

*Congressional Review Act*

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act). This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign based companies in domestic and export markets.

**List of Subjects in 21 CFR Part 1308**

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by section 201(a) of the CSA (21 U.S.C. 811(a)), and delegated to the Administrator of DEA by Department of Justice regulations (28 CFR 0.100), and redelegated to the Deputy Administrator pursuant to 28 CFR 0.104, the Deputy Administrator hereby amends 21 CFR part 1308 as follows:

**PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES**

- 1. The authority citation for part 1308 continues to read as follows:

**Authority:** 21 U.S.C. 811, 812, 871(b) unless otherwise noted.

- 2. Section 1308.11 is amended by:
- A. Redesignating existing paragraphs (d)(15) through (d)(34) as paragraphs (d)(16) through (d)(35); and
  - B. Adding a new paragraph (d)(15).

**§ 1308.11 Schedule I.**

\* \* \* \* \*

(d) \* \* \*

(15) 5-methoxy-N,N-dimethyltryptamine 7431. Some trade or other names: 5-methoxy-3-[2-(dimethylamino)ethyl]indole; 5-MeO-DMT

\* \* \* \* \*

Dated: December 13, 2010.

**Michele M. Leonhart,**  
Deputy Administrator.

[FR Doc. 2010–31854 Filed 12–17–10; 8:45 am]

**BILLING CODE 4410–09–P**

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[EPA–R04–OAR–2009–0041–201058; FRL–9241–1]

**Approval and Promulgation of Implementation Plans; Mississippi; Prevention of Significant Deterioration Rules: Nitrogen Oxides as a Precursor to Ozone**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action 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 amends 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. EPA's approval of Mississippi's provisions to include NO<sub>x</sub> as an ozone precursor into the Mississippi SIP is based on EPA's determination that Mississippi's SIP revision related to these provisions complies with Federal requirements.

**DATES:** *Effective Date:* This rule will be effective January 19, 2011.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2009–0041. 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:** 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:****Table of Contents**

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**I. Background**

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. As part of 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 1 Rule), published on April 30, 2004, and effective on June 15, 2004, provided the implementation requirements for designating areas under subpart 1 and subpart 2 of the CAA. 69 FR 23857.

On November 29, 2005, EPA promulgated the second phase for implementation provisions related to the 1997 8-hour ozone NAAQS which finalized regulations to implement the 8-hour NAAQS for PSD permitting purposes—also known as the Phase II Rule. 70 FR 71612. The Phase II Rule addressed control and planning requirements as they applied to areas

designated nonattainment for the 1997 8-hour ozone NAAQS which included NSR requirements. Specific to this rulemaking, the Phase II Rule made changes to Federal regulations 40 CFR 51.165, 51.166, and 52.21, which govern the nonattainment (NNSR) and PSD permitting programs. The revisions to the NSR permitting requirements in the Phase II Rule are also known as the Ozone Implementation NSR Update.

Specifically, the Phase II Rule requirements included, among other changes, a new provision stating that NO<sub>x</sub> is an ozone precursor. 70 FR 71612 at 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 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 at 71683.

On November 28, 2007, the State of Mississippi, through MDEQ, submitted a SIP revision to EPA for approval, which revised the PSD permitting regulations in order to comply with the Phase II Rule. 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 SIP revision amends Mississippi’s Air Quality Regulations, Air Pollution Control, Section 5 (APC–S–5)—“Regulations for the Prevention of Significant Deterioration of Air Quality.” Mississippi’s November 28, 2007, SIP submittal revises the PSD regulations at APC–S–5 by updating their IBR date of Federal regulations promulgated in 40 CFR 52.21. This final action addresses only one portion of the November 28, 2007, submittal—the Ozone Implementation NSR Update requirements, as contained in 40 Code of Federal Regulations (CFR) 52.21 and promulgated on November 29, 2005, as part of EPA’s Ozone Implementation NSR Update.

Also included in Mississippi’s November 28, 2007, SIP revision were two provisions for which EPA is not

taking action at this time. The first provision is regarding Mississippi’s incorporation by reference of provisions promulgated by EPA on May 1, 2007, which excludes from the NSR major source permitting requirements “chemical process plants” that produce ethanol through a natural fermentation process. 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.

## II. Today’s Action

Mississippi’s November 28, 2007, SIP revision to APC–S–5 incorporates by reference the provisions at 40 CFR 52.21 as amended and promulgated as of June 15, 2007, and updates Mississippi’s existing incorporation by reference of the Federal NSR program to include the NO<sub>x</sub> as an ozone precursor Federal provisions set forth in the Phase II Rule. EPA has determined that Mississippi’s SIP revision, which became State-effective on September 24, 2007, meets the requirements of the Phase II Rule and is consistent with section 110 of the CAA.

On October 7, 2010, EPA published a rulemaking proposing to approve the aforementioned revision into the Mississippi SIP. 75 FR 62024. The comment period closed on November 13, 2010, and no comments, adverse or otherwise, were received. Details regarding the November 28, 2007, SIP revision are discussed in the proposed rulemaking and describe the basis on which EPA is now taking final action on the Mississippi SIP revision.

## III. Final Action

Pursuant to Section 110 of the CAA, EPA is taking final action to approve Mississippi’s November 28, 2007, SIP revision, which incorporates NO<sub>x</sub> as an ozone precursor for PSD purposes into the Mississippi SIP. The revision included in Mississippi’s PSD permitting program is equivalent to the provision in the Ozone Implementation NSR Update. EPA is approving these revisions into the Mississippi SIP because they are consistent with Section 110 CAA and its implementing regulations.

## IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 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 February 18, 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, Ozone, and Volatile organic compounds.

Dated: December 8, 2010.

**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 (c) is amended by revising the entry for "APC-S-5" to read as follows:

#### § 52.1270 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

#### EPA-APPROVED MISSISSIPPI REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	* * *
APC-S-5—Regulations for the Prevention of Significant Deterioration of Air Quality				
All .....	.....	9/24/2007 .....	12/20/10 [Insert citation of publication].	APC-S-5 incorporates by reference the regulations found at 40 CFR 52.21 as of June 15, 2007; This EPA action is approving the incorporation by reference with the exception of the phrase "except ethanol production facilities producing ethanol by natural fermentation under the North American Industry Classification System (NAICS) codes 325193 or 312140," APC-S-5 incorporated by reference from 40 CFR 52.21(b)(1)(i)(a) and (b)(1)(iii)(t). APC-S-5.

\* \* \* \* \*

[FR Doc. 2010-31893 Filed 12-17-10; 8:45 am]

**BILLING CODE 6560-50-P**

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 81

[EPA-R06-OAR-2010-0412; FRL-9240-8]

#### Determination of Nonattainment and Reclassification of the Dallas/Fort Worth 1997 8-Hour Ozone Nonattainment Area; Texas

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

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing its determination that the Dallas/Fort Worth (DFW) moderate 8-hour ozone nonattainment area failed to attain the 1997 8-hour ozone national ambient air quality standard (NAAQS or standard) by June 15, 2010, the attainment deadline set forth in the Clean Air Act

(CAA or Act) and Code of Federal Regulations (CFR) for moderate nonattainment areas. This final determination is based on EPA's review of complete, quality assured and certified ambient air quality monitoring data for the 2007–2009 monitoring period that are available in the EPA Air Quality System (AQS) database. As a result of this final action, the DFW area will be reclassified by operation of law as a serious ozone nonattainment area for the 1997 8-hour ozone standard on the effective date of this rulemaking. The new attainment date for the DFW area is as expeditiously as practicable, but not later than June 15, 2013. The State of Texas must submit State Implementation Plan (SIP) revisions addressing requirements for "serious" areas no later than one year after the effective date of this rulemaking.

**DATES:** This rule is effective on January 19, 2011.

**ADDRESSES:** EPA established a docket for this action under Docket ID No. EPA-R06-OAR-2010-0412. All

documents in the docket are listed at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., 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 Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. The file will be made available by appointment for public inspection in the Region 6 Freedom of Information Act (FOIA) Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214-665-7253 to make an appointment.