

### Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

### Indian Tribal Governments

This rule does not have Tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are

technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction.

An environmental analysis checklist and a categorical exclusion determination will be uploaded to the docket as indicated under **ADDRESSES**.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05-1(g), 6.06-1, 6.05-6 AND 160.5; Pub. L. 107-295, 116 STAT. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A new temporary § 165.T08-1087 is added to read as follows:

#### § 165.T08-1087 Security Zone, Michoud Slip.

(a) *Location.* The following area is a security zone: Michoud Slip, encompassing the entire slip from position 30°0'34.2" N, 89°55'40.7" W to position 30°0'29.5" N, 89°55'52.6" W across the mouth of the slip.

(b) *Effective period.* This section is effective from January 1, 2011, through December 31, 2011.

(c) *Regulations.* (1) In accordance with the general regulation in 33 CFR part 165, subpart D, vessels are prohibited

from entering or transiting the security zone created by this section.

(2) Persons or vessels requiring deviations from this rule must request permission from the Captain of the Port New Orleans. The Captain of the Port New Orleans may be contacted at telephone (504) 365-2543.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port New Orleans and designated personnel. Designated personnel include commissioned, warrant and petty officers of the U.S. Coast Guard assigned to units under the operational control of USCG Sector New Orleans.

Dated: December 8, 2010.

**E.M. Stanton,**

*Captain, U.S. Coast Guard, Captain of the Port New Orleans.*

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### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[EPA-R04-OAR-2010-0811-201070; FRL-9244-4]

#### Approval and Promulgation of Implementation Plans; Mississippi: Prevention of Significant Deterioration; Greenhouse Gas Tailoring Rule Revision

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

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to approve a revision to the State Implementation Plan (SIP), submitted by the State of Mississippi, through the Mississippi Department of Environmental Quality (MDEQ), to EPA on September 14, 2010, for parallel processing. MDEQ submitted the final version of this SIP revision on December 9, 2010. The SIP revision incorporates updates to MDEQ's air quality regulations impacting the regulation of greenhouse gas (GHG) under Mississippi's New Source Review (NSR) Prevention of Significant Deterioration (PSD) program. Specifically, the SIP revision establishes appropriate emission thresholds for determining which new stationary sources and modification projects become subject to Mississippi's PSD permitting requirements for their GHG emissions. The change is necessary because without it, on January 2, 2011, PSD requirements would apply at the 100 or 250 tons per year (tpy) levels otherwise

provided under the Clean Air Act (CAA or Act), which would overwhelm Mississippi's permitting resources. EPA is approving Mississippi's December 9, 2010, SIP revision because the Agency has made the determination that this SIP revision is in accordance with the CAA and EPA regulations, including regulations pertaining to PSD permitting for GHGs. Additionally, EPA is responding to adverse comments received on EPA's November 5, 2010, proposed approval of Mississippi's September 14, 2010, draft SIP revision.

**DATES:** *Effective Date:* This rule will be effective January 2, 2011.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2010-0811. 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 for further information. 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. Ms. Bradley's telephone number is (404) 562-9352; *e-mail address:* [bradley.twunjala@epa.gov](mailto:bradley.twunjala@epa.gov). For information regarding the Tailoring Rule, contact Ms. Heather Abrams, Air Permits Section, at the same address above. Ms. Abrams' telephone number is (404) 562-9185; *e-mail address:* [abrams.heather@epa.gov](mailto:abrams.heather@epa.gov).

#### SUPPLEMENTARY INFORMATION:

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#### I. What is the background for today's final action?

EPA has recently undertaken a series of actions pertaining to the regulation of GHGs that, although for the most part distinct from one another, establish the overall framework for today's final action on the Mississippi SIP.<sup>1</sup> Four of these actions include, as they are commonly called, the "Endangerment Finding" and "Cause or Contribute Finding," which EPA issued in a single final action,<sup>2</sup> the "Johnson Memo Reconsideration,"<sup>3</sup> the "Light-Duty Vehicle Rule,"<sup>4</sup> and the "Tailoring Rule."<sup>5</sup> Taken together, these actions established regulatory requirements for GHGs emitted from new motor vehicles and new motor vehicle engines; determined that such regulations, when they take effect on January 2, 2011, will subject GHGs emitted from stationary sources to PSD requirements; and limited the applicability of PSD requirements to GHG sources on a phased-in basis.

On September 14, 2010, in response to the Tailoring Rule and earlier GHG-related EPA rules, MDEQ submitted a draft revision to EPA for approval into the Mississippi SIP to establish appropriate emission thresholds for determining which new or modified stationary sources become subject to Mississippi's PSD permitting requirements for GHG emissions. Subsequently, on November 5, 2010,

<sup>1</sup> On December 13, 2010, EPA finalized a "SIP Call" that would require those states with SIPs that do not authorize PSD permitting for GHGs to submit a SIP revision providing such authority. 75 FR 77698. In a companion rulemaking, EPA proposed a federal implementation plan (FIP) that would apply in any state that is unable to submit the required SIP revision by its deadline. 75 FR 53883 (September 2, 2010). Because Mississippi's SIP already authorizes Mississippi to regulate GHGs once GHGs become subject to PSD requirements on January 2, 2011, Mississippi is not subject to the proposed SIP Call or FIP.

<sup>2</sup> "Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act." 74 FR 66496 (December 15, 2009).

<sup>3</sup> "Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs." 75 FR 17004 (April 2, 2010).

<sup>4</sup> "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule." 75 FR 25324 (May 7, 2010).

<sup>5</sup> Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule." 75 FR 31514 (June 3, 2010).

EPA published a proposed rulemaking to approve a portion of Mississippi's September 14, 2010, SIP revision under parallel processing. 75 FR 68259. Specifically, Mississippi's September 14, 2010, draft SIP revision incorporates by reference the Tailoring Rule provisions at 40 CFR 52.21 (as amended June 3, 2010, and effective August 2, 2010), into the Mississippi SIP (APC-S-5—*Regulations for the Prevention of Significant Deterioration*) to address the thresholds for GHG permitting applicability. Detailed background information and EPA's rationale for the proposed approval are provided in EPA's November 5, 2010, **Federal Register** notice.

EPA's November 5, 2010, proposed approval was contingent upon Mississippi providing a final SIP revision that was substantively the same as the revision proposed for approval by EPA in the November 5, 2010, proposed rulemaking. 75 FR 68259. Mississippi provided its final SIP revision on December 9, 2010. There was a minor change to correct an error for a citation noted in Mississippi's September 14, 2010, draft SIP revision. Specifically, in providing the citation for the NSR PM<sub>2.5</sub> Implementation Rule, Mississippi provided 73 FR 38349 in its September 14, 2010, draft SIP revision under APC-S-5, Section 2-7. In Mississippi's December 9, 2010, SIP revision, the State corrects this citation to read 73 FR 28321 instead of 73 FR 38349. Besides the correction of the citation, there were no differences between Mississippi's September 14, 2010, draft SIP revision, and the final SIP revision which was provided on December 9, 2010.

Mississippi's December 9, 2010, SIP revision also incorporates two administrative changes to their PSD regulations (Air Pollution Control, Section 5 (APC-S-5)—*Regulations for the Prevention of Significant Deterioration*). These changes relate to Mississippi's pre-existing exclusion of certain provisions of the federal PSD regulations from its SIP, specifically, provisions pertaining to the "reasonable possibility" standard,<sup>6</sup> "clean units," and

<sup>6</sup> On July 10, 2006 (71 FR 38773), EPA approved Mississippi's incorporation by reference of the 2002 NSR Reform Rules into the Mississippi SIP. The SIP-approved rule excludes certain provisions of the federal rules that were not incorporated by reference. Among the excluded provisions are those set forth at 40 CFR 52.21(r)(6) pertaining to the "reasonable possibility" standard, which establishes criteria for when recordkeeping and reporting are required for a modification that does not trigger major NSR. In defining that exclusion, Mississippi's rule quoted the relevant language from the federal PSD regulations. Subsequently, on December 21, 2007 (73 FR 72607), EPA amended the reasonable possibility standard in response to a decision by the

Continued

“pollution control projects” (PCPs).<sup>7</sup> In today’s action, EPA is finalizing approval of these administrative changes into the Mississippi SIP. EPA’s November 5, 2010, proposal addressed these revisions.

In addition to changes to address the Tailoring Rule and the aforementioned administrative changes mentioned above, Mississippi’s December 9, 2010, SIP revision also includes: (1) Provisions to exclude facilities that produce ethanol through a natural fermentation process (hereafter referred to as the “Ethanol Rule”) from the definition of “chemical process plants” in the major NSR source permitting program; and (2) revision to incorporate by reference changes pursuant to EPA’s Fugitive Emissions Rule (73 FR 77882, December 19, 2008).<sup>8</sup> In today’s final rulemaking, EPA is not taking final action on Mississippi’s changes to its PSD regulations to exclude facilities from the definition of “chemical process plants” in the major NSR permitting program, nor is EPA taking final action on Mississippi’s changes to incorporate the provisions of the Fugitive Emission Rule.

## II. What is EPA’s response to comments received on this action?

EPA received two sets of comments on the November 5, 2010, proposed rulemaking to approve revisions to Mississippi’s SIP. One set of comments, provided by the Sierra Club, was in favor of EPA’s November 5, 2010, proposed action. The other set of comments, provided by the Air Permitting Forum, raised concerns with final action on EPA’s November 5, 2010, proposed action. A full set of the comments provided by both the Sierra Club and Air Permitting Forum (hereinafter referred to as “the

Commenter”) is provided in the docket for today’s final action. A summary of the adverse comments and EPA’s responses are provided below.

Generally, the adverse comments fall into four categories. First, the Commenter asserts that PSD requirements cannot be triggered by GHGs. Second, the Commenter expresses concerns regarding a footnote in the November 5, 2010, proposal describing EPA’s previously announced intention to narrow its prior approval of some SIPs to ensure that sources with GHG emissions that are less than the Tailoring Rule’s thresholds will not be obligated under federal law to obtain PSD permits prior to a SIP revision incorporating those thresholds. The Commenter explains that the planned SIP approval narrowing action “is illegal.” Third, the Commenter states that EPA has failed to meet applicable statutory and executive order review requirements. Lastly, the Commenter states: “EPA should explicitly state in any final rule that the continued enforceability of these provisions in the Mississippi SIP is limited to the extent to which the Federal requirements remain enforceable.” EPA’s response to these four categories of comments is provided below.

*Comment 1:* The Commenter asserts that PSD requirements cannot be triggered by GHGs. In its letter, the Commenter reiterates EPA’s statement that without the Tailoring Rule thresholds, PSD will apply as of January 2, 2011, to all stationary sources that emit or have the potential to emit, depending on the source category, either 100 or 250 tons of GHG per year. The Commenter also reiterates EPA’s statement that beginning January 2, 2011, a source owner proposing to construct any new major source that emits at or higher than the GHG applicability levels, or modify any existing major source in a way that would increase GHG emissions, would need to obtain a PSD permit that addresses these emissions before construction could begin. In raising concerns with the two aforementioned statements, the Commenter states: “No area in the State of Mississippi has been designated attainment or unclassifiable for greenhouse gases (GHGs), as there is no national ambient air quality standard (NAAQS) for GHGs. Therefore, GHGs cannot trigger PSD permitting.” The Commenter notes that it made this argument in detail in comments submitted to EPA on the Tailoring Rule and other related GHG rulemakings. The Commenter attached those previously submitted comments to its comments on the proposed rulemaking related to this

action. Finally, the Commenter states that “EPA should immediately provide notice that it is now interpreting the Act not to require that GHGs trigger PSD and allow Mississippi to rescind that portion of its rules that would allow GHGs to trigger PSD.”

*Response 1:* EPA established the requirement that PSD applies to all pollutants newly subject to regulation, including non-NAAQS pollutants, in earlier national rulemakings concerning the PSD program, and EPA has not re-opened that issue in this rulemaking. In an August 7, 1980, rulemaking at 45 FR 52676, 45 FR 52710–52712, and 45 FR 52735, EPA stated that a “major stationary source” was one which emitted “any air pollutant subject to regulation under the Act” at or above the specified numerical thresholds; and defined a “major modification,” in general, as a physical or operational change that increased emissions of “any pollutant subject to regulation under the Act” by more than an amount that EPA variously termed as *de minimis* or significant. In addition, in EPA’s NSR Reform rule at 67 FR 80186 and 67 FR 80240 (December 31, 2002), EPA added to the PSD regulations the new definition of “regulated NSR pollutant” (currently codified at 40 CFR 52.21(b)(50) and 40 CFR 51.166(a)(49)); noted that EPA added this term based on a request from a commenter to “clarify which pollutants are covered under the PSD program;” and explained that in addition to criteria pollutants for which a NAAQS has been established, “[t]he PSD program applies automatically to newly regulated NSR pollutants, which would include final promulgation of an NSPS [new source performance standard] applicable to a previously unregulated pollutant.” *Id.* at 67 FR 80240 and 67 FR 80264. Among other things, the definition of “regulated NSR pollutant” includes “[a]ny pollutant that otherwise is subject to regulation under the Act.” *See* 40 CFR 52.21(b)(50)(d)(iv); *see also id.* 40 CFR 51.166(a)(49)(iv).

In any event, EPA disagrees with the Commenter’s underlying premise that PSD requirements are not triggered for GHGs when GHGs become subject to regulation as of January 2, 2011. As just noted, this has been well established and discussed in connection with prior EPA actions, including, most recently, the Johnson Reconsideration and the Tailoring Rule. In addition, EPA’s November 5, 2010, proposed rulemaking notice provides the general basis for the Agency’s rationale that GHGs (while not a NAAQS pollutant) can trigger PSD permitting requirements. The November 5, 2010, notice also refers the reader to

U.S. Court of Appeals for the DC Circuit. *See New York v. EPA*, 413 F.3d 3 (DC Cir. 2005). While Mississippi will continue to exclude the reasonable possibility provision from its PSD regulations, it is revising the exclusion to reflect the revised reasonable possibility language at 40 CFR 52.21(r)(6) as promulgated on December 21, 2007.

<sup>7</sup> The Mississippi PSD regulations approved by EPA on July 10, 2006 (71 FR 38773), specifically excluded from incorporation by reference the federal regulatory provisions pertaining to “clean units” and PCPs. Subsequently, the DC Circuit vacated the federal clean unit and PCP provisions. *See New York v. EPA*, 413 F.3d at 3. Mississippi’s September 14, 2010, proposed SIP revision removes the reference to these vacated federal regulations from its list of excluded Federal provisions.

<sup>8</sup> On March 31, 2010, EPA stayed the Fugitive Emissions Rule (73 FR 77882) for 18 months to October 3, 2011, to allow the Agency time to propose, take comment and issue a final action regarding the inclusion of fugitive emissions in NSR applicability determinations. Therefore, the 40 CFR part 51 and part 52 administrative regulations that were amended by the Fugitive Emissions Rule are stayed through October 3, 2011.

the preamble to the Tailoring Rule for further information on this rationale. In that rulemaking, EPA addressed at length the comment that PSD can be triggered only by pollutants subject to the NAAQS, and concluded such an interpretation of the Act would contravene Congress' unambiguous intent. See 75 FR 31560–31562. Further discussion of EPA's rationale for concluding that PSD requirements are triggered by non-NAAQS pollutants such as GHGs appears in the Tailoring Rule Response-to-Comments document ("Prevention of Significant Deterioration and Title V GHG Tailoring Rule: EPA's Response to Public Comments"), pp. 34–41; and in EPA's response to motions for a stay filed in the litigation concerning those rules ("EPA's Response to Motions for Stay," *Coalition for Responsible Regulation v. EPA*, DC Cir. No. 09–1322 (and consolidated cases)), at pp. 47–59, and are incorporated by reference here. These documents have been placed in the docket for today's action.

**Comment 2:** The Commenter expresses concerns regarding a footnote in which EPA describes its previously announced intention to narrow its prior approval of some SIPs to ensure that sources with GHG emissions that are less than the Tailoring Rule's thresholds will not be obligated under federal law to obtain PSD permits during any gap between when GHG permitting requirements go into effect and when the SIP is revised to incorporate the Tailoring Rule thresholds. The Commenter explains that narrowing "is illegal." Further, the Commenter states that "EPA has *not* proposed to narrow Mississippi's SIP approval here and any such proposal must be explicit and address the action specifically made with respect to Mississippi. EPA cannot sidestep these important procedural requirements."

**Response 2:** While EPA does not agree with the Commenter's assertion that the narrowing approach discussed in EPA's Tailoring Rule is illegal, the narrowing approach was not the subject of EPA's November 5, 2010, proposed rulemaking to approve Mississippi's September 14, 2010, SIP revision. Rather the narrowing approach was the subject of a separate rulemaking, and any action to use this approach for Mississippi's SIP will be considered and finalized in an action separate from today's rulemaking. In today's final action, EPA is acting to approve a SIP revision submitted by Mississippi, and is not otherwise narrowing its approval of prior submitted and approved provisions in the Mississippi SIP. Accordingly, the legality of the narrowing approach is not at issue in this rulemaking.

**Comment 3:** The Commenter states that EPA has failed to meet applicable statutory and executive order review requirements. Specifically, the Commenter refers to the statutory and executive orders for the Paperwork Reduction Act, the Regulatory Flexibility Act (RFA), Unfunded Mandates Reform Act, and Executive Order 13132 (Federalism). Additionally, the Commenter mentions that EPA has never analyzed the costs and benefits associated with triggering PSD for stationary sources in Mississippi, much less nationwide.

**Response 3:** EPA disagrees with the Commenter's statement that EPA has failed to meet applicable statutory and executive order review requirements. As stated in EPA's proposed approval of Mississippi's December 9, 2010, SIP revision, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. Accordingly, EPA approval, in and of itself, does not impose any new information collection burden, as defined in 5 CFR 1320.3(b) and (c), that would require additional review under the Paperwork Reduction Act. In addition, this SIP approval will not have a significant economic impact on a substantial number of small entities, beyond that which would be required by the state law requirements, so a regulatory flexibility analysis is not required under the RFA. Accordingly, this rule is appropriately certified under section 605(b) of the RFA. Moreover, as this action approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandates or significantly or uniquely affect small governments, such that it would be subject to the Unfunded Mandates Reform Act. Finally, this action does not have federalism implications that would make Executive Order 13132 applicable because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA.

In sum, today's rule is a routine approval of a SIP revision, approving state law, and does not impose any requirements beyond those imposed by state law. To the extent these comments are directed more generally to the application of the statutory and executive order reviews to the required regulation of GHGs under PSD programs, these comments are irrelevant to the approval of state law in today's action. However, EPA provided an

extensive response to similar comments in promulgating the Tailoring Rule. EPA refers the Commenter to the sections in the Tailoring Rule entitled "VII. *Comments on Statutory and Executive Order Reviews*," 75 FR 31601–31603, and "VI. *What are the economic impacts of the final rule?*," 75 FR 31595–31601. EPA also notes that today's action does not in-and-of itself trigger the regulation of GHGs. To the contrary, by putting in place higher PSD applicability thresholds for GHGs than would otherwise be in effect under the Act, this rulemaking, as well as EPA's Tailoring Rule, provides relief to smaller GHG-emitting sources that would otherwise be subject to PSD permitting requirements for their GHG emissions.

**Comment 4:** The Commenter states that "[i]f EPA proceeds with this action, it must condition approval on the continued validity of its determination that PSD can be triggered by or is applicable to GHGs." Further, the Commenter remarks on the ongoing litigation in the U.S. Court of Appeals for the DC Circuit. Specifically, regarding EPA's determination that PSD can be triggered by GHGs or is applicable to GHGs, the Commenter mentions that "EPA should explicitly state in any final rule that continued enforceability of these provisions in the Mississippi SIP is limited to the extent to which the federal requirements remain enforceable." The Commenter notes that if a stay is issued, these requirements should also be stayed.

**Response 4:** EPA believes that it is most appropriate to take actions that are consistent with the federal regulations that are in place at the time the action is being taken. To the extent that any changes to federal regulations related to today's action result from pending legal challenges or other actions, EPA will process appropriate SIP revisions in accordance with the procedures provided in the Act and EPA's regulations. EPA notes that in an order dated December 9, 2010, the United States Court of Appeals for the DC Circuit denied motions to stay EPA's regulatory actions related to GHGs. *Coalition for Responsible Regulation, Inc. v. EPA*, Nos. 09–1322, 10–1073, 10–1092 (and consolidated cases), Slip Op. at 3 (DC Cir. December 10, 2010) (order denying stay motions).

### III. What is the effect of today's final action?

Final approval of Mississippi's December 9, 2010, SIP revision will put in place the GHG emission thresholds for PSD applicability set forth in EPA's Tailoring Rule (75 FR 31514, June 3, 2010), ensuring that smaller GHG

sources emitting less than these thresholds will not be subject to permitting requirements when these requirements begin applying to GHGs on January 2, 2011. Pursuant to section 110 of the CAA, EPA is approving a portion of the changes made in Mississippi's December 9, 2010, SIP revision into Mississippi's SIP.

Mississippi's December 9, 2010, revision updates its existing incorporation by reference of the federal NSR program to include the relevant federal Tailoring Rule provisions set forth at 40 CFR 52.21 into the Mississippi SIP at APC-S-5—*Regulations for the Prevention of Significant Deterioration*.<sup>9</sup> EPA has determined that Mississippi's December 9, 2010, SIP revision is consistent with the Tailoring Rule. Furthermore, EPA has determined that the December 9, 2010, revision to Mississippi's SIP is consistent with section 110 of the CAA. See, e.g., Tailoring Rule, at 75 FR 31561.

#### IV. When is today's action effective?

In accordance with 5 U.S.C. 553(d), EPA finds there is good cause for this action to become effective on January 2, 2011. This is because a delayed effective date is unnecessary due to the nature of Mississippi's changes to its PSD regulations to establish appropriate emissions thresholds for determining PSD applicability with respect to new or modified GHG-emitting sources in accordance with EPA's Tailoring Rule, thereby relieving the State from certain CAA requirements that would otherwise apply to it. The January 2, 2011, effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule "grants or recognizes an exemption or relieves a restriction," and section 553(d)(3), which allows an effective date less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule." The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today's rule, however, does not create any new regulatory requirements such that affected parties would need time to

prepare before the rule takes effect. Rather, today's rule relieves the sources within Mississippi from considering the lower emissions thresholds for GHG permitting purposes. For these reasons, EPA finds good cause under 5 U.S.C. 553(d)(3) for this action to become effective January 2, 2011.

#### V. Final Action

EPA is taking final action to approve Mississippi's December 9, 2010, SIP revision which includes updates to Mississippi's air quality regulations, APC-S-5—*Regulations for the Prevention of Significant Deterioration*. Specifically, Mississippi's December 9, 2010, SIP revision establishes appropriate emissions thresholds for determining PSD applicability with respect to new or modified GHG-emitting sources in accordance with EPA's Tailoring Rule. EPA has made the determination that the December 9, 2010, SIP revision is approvable because it is in accordance with the CAA and EPA regulations, including regulations pertaining to PSD permitting for GHGs.

#### 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 February 28, 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, Greenhouse gases,

<sup>9</sup> Mississippi's December 9, 2010, submittal also revises definitions for APC-S-6—*Air Emissions Operating Permit Regulations for the Purposes of Title V of the Federal Clean Air Act*; however, these relate to title V and are not included in the SIP. As such, EPA is not taking action to approve Mississippi's update to this regulation in this rulemaking.

■ 40 CFR part 52 is amended as follows:

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

\*            \*            \*            \*            \*

(c) \*   \*   \*

Explanation

All	12/1/2010	12/29/2010 [Insert citation of publication].	APC-S-5 incorporates by reference the regulations found at 40 CFR 52.21 as of September 13, 2010. 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. In addition, this EPA action is not incorporating by reference, into the Mississippi SIP, the administrative regulations that were amended in the Fugitive Emissions Rule (73 FR 77882) and are stayed through October 3, 2011.
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**FOR FURTHER INFORMATION CONTACT:** For information regarding the Alabama 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. Ms. Bradley's telephone number is (404) 562-9352; e-mail address: *bradley.twunjala@epa.gov*. For