBI or otherwise protected. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail

address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*Docket:* All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <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:** For information regarding the Mississippi SIP, contact Ms. Twunjala Bradley, 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. *Telephone number:* (404) 562-9352; *e-mail address:*

[bradley.twunjala@epa.gov](mailto:bradley.twunjala@epa.gov). For information regarding NSR/PSD, contact Ms. Yolanda Adams, Air Permits Section, at the same address above. *Telephone number:* (404) 562-9214; *e-mail address:* [adams.yolanda@epa.gov](mailto:adams.yolanda@epa.gov). For information regarding 8-hour ozone NAAQS, contact Ms. Jane Spann, Regulatory Development Section, at the same address above. *Telephone number:*

(404) 562-9029; *e-mail address:* [spann.jane@epa.gov](mailto:spann.jane@epa.gov).

#### SUPPLEMENTARY INFORMATION:

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#### I. What action is EPA proposing today?

EPA is proposing to revise the Mississippi SIP to include the portion of Mississippi's November 28, 2007, SIP revision which incorporates by reference the Ozone Implementation NSR Update into Mississippi's Air Quality Regulations, APC-S-5 "Regulations for the Prevention of Significant Deterioration." This revision is consistent with current Federal NSR requirements (40 CFR 52.21 and the Ozone Implementation NSR Update) relevant to NO<sub>x</sub> as an ozone precursor and section 110 of the CAA. The revision, which became state-effective on September 24, 2007, is incorporated by reference into Mississippi's PSD program, and EPA has preliminarily determined that the incorporation by reference of NO<sub>x</sub> as an ozone precursor meets the requirements of the Ozone Implementation NSR Update.

#### II. What is the background for the action that EPA is proposing today?

On July 18, 1997, EPA promulgated a revised 8-hour ozone NAAQS of 0.08 parts per million—also referred to as the 1997 8-hour ozone NAAQS. On April 30, 2004, EPA designated areas as attainment, nonattainment and unclassifiable for the 1997 8-hour ozone NAAQS. Related to the 2004 designations, EPA also promulgated an implementation rule for the 1997 8-hour ozone NAAQS in two phases. Phase I of EPA's 1997 8-hour ozone implementation rule (Phase I Rule), published on April 30, 2004, effective on June 15, 2004, addresses classifications for the 8-hour ozone NAAQS, revocation of the 1-hour ozone NAAQS, anti-backsliding principles, attainment dates and timing of emissions reductions needed for attainment. See 69 FR 23857.

On November 29, 2005, EPA promulgated the second phase for the implementation provisions related to the 1997 8-hour ozone standards—also known as the Phase II Rule. See 70 FR 71612. The Phase II Rule addresses the remaining control and planning requirements as they apply to areas

designated nonattainment for the 1997 8-hour ozone NAAQS which include NSR requirements. Specific to this rulemaking, the Phase II Rule made changes to Federal regulations found at 40 CFR 51.165, 51.166 and 52.21, which govern the nonattainment NSR and PSD permitting programs.<sup>1</sup> Specifically, the Phase II Rule requirements include among other changes, a provision stating that NO<sub>x</sub> is an ozone precursor. 70 FR 71612, (page 71679) (November 29, 2005). In the Phase II Rule, EPA stated as follows:

“The EPA has recognized NO<sub>x</sub> as an ozone precursor in several national rules because of its contribution to ozone transport and the ozone nonattainment problem. The EPA’s recognition of NO<sub>x</sub> as an ozone precursor is supported by scientific studies, which have long recognized the role of NO<sub>x</sub> in ozone formation and transport. Such formation and transport is not limited to nonattainment areas. Therefore, we believe NO<sub>x</sub> should be treated consistently as an ozone precursor in both our PSD and nonattainment NSR regulations. For these reasons, we have promulgated final regulations providing that NO<sub>x</sub> is an ozone precursor in attainment areas.”

In the Phase II Rule, EPA established that states must submit SIPs incorporating required changes (including the addition of NO<sub>x</sub> as a precursor for ozone) no later than June 15, 2007. See 70 FR 71612 (page 71683).

### III. What is EPA’s analysis of Mississippi’s SIP revision?

On November 28, 2007, the State of Mississippi, through MDEQ, submitted a revision to EPA for approval, which revised the PSD program. This revision incorporates by reference, EPA’s federal regulations specified in the Ozone Implementation NSR Update relating to NO<sub>x</sub> as an ozone precursor. Specifically, the revision is found in Mississippi’s Air Quality Regulations, APC-S-5 “Regulations for the Prevention of Significant Deterioration.” The submittal revised Mississippi’s PSD program to include NO<sub>x</sub> as a precursor to ozone for PSD permitting, consistent with changes to the Federal regulations set forth in the Ozone Implementation NSR Update. Mississippi’s November 28, 2007 SIP revision incorporates by reference the federal PSD regulations (at 40 CFR 52.21) to include the Ozone Implementation NSR Update rules and additional subsequent revisions to the

<sup>1</sup> These changes included amendments to major source thresholds for sources in certain classes of nonattainment areas, changes to offset ratios for marginal, moderate, serious, severe, and extreme ozone nonattainment areas, provisions addressing offset requirements for facilities that shut down or curtail operation, and a requirement stating that NO<sub>x</sub> emissions are ozone precursors.

federal program made through July 15, 2007. Currently, the State of Mississippi is in attainment for all the NAAQS and all major sources are subject to the PSD permitting program in the Mississippi SIP which incorporates by reference 40 CFR 52.21. Today’s action only relates to the portion of Mississippi’s SIP revision which incorporates by reference the federal provisions related to NO<sub>x</sub> as an ozone precursor.

The Mississippi NO<sub>x</sub> as an ozone precursor PSD language was incorporated by reference and is identical to the Federal PSD requirements. The SIP revision is consistent with the CAA because it adds NO<sub>x</sub> as a precursor to ozone and is consistent with federal requirements. Therefore, EPA has preliminarily determined that the Mississippi PSD provisions to include NO<sub>x</sub> as an ozone precursor are approvable.

### IV. Proposed Action

Pursuant to section 110 of the CAA, EPA is proposing to approve the portion of Mississippi’s SIP revision submitted November 28, 2007, which incorporates by reference NO<sub>x</sub> as an ozone precursor for PSD purposes into the Mississippi SIP. EPA is proposing to approve these revisions because they are consistent with the CAA and its implementing regulations.

### V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA 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 proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive 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 proposed 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.

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, and Ozone.

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

Dated: September 22, 2010.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 2010-25309 Filed 10-6-10; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[EPA-R04-OAR-2010-0666-201031; FRL-9211-3]

### Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Tennessee; Redesignation of the Knoxville 8-Hour Ozone Nonattainment Area to Attainment for Ozone

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** On July 14, 2010, the State of Tennessee, through the Tennessee