



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

#### [EPA-R04-OAR-2013-0270; FRL-9919-41-Region 4]

Approval and Promulgation of Implementation Plans; Mississippi; Infrastructure Requirements  
for the 2008 Lead National Ambient Air Quality Standards

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve in part and disapprove in part the November 17, 2011, State Implementation Plan (SIP) submission, provided by the Mississippi Department of Environmental Quality (MDEQ) for inclusion into the Mississippi SIP. This proposal pertains to the Clean Air Act (CAA or the Act) infrastructure requirements for the 2008 Lead national ambient air quality standards (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an “infrastructure” SIP. MDEQ certified that the Mississippi SIP contains provisions that ensure the 2008 Lead NAAQS is implemented, enforced, and maintained in Mississippi (hereafter referred to as an “infrastructure SIP submission”). With the exception of provisions pertaining to prevention of significant deterioration (PSD) permitting and the state board majority requirements respecting significant portion of income, EPA is proposing to determine that Mississippi’s infrastructure SIP submission, provided to EPA on November 17, 2011, addresses the required infrastructure elements for the 2008 Lead NAAQS.

**DATES:** Written comments must be received on or before [insert date 30 days after date of publication in the Federal Register].

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2013-0270, by one of the following methods:

1. [www.regulations.gov](http://www.regulations.gov): Follow the on-line instructions for submitting comments.
2. E-mail: [R4-RDS@epa.gov](mailto:R4-RDS@epa.gov).
3. Fax: (404) 562-9019.
4. Mail: "EPA-R04-OAR-2013-0270," 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: Lynorae 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-2013-0270. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](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 [www.regulations.gov](http://www.regulations.gov) or e-mail, information that you consider to be CBI or otherwise

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*Docket:* All documents in the electronic docket are listed in the [www.regulations.gov](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 [www.regulations.gov](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 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Zuri Farngalo, 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) 562-9152. Mr. Farngalo can be reached via electronic mail at [farngalo.zuri@epa.gov](mailto:farngalo.zuri@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

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  - I. Background**

On October 5, 1978, EPA promulgated primary and secondary NAAQS for Lead under section 109 of the Act. *See* 43 FR 46246. Both primary and secondary standards were set at a level of 1.5 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ), measured as Lead in total suspended particulate matter (Pb-TSP), not to be exceeded by the maximum arithmetic mean concentration averaged over a calendar quarter. This standard was based on the 1977 Air Quality Criteria for Lead (USEPA, August 7, 1977). On November 12, 2008 (75 FR 81126), EPA issued a final rule to revise the primary and secondary Lead NAAQS. The revised primary and secondary Lead

NAAQS were revised to 0.15 µg/m<sup>3</sup>. By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) are to be submitted by states within three years after promulgation of a new or revised NAAQS. Sections 110(a)(1) and (2) require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs to EPA no later than October 15, 2011, for the 2008 Lead NAAQS.<sup>1</sup>

Today's action is proposing to approve Mississippi's infrastructure submissions for the applicable requirements of the 2008 Lead NAAQS, with the exception of the PSD permitting requirements for major sources of sections 110(a)(2)(C), prong 3 of D(i) and (J) and the majority requirements respecting significant portion of income of section 110(a)(2)(E)(ii). With respect to Mississippi's infrastructure SIP submission related to the provisions pertaining to the PSD permitting requirements for major sources of sections 110(a)(2)(C), prong 3 of D(i) and (J), EPA is not proposing any action today regarding these requirements. EPA will act on these portions of the submission in a separate action. With respect to Mississippi's infrastructure SIP submission related to the majority requirements respecting significant portion of income of

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<sup>1</sup> In these infrastructure SIP submissions states generally certify evidence of compliance with sections 110(a)(1) and (2) of the CAA through a combination of state regulations and statutes, some of which have been incorporated into the federally-approved SIP. In addition, certain federally-approved, non-SIP regulations may also be appropriate for demonstrating compliance with sections 110(a)(1) and (2). Throughout this rulemaking, unless otherwise indicated, the term "Air Pollution Control (APC)" or "Section APC-S-X" indicates that the cited regulation has been approved into Mississippi's federally-approved SIP. The term "Mississippi Code" indicates cited Mississippi state statutes, which are not a part of the SIP unless otherwise indicated. Additionally, since the time of Mississippi's infrastructure SIP submissions for the 2008 Lead NAAQS, the state's implementation plan and statutes and have been recodified. In its original infrastructure SIP submission, MDEQ refers to *Mississippi Code Title 49* as "Appendix A-8." However, Mississippi supplemented its original infrastructure SIP submission following this recodification, and as such, updated the Mississippi Code reference to "Appendix A-9" to reflect the most current codification. Accordingly, EPA utilizes the "Appendix A-9" reference throughout today's rulemaking.

110(a)(2)(E)(ii), EPA is proposing to disapprove this portion of Mississippi's November 17, 2011 submission in today's rulemaking. For the aspects of Mississippi's infrastructure SIP submission proposed for approval today, EPA is not approving any specific rule, but rather proposing that Mississippi's already approved SIP meets certain CAA requirements.

## **II. What Elements are Required Under Sections 110(a)(1) and (2)?**

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 2008 Lead NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with the 1978 Lead NAAQS.

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 general requirements

that are the subject of EPA’s infrastructure SIP rulemaking are listed below<sup>2</sup> and in EPA’s October 14, 2011, memorandum entitled “Guidance on Infrastructure State Implementation Plan (SIP) Elements Required Under Sections 110(a)(1) and 110(a)(2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS)” (2011 Lead Infrastructure SIP Guidance).

- 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, Prevention of Significant Deterioration (PSD) and new source review (NSR).<sup>3</sup>
- 110(a)(2)(D): Interstate and international transport provisions.
- 110(a)(2)(E): Adequate personnel, funding, and authority.
- 110(a)(2)(F): Stationary source monitoring and reporting.
- 110(a)(2)(G): Emergency episodes.
- 110(a)(2)(H): Future SIP revisions.

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<sup>2</sup>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 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 proposed rulemaking does not address infrastructure elements related to section 110(a)(2)(I) or the nonattainment planning requirements of 110(a)(2)(C).

<sup>3</sup>This rulemaking only addresses requirements for this element as they relate to attainment areas.

- 110(a)(2)(I): Nonattainment area plan or plan revision under part D.<sup>4</sup>
- 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.

### **III. What is EPA’s Approach to the Review of Infrastructure SIP Submissions?**

EPA is acting upon the SIP submission from Mississippi that addresses the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the Lead NAAQS. The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions “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 these SIP submissions are to provide for the “implementation, maintenance, and enforcement” of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA’s taking any action other than promulgating a new or revised

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<sup>4</sup> As mentioned above, this element is not relevant to today’s proposed rulemaking.

NAAQS. Section 110(a)(2) includes a list of specific elements that “[e]ach such plan” submission must address.

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as “infrastructure SIP” submissions. Although the term “infrastructure SIP” does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as “nonattainment SIP” or “attainment plan SIP” submissions to address the nonattainment planning requirements of part D of title I of the CAA, “regional haze SIP” submissions required by EPA rule to address the visibility protection requirements of CAA section 169A, and nonattainment new source review permit program submissions to address the permit requirements of CAA, title I, part D.

Section 110(a)(1) addresses the timing and general requirements for infrastructure SIP submissions, and section 110(a)(2) provides more details concerning the required contents of these submissions. 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 program provisions, and some of which pertain to requirements for both authority and substantive program provisions.<sup>5</sup> EPA therefore believes that while the timing requirement in section 110(a)(1) is unambiguous, some of the other statutory provisions are ambiguous. In particular, EPA believes that the list of required elements for infrastructure

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<sup>5</sup> For example: Section 110(a)(2)(E)(i) 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 SIP-approved program to address certain sources as required by part C of title I of the CAA; and section 110(a)(2)(G) provides that states must have legal authority to address emergencies as well as contingency plans that are triggered in the event of such emergencies.

SIP submissions provided in section 110(a)(2) contains ambiguities concerning what is required for inclusion in an infrastructure SIP submission.

The following examples of ambiguities illustrate the need for EPA to interpret some section 110(a)(1) and section 110(a)(2) requirements with respect to infrastructure SIP submissions for a given new or revised NAAQS. One example of ambiguity is that section 110(a)(2) requires that “each” SIP submission must meet the list of requirements therein, while EPA has long noted that this literal reading of the statute is internally inconsistent and would create a conflict with the nonattainment provisions in part D of title I of the Act, which specifically address nonattainment SIP requirements.<sup>6</sup> Section 110(a)(2)(I) pertains to nonattainment SIP requirements and part D addresses when attainment plan SIP submissions to address nonattainment area requirements are due. For example, section 172(b) requires EPA to establish a schedule for submission of such plans for certain pollutants when the Administrator promulgates the designation of an area as nonattainment, and section 107(d)(1)(B) allows up to two years, or in some cases three years, for such designations to be promulgated.<sup>7</sup> This ambiguity illustrates that rather than apply all the stated requirements of section 110(a)(2) in a strict literal sense, EPA must determine which provisions of section 110(a)(2) are applicable for a particular infrastructure SIP submission.

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<sup>6</sup> 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<sub>x</sub> SIP Call; Final Rule,” 70 FR 25162, at 25163 – 65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

<sup>7</sup> EPA notes that this ambiguity within section 110(a)(2) is heightened by the fact that various subparts of part D set specific dates for submission of certain types of SIP submissions in designated nonattainment areas for various pollutants. Note, e.g., that section 182(a)(1) provides specific dates for submission of emissions inventories for the ozone NAAQS. Some of these specific dates are necessarily later than three years after promulgation of the new or revised NAAQS.

Another example of ambiguity within sections 110(a)(1) and 110(a)(2) with respect to infrastructure SIPs pertains to whether states must meet all of the infrastructure SIP requirements in a single SIP submission, and whether EPA must act upon such SIP submission in a single action. Although section 110(a)(1) directs states to submit “a plan” to meet these requirements, EPA interprets the CAA to allow states to make multiple SIP submissions separately addressing infrastructure SIP elements for the same NAAQS. If states elect to make such multiple SIP submissions to meet the infrastructure SIP requirements, EPA can elect to act on such submissions either individually or in a larger combined action.<sup>8</sup> Similarly, EPA interprets the CAA to allow it to take action on the individual parts of one larger, comprehensive infrastructure SIP submission for a given NAAQS without concurrent action on the entire submission. For example, EPA has sometimes elected to act at different times on various elements and sub-elements of the same infrastructure SIP submission.<sup>9</sup>

Ambiguities within sections 110(a)(1) and 110(a)(2) may also arise with respect to infrastructure SIP submission requirements for different NAAQS. Thus, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way,

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<sup>8</sup> See, e.g., “Approval and Promulgation of Implementation Plans; New Mexico; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) Permitting,” 78 FR 4339 (January 22, 2013) (EPA’s final action approving the structural PSD elements of the New Mexico SIP submitted by the State separately to meet the requirements of EPA’s 2008 PM<sub>2.5</sub> NSR rule), and “Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Infrastructure and Interstate Transport Requirements for the 2006 PM<sub>2.5</sub> NAAQS,” (78 FR 4337) (January 22, 2013) (EPA’s final action on the infrastructure SIP for the 2006 PM<sub>2.5</sub> NAAQS).

<sup>9</sup> On December 14, 2007, the State of Tennessee, through the Tennessee Department of Environment and Conservation, made a SIP revision to EPA demonstrating that the State meets the requirements of sections 110(a)(1) and (2). EPA proposed action for infrastructure SIP elements (C) and (J) on January 23, 2012 (77 FR 3213) and took final action on March 14, 2012 (77 FR 14976). On April 16, 2012 (77 FR 22533) and July 23, 2012 (77 FR 42997), EPA took separate proposed and final actions on all other section 110(a)(2) infrastructure SIP elements of Tennessee’s December 14, 2007 submittal.

for each new or revised NAAQS. The states' attendant infrastructure SIP submissions for each NAAQS therefore could be different. For example, the monitoring requirements that a state might need to meet in its infrastructure SIP submission for purposes of section 110(a)(2)(B) could be very different for different pollutants because the content and scope of a state's infrastructure SIP submission to meet this element might be very different for an entirely new NAAQS than for a minor revision to an existing NAAQS.<sup>10</sup>

EPA notes that interpretation of section 110(a)(2) is also necessary when EPA reviews other types of SIP submissions required under the CAA. Therefore, as with infrastructure SIP submissions, EPA also has to identify and interpret the relevant elements of section 110(a)(2) that logically apply to these other types of SIP submissions. For example, section 172(c)(7) requires that attainment plan SIP submissions required by part D have to meet the "applicable requirements" of section 110(a)(2). Thus, for example, attainment plan SIP submissions must meet the requirements of section 110(a)(2)(A) regarding enforceable emission limits and control measures and section 110(a)(2)(E)(i) regarding air agency resources and authority. By contrast, it is clear that attainment plan SIP submissions required by part D would not need to meet the portion of section 110(a)(2)(C) that pertains to the PSD program required in part C of title I of the CAA, because PSD does not apply to a pollutant for which an area is designated nonattainment and thus subject to part D planning requirements. As this example illustrates, each type of SIP submission may implicate some elements of section 110(a)(2) but not others.

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<sup>10</sup> For example, implementation of the 1997 PM<sub>2.5</sub> NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

Given the potential for ambiguity in some of the statutory language of section 110(a)(1) and section 110(a)(2), EPA believes that it is appropriate to interpret the ambiguous portions of section 110(a)(1) and section 110(a)(2) in the context of acting on a particular SIP submission. In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the NAAQS in question or the history of SIP development for the relevant pollutant, would meet each of the requirements, or meet each of them in the same way. Therefore, EPA has adopted an approach under which it reviews infrastructure SIP submissions against the list of elements in section 110(a)(2), but only to the extent each element applies for that particular NAAQS.

Historically, EPA has elected to use guidance documents to make recommendations to states for infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in some cases conveying interpretations that have already been developed and applied to individual SIP submissions for particular elements.<sup>11</sup> EPA issued the 2011 Lead Infrastructure SIP Guidance<sup>12</sup> to provide states with up-to-date guidance for Lead infrastructure SIPs. Within this guidance, EPA describes the duty of states to make infrastructure SIP submissions to meet basic structural SIP requirements within three years of promulgation of a new or revised NAAQS. EPA also made recommendations about many specific subsections of section 110(a)(2) that are relevant in the context of infrastructure SIP submissions. The guidance also discusses the

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<sup>11</sup> EPA notes, however, that nothing in the CAA requires EPA to provide guidance or to promulgate regulations for infrastructure SIP submissions. The CAA directly applies to states and requires the submission of infrastructure SIP submissions, regardless of whether or not EPA provides guidance or regulations pertaining to such submissions. EPA elects to issue such guidance in order to assist states, as appropriate.

<sup>12</sup> “Guidance on Infrastructure State Implementation Plan (SIP) Elements Required under Clean Air Act Sections 110(a)(1) and 110(a)(2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS),” Memorandum from Stephen D. Page, October 14, 2011.

substantively important issues that are germane to certain subsections of section 110(a)(2). Significantly, EPA interprets sections 110(a)(1) and 110(a)(2) such that infrastructure SIP submissions need to address certain issues and need not address others. Accordingly, EPA reviews each infrastructure SIP submission for compliance with the applicable statutory provisions of section 110(a)(2), as appropriate.<sup>13</sup>

EPA's approach to review of infrastructure SIP submissions is to identify the CAA requirements that are logically applicable to that submission. EPA believes that this approach to the review of a particular infrastructure SIP submission is appropriate, because it would not be reasonable to read the general requirements of section 110(a)(1) and the list of elements in 110(a)(2) as requiring review of each and every provision of a state's existing SIP against all requirements in the CAA and EPA regulations merely 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. These provisions, 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 evaluates adequacy of the infrastructure SIP submission. EPA

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<sup>13</sup> Although not intended to provide guidance for purposes of infrastructure SIP submissions for the 2008 Lead NAAQS, EPA notes, that following the 2011 Lead Infrastructure SIP Guidance, EPA issued the "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)." Memorandum from Stephen D. Page, September 13, 2013. This 2013 guidance provides recommendations for air agencies' development and the EPA's review of infrastructure SIPs for the 2008 ozone primary and secondary NAAQS, the 2010 primary nitrogen dioxide (NO<sub>2</sub>) NAAQS, the 2010 primary sulfur dioxide (SO<sub>2</sub>) NAAQS, and the 2012 primary fine particulate matter (PM<sub>2.5</sub>) NAAQS, as well as infrastructure SIPs for new or revised NAAQS promulgated in the future.

believes that a better approach is for states and EPA to focus attention on those elements of section 110(a)(2) of the CAA most likely to warrant a specific SIP revision due to the promulgation of a new or revised NAAQS or other factors.

Finally, EPA believes that its approach with respect to infrastructure SIP requirements is based on a reasonable reading of sections 110(a)(1) and 110(a)(2) because the CAA provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow EPA to take appropriately 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 to otherwise comply with the CAA.<sup>14</sup> Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.<sup>15</sup> Significantly, EPA’s determination that an action on a state’s infrastructure SIP submission is not the appropriate time and place to address all potential existing SIP deficiencies does not preclude EPA’s subsequent reliance on provisions in section 110(a)(2) as part of the basis for action to correct those deficiencies at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director’s discretion

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<sup>14</sup> For example, EPA issued a SIP call to Utah to address specific existing SIP deficiencies related to the treatment of excess emissions during SSM events. See “Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revisions,” 74 FR 21639 (April 18, 2011).

<sup>15</sup> EPA has used 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 section 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).

provisions in the course of acting on an infrastructure SIP submission, EPA believes that section 110(a)(2)(A) may be among the statutory bases that EPA relies upon in the course of addressing such deficiency in a subsequent action.<sup>16</sup>

#### **IV. What is EPA’s Analysis of How Mississippi Addressed the Elements of Sections 110(a)(1) and (2) “Infrastructure” Provisions?**

The Mississippi infrastructure submission addresses the provisions of sections 110(a)(1) and (2) as described below.

**1. 110(a)(2)(A): *Emission limits and other control measures*:** Mississippi’s infrastructure SIP submission provides an overview of the provisions of the Mississippi Air Pollution Control (APC) regulations relevant to air quality control. *Mississippi Code Title 49*, Section 49-17-17(h) (Appendix A-9) and Sections APC-S-1 - *Air Emission Regulations for the Prevention, Abatement, and Control of Air Contaminants*, and APC-S-3 - *Regulations for the Prevention of Air Pollution Emergency Episodes*, provide the MDEQ with the authority to adopt, modify, or repeal ambient air quality standards and emission standards for the state under such conditions as the Mississippi Commission on Environmental Quality (Commission) may prescribe for the prevention, control, and abatement of pollution. EPA has made the preliminary determination that the above provisions and Mississippi’s practices are adequate to protect the 2008 Lead NAAQS in the State.

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<sup>16</sup> See, e.g., EPA’s disapproval of 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 (Jan. 26, 2011) (final disapproval of such provisions).

In this action, EPA is not proposing to approve or disapprove any existing State provisions with regard to excess emissions during SSM of operations at a facility. EPA believes that a number of states have SSM provisions which are contrary to the CAA and existing EPA guidance, “State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown” (September 20, 1999), and the Agency plans to address such state regulations in the future<sup>17</sup>. In the meantime, EPA encourages any state having a deficient SSM provision to take steps to correct it as soon as possible.

Additionally, in this action, EPA is not proposing to approve or disapprove any existing State rules with regard to director’s discretion or variance provisions. EPA believes that a number of states have such provisions which are contrary to the CAA and existing EPA guidance (52 FR 45109 (November 24, 1987)), and the Agency plans to take action in the future to address such state regulations. In the meantime, EPA encourages any state having a director’s discretion or variance provision which is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

**2. 110(a)(2)(B): *Ambient air quality monitoring/data system:*** SIPs are required to provide for the establishment and operation of ambient air quality monitors, the compilation and analysis of ambient air quality data, and the submission of these data to EPA upon request. *Mississippi Code Title 49*, Section 49-17-17(g) (Appendix A-9), provides MDEQ with the necessary statutory

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<sup>17</sup> On February 22, 2013, EPA published a proposed action in the Federal Register entitled, “State Implementation Plans: Response to Petition for Rulemaking; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction; Proposed Rule.” 78 FR 12459.

authority to collect and disseminate information relating to air quality and pollution and the prevention, control, supervision, and abatement thereof. Annually, States develop and submit to EPA for approval statewide ambient monitoring network plans consistent with the requirements of 40 CFR Parts 50, 53, and 58. The annual network plan involves an evaluation of any proposed changes to the monitoring network, includes the annual ambient monitoring network design plan and a certified evaluation of the agency's ambient monitors and auxiliary support equipment.<sup>18</sup> On June 26, 2013 with and addendum on August 27, 2013, Mississippi submitted its monitoring network plan to EPA, which was approved on November 22, 2013. Mississippi's approved monitoring network plan can be accessed at [www.regulations.gov](http://www.regulations.gov) using Docket ID No. EPA-R04-OAR-2013-0270. EPA has made the preliminary determination that Mississippi's SIP and practices are adequate for the ambient air quality monitoring and data system requirements related to the 2008 Lead NAAQS.

**3. 110(a)(2)(C): *Program for enforcement, Prevention of Significant Deterioration (PSD)***

***and new source review (NSR):*** In this action, EPA is proposing to approve Mississippi's infrastructure SIP submission for the 2008 Lead NAAQS with respect to the general requirement in section 110(a)(2)(C) to include a program in the SIP that provides for enforcement of emission limits and control measures, the regulation of minor sources and modifications, and the enforcement of oxides of nitrogen (NO<sub>x</sub>) and volatile organic compounds (VOCs) emission limits to assist in the protection of air quality in nonattainment, attainment or unclassifiable

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<sup>18</sup> On occasion, proposed changes to the monitoring network are evaluated outside of the network plan approval process in accordance with 40 CFR Part 58.

areas. To meet these obligations, Sections APC-S-5 - *Mississippi Regulations for the Prevention of Significant Deterioration of Air Quality* and APC-S-2 - *Permit Regulation for the Construction and/or Operation of Air Emissions Equipment*, both of which pertain to the construction of any new major stationary source or any project at an existing major stationary source in an area designated as attainment or unclassifiable.

**Enforcement:** MDEQ's above-described, SIP-approved regulations provide for enforcement of VOC and NOx emission limits and control measures and construction permitting for new or modified stationary sources.

**Preconstruction PSD Permitting for Major Sources:** With respect to Mississippi's infrastructure SIP submission related to the preconstruction PSD permitting requirements for major sources of section 110(a)(2)(C), EPA is not proposing any action today regarding these requirements and instead will act on this portion of the submission in a separate action.

**Regulation of minor sources and modifications:** Section 110(a)(2)(C) also requires the SIP to include provisions that govern the minor source pre-construction program that regulates emissions of the 2008 Lead NAAQS. Mississippi has a SIP-approved minor NSR permitting program at APC-S-2, I. D - *Permitting Requirements* that regulates the preconstruction permitting of modifications and construction of minor stationary sources.

EPA has made the preliminary determination that Mississippi's SIP and practices are adequate for enforcement of control measures and regulation of minor sources and modifications related to the Lead NAAQS.

**4. 110(a)(2)(D)(i) and (ii): *Interstate and International transport provisions:*** Section 110(a)(2)(D)(i) has two components; 110(a)(2)(D)(i)(I) and 110(a)(2)(D)(II). Each of these

components have two subparts resulting in four distinct components, commonly referred to as “prongs,” that must be addressed in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state (“prong 1”), and interfering with maintenance of the NAAQS in another state (“prong 2”). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state interfering with measures required to prevent significant deterioration of air quality in another state (“prong 3”), or to protect visibility in another state (“prong 4”). Section 110(a)(2)(D)(ii) requires SIPs to include provisions insuring compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement.

**110(a)(2)(D)(i)(I) – prongs 1 and 2:** Section 110(a)(2)(D)(i) requires infrastructure SIP submissions to include provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment in, or interfering with maintenance of the NAAQS in another state. The physical properties of lead prevent lead emission from experiencing that same travel or formation phenomena as PM<sub>2.5</sub> and ozone for interstate transport as outlined in prongs 1 and 2. More specifically, there is a sharp decrease in lead concentrations, at least in the coarse fraction, as the distance from a lead source increases. EPA believes that the requirements of prongs 1 and 2 can be satisfied through a state’s assessment as to whether a lead source located within its State in close proximity to a state border has emissions that contribute significantly to the nonattainment or interfere with maintenance of the NAAQS in the neighboring state. For example, EPA’s experience with the initial Lead designations suggest that sources that emit less than 0.5 tpy generally appear unlikely to contribute significantly to the

nonattainment in another state.<sup>19</sup> Mississippi has no Lead sources that have emissions of Lead over 0.5 tons per year (tpy). Therefore, EPA has made the preliminary determination that Mississippi's SIP meets the requirements of section 110(a)(2)(D)(i)(I).

**110(a)(2)(D)(i)(II) – prong 3:** With respect Mississippi's infrastructure SIP submission related to the preconstruction PSD permitting requirements for major sources of section 110(a)(2)(D)(i)(II), EPA is not proposing any action today regarding these requirements and instead will act on this portion of the submission in a separate action.

**110(a)(2)(D)(i)(II) – prong 4:** With regard to section 110(a)(2)(D)(i)(II), the visibility sub-element, referred to as prong 4, significant impacts from lead emissions from stationary sources are expected to be limited to short distances from the source. The 2011 Lead Infrastructure SIP Guidance notes that it is anticipated that lead emissions will contribute only negligibly to visibility impairment in Class I areas. Lead stationary sources in Mississippi are located distances from Class I areas such that visibility impacts are negligible. Mississippi's infrastructure SIP submittal cites its SIP revision regarding the Regional Haze Program Requirements (Appendix R) to satisfy its obligations under prong 4 of section 110(a)(2)(D)(i). Mississippi also notes that the States does not have any lead sources with emissions equal to or greater than 0.5 tons per year. Therefore, EPA has preliminarily determined that the Mississippi SIP meets the relevant visibility requirements of prong 4 of section 110(a)(2)(D)(i).

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<sup>19</sup> EPA's experience also suggests that sources located more than two miles from the state border generally appear unlikely to contribute significantly to the nonattainment in another state.

**110(a)(2)(D)(ii): Interstate and International transport provisions:** Section APC-S-2 - *Permit Regulations For The Construction and/or Operation of Air Emissions Equipment*, provides how MDEQ will notify neighboring states of potential impacts from new or modified sources consistent with the requirements of 40 CFR 51.166. EPA is unaware of any pending obligations for the state of Mississippi pursuant to sections 115 and 126. EPA has made the preliminary determination that Mississippi's SIP and practices are adequate for insuring compliance with the applicable requirements relating to interstate and international pollution abatement for the 2008 Lead NAAQS.

**5. 110(a)(2)(E): Adequate personnel, funding, and authority:** Section 110(a)(2)(E) requires that each implementation plan provide (i) necessary assurances that the State will have adequate personnel, funding, and authority under state law to carry out its implementation plan, (ii) that the State comply with the requirements respecting State Boards pursuant to section 128 of the Act, and (iii) necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provisions. EPA is proposing to approve Mississippi's SIP as meeting the requirements of sections 110(a)(2)(E)(i) and (iii). EPA is proposing to approve in part and disapprove in part Mississippi's SIP respecting section 110(a)(2)(E)(ii). EPA's rationale for today's proposals respecting each section of 110(a)(2)(E) is described in turn below.

To satisfy the requirements of sections 110(a)(2)(E)(i) and (iii), Mississippi's infrastructure SIP submission describes that *Mississippi Code Title 49*, Sections 49-17-17(d) and 49-17-17(h) (Appendix A-9), provide MDEQ with the authority to accept and administer laws and grants from the federal government and from other sources, public and private, for carrying

out any of its functions, including its responsibility to implement its SIP. As further evidence of the adequacy of MDEQ's resources with respect to sub-elements (i) and (iii), EPA submitted a letter to Mississippi on March 28, 2014, outlining 105 grant commitments and the current status of these commitments for fiscal year 2013. The letter EPA submitted to Mississippi can be accessed at [www.regulations.gov](http://www.regulations.gov) using Docket ID No. EPA-R04-OAR-2013-0270. Annually, states update these grant commitments based on current SIP requirements, air quality planning, and applicable requirements related to the NAAQS. Mississippi satisfactorily met all commitments agreed to in the Air Planning Agreement for fiscal year 2013, therefore Mississippi's grants were finalized and closed out. EPA has made the preliminary determination that Mississippi has adequate resources for implementation of the 2008 Lead NAAQS.

To meet the requirements of section 110(a)(2)(E)(ii), states must comply with the requirements respecting state boards pursuant to section 128 of the Act. Section 128 of the CAA requires that states include provisions in their SIP to address conflicts of interest for state boards or bodies that oversee CAA permits and enforcement orders and disclosure of conflict of interest requirements. Specifically, CAA section 128(a)(1) necessitates that each SIP shall require that at least a majority of any board or body which approves permits or enforcement orders shall be subject to the described public interest service and income restrictions therein. Subsection 128(a)(2) requires that the members of any board or body, or the head of an executive agency with similar power to approve permits or enforcement orders under the CAA, shall also be subject to conflict of interest disclosure requirements.

To meet its section 110(a)(2)(E)(ii) obligations for the 2008 Lead NAAQS, Mississippi's infrastructure SIP submission cites the State's revision to its SIP to meet the requirements of

CAA section 128 for the 1997 and 2006 PM<sub>2.5</sub> NAAQS, which was submitted to EPA on October 11, 2012.<sup>20</sup> Based upon the review of the laws and provisions contained in MDEQ's October 11, 2012, SIP revision, which have since been incorporated into the SIP, EPA is proposing to approve the section 110(a)(2)(E)(ii) portions of the infrastructure SIP submission as it relates to the public interest requirements of section 128(a)(1) and the conflict of interest disclosure provisions of section 128(a)(2). EPA is also proposing to disapprove the section 110(a)(2)(E)(ii) portion of the infrastructure SIP submission as it pertains to compliance with the significant portion of income requirement of section 128(a)(1) for the 2008 8-hour ozone NAAQS.<sup>21</sup>

With respect to the public interest requirement of section 128(a)(1) and the adequate disclosure of conflicts of interest requirement of section 128(a)(2), EPA has previously found these requirements to be satisfied by the existing provisions in Mississippi's SIP. *See* 78 FR 20793.

With respect to the significant portion of income requirement of section 128(a)(1), the provisions included in the October 11, 2012 infrastructure SIP submission did not preclude at least a majority of the members of the Mississippi Board from receiving a significant portion of their income from persons subject to permits or enforcement orders issued by the Mississippi Boards. While the submitted laws and provisions preclude members of the Mississippi Boards

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<sup>20</sup> Mississippi's October 11, 2012, infrastructure SIP submission only addressed compliance with 110(a)(2)(E)(ii) respecting CAA section 128 requirements. On May 8, 2014, Mississippi clarified to EPA that the provisions submitted in the October 11, 2012, SIP submission to comply with 110(a)(2)(E)(ii) for the PM<sub>2.5</sub> NAAQS infrastructure SIP were also intended to cover the 2008 Lead and 2008 8-hour ozone NAAQS infrastructure SIP.

<sup>21</sup> EPA took similar action with respect to Mississippi's section 110(a)(2)(E)(ii) submission for the 1997 and 2006 PM<sub>2.5</sub> NAAQS.

from certain types of income (e.g., contracts with State or political subdivisions thereof, or income obtained through the use of his or her public office or obtained to influence a decision of the Mississippi Boards), they do not preclude a majority of members of the Mississippi Boards from deriving any significant portion of their income from persons subject to permits or enforcement orders so long as that income is not derived from one of the proscribed methods described in the laws and provisions submitted by the State. Because a majority of board members may still derive a significant portion of income from persons subject to permits or enforcement orders issued by the Mississippi Boards, the Mississippi SIP does not meet the section 128(a)(1) majority requirements respecting significant portion of income, and as such, EPA is today proposing to disapprove the State's 110(a)(2)(E)(ii) submission as it relates only to this portion of section 128(a)(1).

Accordingly, EPA is proposing to approve the section 110(a)(2)(E)(ii) submission as it relates to the public interest requirements of section 128(a)(1) and the conflict of interest disclosure provisions of section 128(a)(2), and is proposing to disapprove Mississippi's section 110(a)(2)(E)(ii) submission as it pertains to compliance with the significant portion of income requirements of section 128(a)(1) for the 2008 Lead NAAQS.

**6. 110(a)(2)(F): *Stationary source monitoring system:*** Mississippi's infrastructure SIP submission describes how the State establishes requirements for compliance testing by emissions sampling and analysis, and for emissions and operation monitoring to ensure the quality of data in the State. These requirements are met by Section APC-S-2 - *Permit Regulation for the Construction and/or Operation of Air Emissions Equipment* and *Mississippi Code 49, Section 49-17-21* (Appendix A-9), which provides MDEQ with the authority to require the maintenance

of records related to the operation of air contaminant sources and provides any authorized representative of the Mississippi Commission on Environmental Quality with authority to examine and copy any such records or memoranda pertaining to the operation of such contaminant source. Section APC-S-2 also lists the requirements for compliance testing which is included in any MDEQ air pollution air permit. Section APC-S-1 authorizes source owners or operators to use any credible evidence or information relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed, for the purpose of submitting compliance certifications. Accordingly, EPA is unaware of any provision preventing the use of credible evidence in the Mississippi SIP.

Additionally, Mississippi is required to submit emissions data to EPA for purposes of the National Emissions Inventory (NEI). The NEI is EPA's central repository for air emissions data. EPA published the Air Emissions Reporting Rule (AERR) on December 5, 2008, which modified the requirements for collecting and reporting air emissions data (73 FR 76539). The AERR shortened the time states had to report emissions data from 17 to 12 months, giving states one calendar year to submit emissions data. All states are required to submit a comprehensive emissions inventory every three years and report emissions for certain larger sources annually through EPA's online Emissions Inventory System. States report emissions data for the six criteria pollutants and their associated precursors—NO<sub>x</sub>, sulfur dioxide, ammonia, Lead, carbon monoxide, particulate matter, and VOCs. Many states also voluntarily report emissions of hazardous air pollutants. Mississippi made its latest update to the 2012 NEI on January 9, 2014. EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the website <http://www.epa.gov/ttn/chief/eiinformation.html>. EPA has made the preliminary determination that Mississippi's SIP and practices are adequate for the

stationary source monitoring systems related to the 2008 Lead NAAQS. Accordingly, EPA is proposing to approve Mississippi's infrastructure SIP submission with respect to section 110(a)(2)(F).

**7. 110(a)(2)(G): *Emergency episodes:*** This section of the CAA requires that states demonstrate authority comparable with section 303 of the CAA and adequate contingency plans to implement such authority. Mississippi cites Section APC-S-3 - *Mississippi Regulations for the Prevention of Air Pollution Emergency Episodes* and *Mississippi Code Title 49, 49-17-27* (Appendix A-9), as providing the State with the authority to identify air pollution emergency events and to implement preplanned abatement strategies in response to such events. This regulation and statute further prevent the excessive buildup of air pollutants during air pollution episodes. EPA has made the preliminary determination that Mississippi's SIP and practices are adequate for emergency powers related to the 2008 Lead NAAQS.

**8. 110(a)(2)(H): *Future SIP revisions:*** Mississippi's infrastructure SIP submission cites *Mississippi Code Title 49, Section 49-17-17(h)* (Appendix A-9), as providing MDEQ with the authority to adopt air quality rules and revise SIPs as needed to attain or maintain the NAAQS in the State. The infrastructure SIP submission as cites this statute as providing MDEQ with the statutory authority to revise the SIP to accommodate changes to the NAAQS and revise the SIP if the EPA Administrator finds the plan to be substantially inadequate to attain the NAAQS. Accordingly, EPA has made the preliminary determination that Mississippi's SIP and practices adequately demonstrate a commitment to provide future SIP revisions related to the 2008 Lead NAAQS when necessary.

**9. 110(a)(2)(J): Consultation with Government Officials, Public Notification, and PSD and Visibility Protection:** EPA is proposing to approve Mississippi's infrastructure SIP for the 2008 Lead NAAQS with respect to the general requirement in section 110(a)(2)(J) to include a program in the SIP that provides for meeting the applicable consultation requirements of section 121, the public notification requirements of section 127, and visibility protection requirements of part C of the Act. With respect to Mississippi's infrastructure SIP submission related to the preconstruction PSD permitting, EPA is not proposing any action today regarding these requirements and instead will act on these portions of the submission in a separate action.

**Consultation with government officials (121 Consultation):** This requirement is met through Section APC-S-5 - *Mississippi Regulations for the Prevention of Significant Deterioration of Air Quality* and *Mississippi Code Title 49, Section 49-17-17(c)* (Appendix A-9), along with the State's SIP revisions, such as the Regional Haze SIP revision, which allows for consultation between appropriate state, local, and tribal air pollution control agencies as well as the corresponding Federal Land Managers whose jurisdictions might be affected by SIP development activities. EPA has made the preliminary determination that Mississippi's SIP and practices adequately demonstrate that the State meets applicable requirements related to consultation with government officials for the 2008 Lead NAAQS when necessary.

**Public notification (127 Public Notification):** These requirements are met through Section APC-S-3 - *Mississippi Regulations for the Prevention of Air Pollution Emergency Episodes*, which requires that MDEQ notify the public of any air pollution alert, warning, or emergency. The MDEQ website also provides air quality summary data, air quality index reports, and links to more information regarding public awareness of measures that can prevent such exceedances and of ways in which the public can participate in regulatory and other efforts to improve air

quality. EPA has made the preliminary determination that Mississippi's SIP and practices adequately demonstrate the State's ability to provide public notification related to the 2008 Lead NAAQS when necessary.

**Visibility Protection:** Proposed approval of Mississippi's implementation plan respecting prong 4 of 110(a)(2)(D)(i)(II) requires that the SIP contain adequate provisions to protect visibility (referred to as "prong 4") in Mississippi. The 2011 Lead Infrastructure SIP Guidance notes that EPA does not generally treat the visibility protection aspects of section 110(a)(2)(J) as applicable for purposes of the infrastructure SIP approval process. EPA recognizes that states are subject to visibility protection and regional haze program requirements under Part C of the Act (which includes sections 169A and 169B). However, in the event of the establishment of a new primary NAAQS, the visibility protection and regional haze program requirements under part C do not change. Thus, EPA concludes there are no new applicable visibility protection obligations under section 110(a)(2)(J) as a result of the 2008 Lead NAAQS, and as such, EPA is proposing to approve section 110(a)(2)(J) of MDEQ's infrastructure SIP submission as it relates to visibility protection.

**10. 110(a)(2)(K): Air quality and modeling/data:** Sections APC-S-2, Section V.B. - *Permit Regulation for the Construction and/or Operation of Air Emissions Equipment* and APC-S-5 - *Mississippi Regulations for the Prevention of Significant Deterioration of Air Quality*, specify that required air modeling be conducted in accordance with 40 CFR Part 51, Appendix W "Guideline on Air Quality Models," as incorporated into the Mississippi SIP. These standards demonstrate that Mississippi has the authority to perform air quality monitoring and to provide relevant data for the purpose of predicting the effect on ambient air quality of the 2008 Lead

NAAQS. Additionally, Mississippi supports a regional effort to coordinate the development of emissions inventories and conduct regional modeling for several NAAQS, including the Lead NAAQS, for the southeastern states. Taken as a whole, Mississippi's air quality regulations and practices demonstrate that MDEQ has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of the 2008 Lead NAAQS. EPA has made the preliminary determination that Mississippi's SIP and practices adequately demonstrate the State's ability to provide for air quality and modeling, along with analysis of the associated data, related to the 2008 Lead NAAQS when necessary.

**11. 110(a)(2)(L): Permitting fees:** This element necessitates that the SIP require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under the CAA, a fee sufficient to cover (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V.

To satisfy these requirements, Mississippi's infrastructure SIP submission cites *Mississippi Code Title 49*, Section 49-2-9(c) (Appendix A-9), which authorizes MDEQ to apply for, receive, and expend Federal or state funds in order to operate its air programs; *Mississippi Code Title 49*, Section 49-17-30 (Appendix A-9), which provides for the assessment of title V permit fees to cover the reasonable cost of reviewing and acting upon permitting air permitting activities in the state including title V, PSD and NNSR permits; and, *Mississippi Code Title 49*, Section 49-17-14 (Appendix A-9), which allows MDEQ to expend or utilize monies in the

Mississippi Air Operating Permit Program Fee Trust Fund to pay all reasonable direct and indirect costs associated with the development and administration of the title V program including, but not limited to, the reasonable costs of performing activities related to the title V program. These funding mechanisms reflect the reasonable cost of review, approval, implementation, and enforcement of the state's air permitting program. The title V operating program fees also cover the reasonable cost of implementation and enforcement of PSD permits after they have been issued. EPA has made the preliminary determination that Mississippi adequately provides for permitting fees related to the Lead NAAQS, when necessary.

**12. 110(a)(2)(M): *Consultation/participation by affected local entities:*** *Mississippi Code Title 49, Sections 49-17-17(c) and 49-17-19(b) (Appendix A-9), requires that MDEQ notify the public of an application, preliminary determination, the activity or activities involved in the permit action, any emissions change associated with any permit modification, and the opportunity for comment prior to making a final permitting decision. Additionally, MDEQ works closely with local political subdivisions during the development of its Transportation Conformity SIP and Regional Haze SIP. EPA has made the preliminary determination that Mississippi's SIP and practices adequately demonstrate consultation with affected local entities related to the 2008 Lead NAAQS when necessary.*

## **V. Proposed Action**

With the exception of the PSD permitting requirements for major sources of section 110(a)(2)(C), (D)(i)(II) and (J) and the state board majority requirements respecting significant

portion of income of section 110(a)(2)(E)(ii), EPA is proposing to approve that MDEQ's infrastructure SIP submission, submitted November 17, 2011, for the 2008 Lead NAAQS has met the above-described infrastructure SIP requirements. EPA is proposing to disapprove in part section 110(a)(2)(E)(ii) of Mississippi's infrastructure SIP submission because a majority of board members may still derive a significant portion of income from persons subject to permits or enforcement orders issued by the Mississippi Boards, therefore, its current SIP does not meet the section 128(a)(1) majority requirements respecting significant portion of income. This proposed approval in part and disapproval in part, does not include sections 110(a)(2)(C), prong 3 of D(i) and (J). EPA will address these portions of Mississippi's infrastructure SIP submission for the 2008 Lead NAAQS in a separate action.

Under section 179(a) of the CAA, final disapproval of a submittal that addresses a requirement of a CAA Part D Plan or is required in response to a finding of substantial inadequacy as described in CAA section 110(k)(5) (SIP call) starts a sanctions clock. The portion of section 110(a)(2)(E)(ii) provisions (the provisions being proposed for disapproval in today's notice) were not submitted to meet requirements for Part D or a SIP call, and therefore, if EPA takes final action to disapprove this submittal, no sanctions will be triggered. However, if this disapproval action is finalized, that final action will trigger the requirement under section 110(c) that EPA promulgate a federal implementation plan (FIP) no later than 2 years from the date of the disapproval unless the State corrects the deficiency, and EPA approves the plan or plan revision before EPA promulgates such FIP.

## **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. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. 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 (Public Law 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, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

## **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Intergovernmental relations, Lead, and Recordkeeping requirements.

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

Dated: November 3, 2014.

V. Anne Heard

Acting Regional Administrator,  
Region 4.

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