



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2016-0294; FRL-9948-41-Region 4]

Air Plan Approval; Alabama; Cross-State Air Pollution Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve portions of the October 26, 2015, State Implementation Plan (SIP) submittal from Alabama concerning the Cross-State Air Pollution Rule (CSAPR). Under CSAPR, large electricity generating units (EGUs) in Alabama are subject to Federal Implementation Plans (FIPs) requiring the units to participate in CSAPR's federal trading program for annual emissions of nitrogen oxides (NO_x) and one of CSAPR's two federal trading programs for annual emissions of sulfur dioxide (SO₂). This action would approve into Alabama's SIP the state's regulations requiring Alabama EGUs to participate in new CSAPR state trading programs for annual NO_x and SO₂ emissions integrated with the CSAPR federal trading programs, replacing the corresponding FIP requirements. These CSAPR state trading programs are substantively identical to the CSAPR federal trading programs except with regard to the provisions allocating emission allowances among Alabama units. EPA is proposing to approve the portions of the SIP revision concerning these CSAPR state trading programs because these portions of the SIP revision meet the requirements of the Clean Air Act (CAA or Act) and EPA's regulations for approval of a CSAPR full SIP revision replacing the requirements of a CSAPR FIP. Under the CSAPR regulations, approval of these portions of the SIP revision would automatically eliminate

Alabama units' obligations to participate in CSAPR's federal trading programs for annual NOx and SO₂ emissions under the corresponding CSAPR FIPs addressing interstate transport requirements for the 1997 and 2006 Fine Particulate Matter (PM_{2.5}) national ambient air quality standards (NAAQS). Approval of these portions of the SIP revision would satisfy Alabama's good neighbor obligation under the CAA to prohibit emissions which will significantly contribute to nonattainment or interfere with maintenance of the 1997 and 2006 PM_{2.5} NAAQS in any other state. EPA is not proposing to act at this time on the portion of Alabama's SIP submittal intended to replace Alabama units' obligations to participate in CSAPR's federal trading program for ozone-season NOx emissions under a separate CSAPR FIP.

DATES: 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-2016-0294 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

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SUPPLEMENTARY INFORMATION:

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I. Summary

EPA is proposing to approve the portions of the October 26, 2015, SIP submittal from Alabama concerning CSAPR¹ trading programs for annual emissions of NO_x and SO₂. Large EGUs in Alabama are subject to CSAPR FIPs that require the units to participate in the federal CSAPR NO_x Annual Trading Program and the federal CSAPR SO₂ Group 2 Trading Program.² CSAPR also provides a process for the submission and approval of SIP revisions to replace the requirements of CSAPR FIPs with SIP requirements under which a state's units participate in CSAPR state trading programs that are integrated with and, with certain permissible exceptions, substantively identical to the CSAPR federal trading programs.

The portions of the SIP revision proposed for approval would incorporate into Alabama's SIP state trading program regulations for annual NO_x and SO₂ emissions that would replace EPA's federal trading program regulations for those emissions for Alabama units for control periods in 2017 and later years. EPA is proposing to approve these portions of the SIP revision because they meet the requirements of the CAA and EPA's regulations for approval of a CSAPR full SIP revision replacing a federal trading program with a state trading program that is integrated with and substantively identical to the federal trading program except for permissible differences with respect to emission allowance allocation provisions. Under the CSAPR regulations, approval of these portions of the SIP revision would automatically eliminate the obligations of units in Alabama (but not any units in Indian country within Alabama's borders)

¹ Federal Implementation Plans; Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals, 76 FR 48208 (August 8, 2011) (codified as amended at 40 CFR 52.38 and 52.39 and subparts AAAAA through DDDDD of 40 CFR part 97).

² EPA has proposed to replace the terms "Transport Rule" and "TR" in the text of the *Code of Federal Regulations* with the updated terms "Cross-State Air Pollution Rule" and "CSAPR." 80 FR 75706 and 75759 (December 3, 2015). Except where otherwise noted, EPA uses the updated terms here.

to participate in CSAPR's federal trading programs for annual NO_x and SO₂ emissions under the corresponding CSAPR FIPs. EPA proposes to find that approval of these portions of the SIP revision would satisfy Alabama's obligation pursuant to CAA section 110(a)(2)(D)(i)(I) to prohibit emissions which will significantly contribute to nonattainment or interfere with maintenance of the 1997 and 2006 PM_{2.5} NAAQS in any other state.

The Phase 2 SO₂ budget established for Alabama in the CSAPR rulemaking has been remanded to EPA for reconsideration.³ If EPA finalizes approval of these portions of the SIP revision as proposed, Alabama will have fulfilled its obligations to provide a SIP that address the interstate transport provisions of CAA section 110(a)(2)(D)(i)(I) with respect to the 1997 and 2006 PM_{2.5} NAAQS. Thus, EPA would no longer be under an obligation to (nor would EPA have the authority to) address those interstate transport requirements through implementation of a FIP, and approval of these portions of the SIP revision would eliminate Alabama units' obligations to participate in the federal CSAPR NO_x Annual Trading Program and the federal CSAPR SO₂ Group 2 Trading Program. Elimination of Alabama units' obligations to participate in the federal trading programs would include elimination of the federally-established Phase 2 budgets capping allocations of CSAPR NO_x Annual allowances and CSAPR SO₂ Group 2 allowances to Alabama units under those federal trading programs. As approval of these portions of the SIP revision would eliminate Alabama's remanded federally-established Phase 2 SO₂ budget and eliminate EPA's authority to subject units in Alabama to a FIP, it is EPA's opinion

³ *EME Homer City Generation, L.P. v. EPA*, 795 F.3d 118, 138 (D.C. Cir. 2015).

that finalization of approval of this SIP action would address the judicial remand of Alabama's federally-established Phase 2 SO₂ budget.⁴

Large electricity generating units in Alabama are also subject to an additional CSAPR FIP requiring them to participate in the federal CSAPR NO_x Ozone Season Trading Program. While Alabama's SIP submittal also seeks to replace the requirements of the CSAPR FIP concerning Alabama units' ozone-season NO_x emissions, EPA is not proposing to act on that portion of the SIP submittal at this time. Approval of this SIP revision concerning other CSAPR trading programs would have no effect on the CSAPR NO_x Ozone Season Trading Program as applied to Alabama units, and the FIP requiring the units to participate in that program would remain in place.

Section II of this document summarizes relevant aspects of the CSAPR federal trading programs and FIPs as well as the range of opportunities states have to submit SIP revisions to modify or replace the FIP requirements while continuing to rely on CSAPR's trading programs to address the states' obligations to mitigate interstate air pollution. Section III describes the specific conditions for approval of such SIP revisions. Section IV contains EPA's analysis of Alabama's SIP submittal, and Section V sets forth EPA's proposed action on the submittal. Section VI addresses required statutory and Executive Order reviews.

II. Background on CSAPR and CSAPR-related SIP revisions

EPA issued CSAPR in July 2011 to address the requirements of CAA section 110(a)(2)(D)(i)(I) concerning interstate transport of air pollution. As amended, CSAPR requires 28 Eastern states to limit their statewide emissions of SO₂ and/or NO_x in order to mitigate

⁴ Although the court in *EME Homer City Generation* remanded Alabama's Phase 2 SO₂ budget because it determined that the budget was too stringent, nothing in the court's decision affects Alabama's authority to seek incorporation into its SIP of a state-established budget as stringent as the remanded federally-established budget or limits EPA's authority to approve such a SIP revision. See 42 U.S.C. 7416, 7410(k)(3).

transported air pollution unlawfully impacting other states' ability to attain or maintain three NAAQS: the 1997 ozone NAAQS, the 1997 annual PM_{2.5} NAAQS, and the 2006 24-hour PM_{2.5} NAAQS. The CSAPR emissions limitations are defined in terms of maximum statewide "budgets" for emissions of annual SO₂, annual NO_x, and/or ozone-season NO_x by each covered state's large EGUs. The CSAPR state budgets are implemented in two phases of generally increasing stringency, with the Phase 1 budgets applying to emissions in 2015 and 2016 and the Phase 2 budgets applying to emissions in 2017 and later years. As a mechanism for achieving compliance with the emissions limitations, CSAPR established four federal emissions trading programs: a program for annual NO_x emissions, a program for ozone-season NO_x emissions, and two geographically separate programs for annual SO₂ emissions. CSAPR also established up to three FIPs applicable to the large electricity generating units in each covered state. Each CSAPR FIP requires a state's units to participate in one of the four CSAPR trading programs.

CSAPR includes provisions under which states may submit and EPA will approve SIP revisions to modify or replace the CSAPR FIP requirements while allowing states to continue to meet their transport-related obligations using either CSAPR's federal emissions trading programs or state emissions trading programs integrated with the federal programs.⁵ Through such a SIP revision, a state may replace EPA's default provisions for allocating emission allowances among the state's units, employing any state-selected methodology to allocate or auction the allowances, subject to timing conditions and limits on overall allowance quantities. In the case of CSAPR's federal trading program for ozone-season NO_x emissions (or an integrated state trading program), a state may also expand trading program applicability to include certain smaller electricity generating units. If a state wants to replace CSAPR FIP requirements with SIP

⁵ See 40 CFR 52.38, 52.39. States also retain the ability to submit SIP revisions to meet their transport-related obligations using mechanisms other than the CSAPR federal trading programs or integrated state trading programs.

requirements under which the state's units participate in a state trading program that is integrated with and identical to the federal trading program even as to the allocation and applicability provisions, the state may submit a SIP revision for that purpose as well. However, no emissions budget increases or other substantive changes to the trading program provisions are allowed. A state whose units are subject to multiple CSAPR FIPs and federal trading programs may submit SIP revisions to modify or replace the requirements under either some or all of those FIPs.

States can submit two basic forms of CSAPR-related SIP revisions effective for emissions control periods in 2017 or later years.⁶ Specific conditions for approval of each form of SIP revision are set forth in the CSAPR regulations, as described in section III below. Under the first alternative – an “abbreviated” SIP revision – a state may submit a SIP revision that upon approval replaces the default allowance allocation and/or applicability provisions of a CSAPR federal trading program for the state.⁷ Approval of an abbreviated SIP revision leaves the corresponding CSAPR FIP and all other provisions of the relevant federal trading program in place for the state's units.

Under the second alternative – a “full” SIP revision – a state may submit a SIP revision that upon approval replaces a CSAPR federal trading program for the state with a state trading program integrated with the federal trading program, so long as the state trading program is substantively identical to the federal trading program or does not substantively differ from the federal trading program except as discussed above with regard to the allowance allocation and/or applicability provisions.⁸ For purposes of a full SIP revision, a state may either adopt state rules

⁶ CSAPR also provides for a third, more streamlined form of SIP revision that is effective only for control periods in 2016 and is not relevant here. *See* § 52.38(a)(3), (b)(3); § 52.39(d), (g).

⁷ § 52.38(a)(4), (b)(4); § 52.39(e), (h).

⁸ § 52.38(a)(5), (b)(5); § 52.39(f), (i).

with complete trading program language, incorporate the federal trading program language into its state rules by reference (with appropriate conforming changes), or employ a combination of these approaches.

The CSAPR regulations identify several important consequences and limitations associated with approval of a full SIP revision. First, upon EPA's approval of a full SIP revision as correcting the deficiency in the state's SIP that was the basis for a particular CSAPR FIP, the obligation to participate in the corresponding CSAPR federal trading program is automatically eliminated for units subject to the state's jurisdiction without the need for a separate EPA withdrawal action, so long as EPA's approval of the SIP is full and unconditional.⁹ Second, approval of a full SIP revision does not terminate the obligation to participate in the corresponding CSAPR federal trading program for any units located in any Indian country within the borders of the state, and if and when a unit is located in Indian country within a state's borders, EPA may modify the SIP approval to exclude from the SIP, and include in the surviving CSAPR FIP instead, certain trading program provisions that apply jointly to units in the state and to units in Indian country within the state's borders.¹⁰ Finally, if at the time a full SIP revision is approved EPA has already started recording allocations of allowances for a given control period to a state's units, the federal trading program provisions authorizing EPA to complete the process of allocating and recording allowances for that control period to those units will continue to apply, unless EPA's approval of the SIP revision provides otherwise.¹¹

⁹ § 52.38(a)(6), (b)(6); § 52.39(j).

¹⁰ § 52.38(a)(5)(iv) and (v), (a)(6), (b)(5)(v) and (vi), (b)(6); § 52.39(f)(4) and (5), (i)(4) and (5), (j).

¹¹ § 52.38(a)(7), (b)(7); § 52.39(k).

Certain CSAPR Phase 2 emissions budgets have been remanded to EPA for reconsideration.¹² However, the CSAPR trading programs remain in effect and all CSAPR emissions budgets likewise remain in effect pending EPA final action to address the remands. The remanded budgets include the CSAPR Phase 2 SO₂ emissions budget applicable to Alabama units under the federal CSAPR SO₂ Group 2 Trading Program.

In 2015, EPA proposed to update CSAPR to address Eastern states' interstate air pollution mitigation obligations with regard to the 2008 ozone NAAQS. Among other things, the proposed rule would amend the Phase 2 emissions budget applicable to Alabama units under the CSAPR NO_x Ozone Season Trading Program and would make technical corrections and nomenclature changes that would apply throughout the CSAPR regulations, including the CSAPR FIPs at 40 CFR part 52 and the CSAPR federal trading program regulations for annual NO_x, ozone-season NO_x, and SO₂ emissions at 40 CFR part 97.¹³

III. Conditions for approval of CSAPR-related SIP revisions

Each CSAPR-related abbreviated or full SIP revision must meet the following general submittal conditions:

- *Timeliness and completeness of SIP submittal.* If a state wants to replace the default allowance allocation or applicability provisions of a CSAPR federal trading program, the complete SIP revision must be submitted to EPA by December 1 of the year before the deadlines described below for submitting allocation or auction amounts to EPA for the first control period for which the state wants to replace the default allocation and/or applicability provisions.¹⁴ This SIP submission deadline is inoperative in the case of a

¹² *EME Homer City Generation, L.P. v. EPA*, 795 F.3d 118, 138 (D.C. Cir. 2015).

¹³ 80 FR 75706, 75710, 75757 (December 3, 2015).

¹⁴ 40 CFR 52.38(a)(4)(ii), (a)(5)(vi), (b)(4)(iii), (b)(5)(vii); § 52.39(e)(2), (f)(6), (h)(2), (i)(6).

SIP revision that seeks only to replace a CSAPR FIP and federal trading program with a SIP and a substantively identical state trading program integrated with the federal trading program. The SIP submittal completeness criteria in section 2.1 of appendix V to 40 CFR part 51 also apply.

In addition to the general submittal conditions, a CSAPR-related abbreviated or full SIP seeking to address the allocation or auction of emission allowances must meet the following further conditions:

- *Methodology covering all allowances potentially requiring allocation.* For each federal trading program addressed by a SIP revision, the SIP revision’s allowance allocation or auction methodology must replace both the federal program’s default allocations to existing units¹⁵ at 40 CFR 97.411(a), 97.511(a), 97.611(a), or 97.711(a), as applicable, and the federal trading program’s provisions for allocating allowances from the new unit set-aside (NUSA) for the state at 40 CFR 97.411(b)(1) and 97.412(a), 97.511(b)(1) and 97.512(a), 97.611(b)(1) and 97.612(a), or 97.711(b)(1) and 97.712(a), as applicable.¹⁶ In the case of a state with Indian country within its borders, while the SIP revision may neither alter nor assume the federal program’s provisions for administering the Indian country NUSA for the state, the SIP revision must include procedures addressing the disposition of any otherwise unallocated allowances from an Indian country NUSA that

¹⁵ In the context of the approval conditions for CSAPR-related SIP revisions, an “existing unit” is a unit for which EPA has determined default allowance allocations (which could be allocations of zero allowances) in the rulemakings establishing and amending CSAPR. A spreadsheet showing EPA’s default allocations to existing units is posted at www.epa.gov/crossstaterule/techinfo.html.

¹⁶ § 52.38(a)(4)(i), (a)(5)(i), (b)(4)(ii), (b)(5)(ii); § 52.39(e)(1), (f)(1), (h)(1), (i)(1).

may be made available for allocation by the state after EPA has carried out the Indian country NUSA allocation procedures.¹⁷

- *Assurance that total allocations will not exceed the state budget.* For each federal trading program addressed by a SIP revision, the total amount of allowances auctioned or allocated for each control period under the SIP revision (prior to the addition by EPA of any unallocated allowances from any Indian country NUSA for the state) may not exceed the state's emissions budget for the control period less the sum of the amount of any Indian country NUSA for the state for the control period and any allowances already allocated to the state's units for the control period and recorded by EPA.¹⁸ Under its SIP revision, a state is free to not allocate allowances to some or all potentially affected units, to allocate or auction allowances to entities other than potentially affected units, or to allocate or auction fewer than the maximum permissible quantity of allowances and retire the remainder.
- *Timely submission of state-determined allocations to EPA.* The SIP revision must require the state to submit to EPA the amounts of any allowances allocated or auctioned to each unit for each control period (other than allowances initially set aside in the state's allocation or auction process and later allocated or auctioned to such units from the set-aside amount) by the following deadlines.¹⁹ Note that the submission deadlines differ for amounts allocated or auctioned to units considered existing units for CSAPR purposes and amounts allocated or auctioned to other units.

¹⁷ See §§ 97.412(b)(10)(ii), 97.512(b)(10)(ii), 97.612(b)(10)(ii), 97.712(b)(10)(ii).

¹⁸ § 52.38(a)(4)(i)(A), (a)(5)(i)(A), (b)(4)(ii)(A), (b)(5)(ii)(A); § 52.39(e)(1)(i), (f)(1)(i), (h)(1)(i), (i)(1)(i).

¹⁹ § 52.38(a)(4)(i)(B) and (C), (a)(5)(i)(B) and (C), (b)(4)(ii)(B) and (C), (b)(5)(ii)(B) and (C); § 52.39(e)(1)(ii) and (iii), (f)(1)(ii) and (iii), (h)(1)(ii) and (iii), (i)(1)(ii) and (iii).

Units	Year of the Control Period	Deadline for Submission to EPA of Allocations or Auction Results
Existing	2017 and 2018	June 1, 2016
	2019 and 2020	June 1, 2017
	2021 and 2022	June 1, 2018
	2023 and later years	June 1 of the fourth year before the year of the control period
Other	All years	July 1 of the year of the control period

- *No changes to allocations already submitted to EPA or recorded.* The SIP revision must not provide for any change to the amounts of allowances allocated or auctioned to any unit after those amounts are submitted to EPA or any change to any allowance allocation determined and recorded by EPA under the federal trading program regulations.²⁰
- *No other substantive changes to federal trading program provisions.* The SIP revision may not substantively change any other trading program provisions, except in the case of a SIP revision that also expands program applicability as described below.²¹ Any new definitions adopted in the SIP revision (in addition to the federal trading program’s definitions) may apply only for purposes of the SIP revision’s allocation or auction provisions.²²

In addition to the general submittal conditions, a CSAPR-related abbreviated or full SIP revision seeking to expand applicability under the CSAPR NOx Ozone Season Trading Program (or an integrated state trading program) must meet the following further conditions:

- *Only electricity generating units with nameplate capacity of at least 15 MWe.* The SIP revision may expand applicability only to additional fossil fuel-fired boilers or combustion turbines serving generators producing electricity for sale, and only by

²⁰ § 52.38(a)(4)(i)(D), (a)(5)(i)(D), (b)(4)(ii)(D), (b)(5)(ii)(D); § 52.39(e)(1)(iv), (f)(1)(iv), (h)(1)(iv), (i)(1)(iv).

²¹ § 52.38(a)(4), (a)(5), (b)(4), (b)(5); § 52.39(e), (f), (h), (i).

²² § 52.38(a)(4)(i), (a)(5)(ii), (b)(4)(ii), (b)(5)(iii); § 52.39(e)(1), (f)(2), (h)(1), (i)(2).

lowering the generator nameplate capacity threshold used to determine whether a particular boiler or combustion turbine serving a particular generator is a potentially affected unit. The nameplate capacity threshold adopted in the SIP revision may not be less than 15 MWe.²³

- *No other substantive changes to federal trading program provisions.* The SIP revision may not substantively change any other trading program provisions, except in the case of a SIP revision that also addresses the allocation or auction of emission allowances as described above.²⁴

In addition to the general submittal conditions and the other applicable conditions described above, a CSAPR-related full SIP revision must meet the following further conditions:

- *Complete, substantively identical trading program provisions.* The SIP revision must adopt complete state trading program regulations substantively identical to the complete federal trading program regulations at 40 CFR 97.402 through 97.435, 97.502 through 97.535, 97.602 through 97.635, or 97.702 through 97.735, as applicable, except as described above in the case of a SIP revision that seeks to replace the default allowance allocation and/or applicability provisions.
- *Only non-substantive substitutions for the term “State.”* The SIP revision may substitute the name of the state for the term “State” as used in the federal trading program regulations, but only to the extent that EPA determines that the substitutions do not substantively change the trading program regulations.²⁵

²³ § 52.38(b)(4)(i), (b)(5)(i).

²⁴ § 52.38(b)(4), (b)(5).

²⁵ §§ 52.38(a)(5)(iii), (b)(5)(iv); 52.39(f)(3), (i)(3).

- *Exclusion of provisions addressing units in Indian country.* The SIP revision may not include references to or impose requirements on any unit in any Indian country within the state's borders and must not include the federal trading program provisions governing allocation of allowances from any Indian country NUSA for the state.²⁶

IV. Alabama's SIP submittal and EPA's analysis

A. Alabama's SIP submittal

In the CSAPR rulemaking, EPA determined that air pollution transported from Alabama would unlawfully affect other states' ability to attain or maintain the 1997 ozone NAAQS, the 1997 annual PM_{2.5} NAAQS, and the 2006 24-hour PM_{2.5} NAAQS.²⁷ Alabama units meeting the CSAPR applicability criteria are consequently subject to CSAPR FIPs that require participation in the CSAPR NO_x Annual Trading Program, the CSAPR NO_x Ozone Season Trading Program, and the CSAPR SO₂ Group 2 Trading Program.²⁸

On October 26, 2015, Alabama submitted to EPA a SIP revision including provisions that, if all portions were approved, would incorporate into Alabama's SIP CSAPR state trading program regulations that would replace the CSAPR federal trading program regulations with regard to Alabama units' SO₂, annual NO_x, and ozone-season NO_x emissions for control periods in 2017 and later years. The SIP submittal includes three sets of duly adopted state rules: ADEM Administrative Code rules 335-3-5-.06 through 335-3-5-.36, which establish Alabama's "TR SO₂ Group 2 Trading Program"; rules 335-3-8-.07 through 335-3-8-.38, which establish Alabama's "TR NO_x Annual Trading Program"; and rules 335-3-8-.39 through 335-3-8-.70,

²⁶ §§ 52.38(a)(5)(iv), (b)(5)(v); 52.39(f)(4), (i)(4).

²⁷ 76 FR 48208, 48213 (August 8, 2011).

²⁸ 40 CFR 52.38(a)(2), (b)(2); § 52.39(c); § 52.54(a), (b); § 52.55.

which establish Alabama’s “TR NOx Ozone Season Trading Program”.²⁹ In general, each individual rule in Alabama’s three sets of CSAPR state trading program rules is designed to replace one individual section (or in a few cases two or three sections) of the corresponding federal trading program regulations, and each set of rules is designed to collectively replace all sections of the corresponding federal trading program regulations. For example, Alabama rule 335-3-5-.06 is designed to replace 40 CFR 97.401 through 97.403, while Alabama rules 335-3-5-.06 through 335-3-5-.36 are designed to collectively replace all of subpart AAAAA of 40 CFR part 97 (i.e., 40 CFR 97.401 through 97.435).

With regard to form, some of the individual rules for each Alabama CSAPR state trading program are set forth as full regulatory text – notably the rules addressing program applicability, emissions budgets and variability limits, and allowance allocations – but most of the rules incorporate the corresponding federal trading program section or sections by reference. Several of the Alabama rules adopt cross-references to other Alabama rules in place of cross-references to specific federal trading program sections that would be replaced by those other Alabama rules.

With regard to substance, the rules for each Alabama CSAPR state trading program differ from the corresponding CSAPR federal trading program regulations in three main ways. First, the applicability provisions in the Alabama rules require participation in Alabama’s CSAPR state trading programs only for units in Alabama, not for units in any other state or in Indian country within the borders of Alabama or any other state. Second, the Alabama rules set forth a methodology for allocating emission allowances among Alabama units that differs from the default allowance allocation provisions in the federal trading program regulations. Finally, the Alabama rules omit a number of federal trading program provisions not applicable to Alabama’s

²⁹ Consistent with the current CSAPR regulatory text, Alabama’s rules use the terms “Transport Rule” and “TR” instead of the updated terms “Cross-State Air Pollution Rule” and “CSAPR”. For simplicity, EPA uses the updated terms here except where otherwise noted.

state trading programs, including provisions setting forth the amounts of emissions budgets, NUSAs, Indian country NUSAs, and variability limits for other states; provisions addressing EPA's procedures for allocating allowances from Indian country NUSAs; and provisions addressing EPA's recordation of certain allowance allocations.

The Alabama SIP adopts the Phase 2 annual NO_x and SO₂ budgets found at 40 CFR 97.410(a)(1)(iv) and 97.710(a)(1)(iv), respectively. Although the court in *EME Homer City* remanded Alabama's Phase 2 SO₂ budget because it determined that EPA required more emissions reductions than necessary to address the downwind air quality problems to which Alabama contributes, Alabama is voluntarily adopting a Phase 2 SO₂ budget that is equivalent to the federally-developed budget remanded by the court. Nothing in the court's decision affects Alabama's authority to seek incorporation into its SIP of a state-established budget as stringent as the remanded federally-established budget or limits EPA's authority to approve such a SIP revision. *See* 42 U.S.C. 7416, 7410(k)(3). Accordingly, EPA will evaluate the approvability of the Alabama SIP submission consistent with this budget.

The SIP revision was submitted to EPA by a letter from the Director of the Alabama Department of Environmental Management. The letter and its enclosures describe steps taken by Alabama to provide public notice prior to adoption of the state rules.

At this time, EPA is proposing to take action on the portions of Alabama's SIP submittal designed to replace the federal CSAPR NO_x Annual Trading Program and the federal CSAPR SO₂ Group 2 Trading Program with regard to Alabama units. EPA is not proposing to take action at this time on the portion of the SIP submittal designed to replace the federal CSAPR NO_x Ozone Season Trading Program with regard to Alabama units. As noted in section II above, EPA has proposed to update CSAPR to address Eastern states' interstate air pollution

mitigation obligations with regard to the 2008 ozone NAAQS. The proposal would further reduce the ozone-season NO_x emissions budgets for control periods in 2017 and later years for a number of states, including Alabama.³⁰ Action on the portion of Alabama's SIP submittal related to ozone-season NO_x emissions would be premature while the proposed update is pending because there is a foreseeable potential conflict between the total amount of allowances that would be allocated to Alabama units under Alabama's state trading program, which reflects Alabama's current ozone-season NO_x budget, and the total amount of allowances that could permissibly be allocated to the units under a final updated budget.

EPA has previously approved a separate Alabama SIP revision replacing the default allowance allocation provisions of the CSAPR NO_x Annual Trading Program, the CSAPR NO_x Ozone Season Trading Program, and the CSAPR SO₂ Group 2 Trading Program for Alabama existing units for the control period in 2016.³¹

B. EPA's analysis of Alabama's submittal

As described in section IV.A above, at this time EPA is taking action on the portions of Alabama's SIP submittal designed to replace the federal CSAPR NO_x Annual Trading Program and the federal CSAPR SO₂ Group 2 Trading Program for Alabama units but not the portion of the SIP submittal designed to replace the federal CSAPR NO_x Ozone Season Trading Program. The analysis discussed in this section addresses only the portions of Alabama's SIP submittal on which EPA is taking action at this time. For simplicity, throughout this section EPA refers to the

³⁰ Alabama's current Phase 2 emissions budget under the CSAPR NO_x Ozone Season Trading Program is 31,499 tons. 40 CFR 97.510(a)(1)(iv). Alabama's proposed updated CSAPR emissions budget for ozone season NO_x emissions is 9,979 tons. 80 FR at 75770.

³¹ 80 FR 52272 (September 22, 2015).

portions of the submittal on which EPA is proposing to take action as “the submittal” or “the SIP revision” without repeating the qualification that at this time EPA is analyzing and proposing to act on only portions of the SIP submittal.

1. Timeliness and completeness of SIP submittal

Alabama’s SIP revision seeks in part to replace the default allowance allocation provisions in the CSAPR federal trading program regulations for annual NO_x and SO₂ emissions as applied to Alabama units with state regulations establishing a different state-determined methodology, starting with the control periods in 2017. Under 40 CFR 52.38(a)(5)(i)(B) and 52.39(h)(1)(ii), the deadline for submission of state-determined allowance allocations for the 2017 and 2018 control periods is June 1, 2016, which under §§ 52.38(a)(5)(vi) and 52.39(i)(6) makes December 1, 2015, the deadline for submission to EPA of a complete SIP revision establishing state-determined allocations for those control periods. Alabama submitted its SIP revision to EPA on October 26, 2015, and EPA has determined that the submittal complies with the applicable minimum completeness criteria in section 2.1 of appendix V to 40 CFR part 51. Because Alabama’s SIP revision was timely submitted and meets the applicable completeness criteria, it meets the conditions under 40 CFR 52.38(a)(5)(vi) and 52.39(i)(6) for timely submission of a complete SIP revision.

2. Methodology covering all allowances potentially requiring allocation

Paragraphs 335-3-8-.14(1) and 335-3-5-.13(1) of the Alabama rules set forth total amounts of 71,962 CSAPR Annual NO_x allowances and 213,258 CSAPR SO₂ Group 2 allowances, respectively, that would be allocated to Alabama units for each control period in 2017 and later years according to the allocation procedures set forth under the remaining paragraphs of Alabama rules 335-3-8-.14 and 335-3-5-.13 (Paragraphs 335-3-8-.13(1) and 335-

3-5-.12(1) set forth the same amounts as the respective state emissions budgets, in conjunction with the corresponding variability limits). These totals match the amounts of the respective Phase 2 emissions budgets for Alabama established under the federal trading program regulations for annual NO_x and SO₂ emissions, thereby addressing the full quantities of allowances that could be allocated to Alabama units under the default allocation provisions for the federal trading programs.³² As noted earlier, although the Phase 2 SO₂ emissions budget was remanded because the court in *EME Homer City* determined that the budget was too stringent, nothing in the court's decision affects Alabama's authority to seek incorporation into its SIP of a state-established budget as stringent as the remanded federally-established budget or limits EPA's authority to approve such a SIP revision. *See* 42 U.S.C. 7416, 7410(k)(3). Because the current CSAPR federal trading program regulations for annual NO_x and SO₂ emissions do not provide for portions of Alabama's overall emissions budgets to be allocated pursuant to the Indian country NUSA allocation procedures, there is no current need for the Alabama rules establishing CSAPR state trading programs for annual NO_x and SO₂ emissions to include provisions addressing the disposition of otherwise unallocated allowances from an Indian country NUSA that might be made available by EPA for state allocation.³³ The allocation provisions in the Alabama rules therefore enable Alabama's SIP revision to meet the condition under 40 CFR 52.38(a)(5)(i) and 52.39(i)(1) that the state's allocation or auction methodology must cover all allowances potentially requiring allocation by the state.

³² 40 CFR 97.410(a)(1)(iv); § 97.710(a)(1)(iv).

³³ Since promulgating the current CSAPR regulations, EPA has learned of Indian country within Alabama's borders. If any units were to locate in that area of Indian country in the future, EPA would determine at that time what actions, if any, should be taken to make CSAPR NO_x Annual allowances and CSAPR SO₂ Group 2 allowances available for allocation to those units.

3. Assurance that total allocations will not exceed the state budget

As discussed in section IV.B.2 above, paragraphs 335-3-8-.14(1) and 335-3-5-.13(1) of the Alabama rules set forth the total amounts of CSAPR Annual NO_x allowances and CSAPR SO₂ Group 2 allowances to be allocated to Alabama units for each control period under the state trading programs; these total amounts equal the amounts of the respective annual NO_x and SO₂ emissions budgets established for Alabama units under the CSAPR federal trading program regulations; and under the current CSAPR federal trading program regulations for annual NO_x and SO₂ there is no possibility of additional allowances from an Indian country NUSA being allocated to Alabama units. EPA has not yet allocated or recorded CSAPR allowances for the control periods in 2017 or later years. The allocation methodology in Alabama's SIP revision therefore meets the condition under 40 CFR 52.38(a)(5)(i)(A) and 52.39(i)(1)(i) that, for each trading program, the total amount of allowances allocated under the SIP revision (before the addition of any otherwise unallocated allowances from an Indian country NUSA) may not exceed the state's budget for the control period less the amount of the Indian country NUSA for the state and any allowances already allocated and recorded by EPA.

4. Timely submission of state-determined allocations to EPA

Paragraphs 335-3-8-.14(2)(a) through (d) and 335-3-5-.13(2)(a) through (d) of the Alabama rules provide for all allowance allocations to Alabama units established under the Alabama rules to be submitted to EPA by the following deadlines: allocations for the control periods in 2017 and 2018, by June 1, 2016; allocations for the control periods in 2019 and 2020, by June 1, 2017; allocations for the control periods in 2021 and 2022, by June 1, 2018; and allocations for later control periods, by June 1 of the fourth or fifth year before the year of the control period. These submission deadlines match or precede the submission deadlines discussed

in section III above (specifically, the deadlines under 40 CFR 52.38(a)(5)(i)(B) and 52.39(i)(1)(ii) for allocations to units considered existing units for CSAPR purposes and the submission deadlines under §§ 52.38(a)(5)(i)(C) and 52.39(i)(1)(iii) for allocations to other units). Alabama's SIP revision therefore meets the conditions under 40 CFR 52.38(a)(5)(i)(B) and (C) and 52.39(i)(1)(ii) and (iii) requiring that the SIP revision provide for submission of state-determined allowance allocations to EPA by the deadlines specified in those provisions.

5. No changes to allocations already submitted to EPA or recorded

The Alabama rules include no provisions allowing alteration of allocations after the allocation amounts have been provided to EPA and no provisions allowing alteration of any allocations made and recorded by EPA under the federal trading program regulations, thereby meeting the condition under 40 CFR 52.38(a)(5)(i)(D) and 52.39(i)(1)(iv).

6. No other substantive changes to federal trading program provisions

With the exception of the provisions addressing allowance allocations discussed above, the Alabama state trading program rules generally incorporate sections of the corresponding federal trading program regulations by reference or set forth full text that is very similar to the text in the corresponding federal trading program regulations.³⁴ Some of the differences between the Alabama rules and the corresponding federal trading program regulations are clearly non-substantive. For example, in instances where an Alabama rule contains full text substituting for the text of a section of the federal trading program regulations, the remaining Alabama rules

³⁴ EPA has proposed to make certain technical corrections to the CSAPR FIP and federal trading program regulations in order to more accurately reflect EPA's intent as described in the CSAPR rulemaking and has also proposed to replace "TR" with "CSAPR" throughout the regulations (for example, "TR NOx Annual unit" would become "CSAPR NOx Annual unit"). See 80 FR 75706, 75758. Because the proposed technical corrections merely clarify and do not change EPA's interpretations, where the proposed corrections would apply to a provision incorporated by reference in the Alabama rules, EPA would interpret the Alabama rules as reflecting the corrections. Further, EPA anticipates that if the proposed nomenclature updates are finalized, the final CSAPR federal regulations would explicitly provide that terms that include "CSAPR" encompass otherwise identical terms in approved SIP revisions that include "TR".

adopt cross-references to the full-text Alabama rule in place of cross-references to the section of the federal trading program regulations that would be replaced by the full-text Alabama rule. The Alabama rules also contain definitions for certain terms used in the state trading programs' allocation provisions that are not used in the federal trading program regulations, as expressly permitted under the CSAPR regulations.³⁵ Most of the remaining differences between the Alabama rules and the corresponding sections of the federal trading program regulations consist of non-substantive renumbering of the provisions.³⁶

In addition to the clearly non-substantive or expressly authorized differences summarized above, a few of Alabama's rules contain other differences from the federal trading program regulations. In each case, EPA has determined that the changes do not represent substantive changes to the federal trading program regulations. First, paragraphs 335-3-8-.08(1)(c), 335-3-8-.09(1)(a), 335-3-8-.34(2)(a), 335-3-5-.07(1)(c), 335-3-5-.08(1)(a), and 335-3-5-.32(2)(a) of the Alabama rules require Alabama units to submit certain petitions, statements, and notices not only to EPA but also to the Alabama Department of Environmental Management. Because the additional notification requirements do not alter the respective authorities or responsibilities of EPA and the Department, EPA considers the requirements to be non-substantive changes.

Second, paragraphs 335-3-8-.20(2)(a), 335-3-8-.23(2)(a), 335-3-5-.18(2)(a), and 335-3-5-.21(2)(a) of the Alabama rules provide that, like EPA, the Department will not adjudicate certain private legal disputes. Because the Department is not required to adjudicate such disputes under the federal trading program regulations in any event, these additions to the text of the state trading program rules merely clarify that the Department is not undertaking a new adjudication

³⁵ 40 CFR 52.38(a)(5)(ii); § 52.39(i)(2).

³⁶ Instances where Alabama's CSAPR state trading program rules omit provisions of the CSAPR federal trading program regulations are discussed in sections IV.B.7 and 9 below.

responsibility under the state trading programs. EPA therefore considers these additions to be non-substantive changes.

Third, paragraph 335-3-8-.07(2)(b)8. of the Alabama CSAPR state trading program rules for annual NO_x emissions substitutes a reference to Alabama rule 335-3-16-.01 (an Alabama air permit program rule) for a reference to 40 CFR 70.2 (the definitions section of the federal regulations governing state operating permit programs under CAA title V) in the corresponding CSAPR federal trading program definition of “permitting authority.”³⁷ Although substitutions to definitions in the CSAPR federal trading program regulations generally are not permissible in a CSAPR-related SIP revision, in this case the substitution has no substantive effect, for two reasons. First, the state trading program rule, like the CSAPR federal trading program definition, includes a reference to the definition of “permitting authority” in 40 CFR 71.2 (the definitions section of the federal operating permit program under CAA title V) which encompasses the definition of “permitting authority” in § 70.2, so all the intended possible meanings of “permitting authority” are captured in the state trading program rules despite the loss of the reference to 40 CFR 70.2. Second, Alabama rule 335-3-16-.01 contains no definition of “permitting authority,” so the substitution does not introduce any new, unintended meanings of “permitting authority” in the state trading program rules. EPA therefore considers the substitution to be a non-substantive change.

Finally, paragraphs 335-3-8-.10(2)(a) and (b) and 335-3-5-.09(2)(a) and (b) of the Alabama rules substitute references to Alabama rule 335.3.16-.13(3) (the Alabama rule addressing minor permit modification procedures) for references to 40 CFR 70.7(e)(2) (the minor permit modification procedures section of the federal regulations governing state

³⁷ Alabama’s CSAPR state trading program rules for SO₂ emissions do not contain a comparable substitution provision.

operating permit programs under CAA title V) in the federal trading program regulations regarding title V permit requirements. As applied to Alabama units only, the substituted Alabama rule provisions are substantively identical to the provisions in 40 CFR 70.7(e)(2) that would be replaced. Because in the context of Alabama's CSAPR state trading programs these particular provisions need to address only Alabama units and not units from other states participating in the CSAPR trading programs, EPA determines that these substitutions have no substantive effect.

For the reasons discussed above, EPA has determined that none of the textual additions or substitutions made to the CSAPR federal trading program regulations in Alabama's corresponding CSAPR state trading program rules are substantive, and that Alabama's SIP revision therefore meets the conditions under 40 CFR 52.38(a)(5) and 52.39(i) of making no substantive changes to the provisions of the federal trading program regulations beyond the provisions addressing allowance allocations.

7. Complete, substantively identical trading program provisions

With the following exceptions, the Alabama rules comprising Alabama's CSAPR state trading program for annual NO_x emissions either incorporate by reference or adopt full-text replacements for all of the provisions of 40 CFR 97.402 through 97.435, and the Alabama rules comprising Alabama's CSAPR state trading program for SO₂ emissions either incorporate by reference or adopt full-text replacements for all of the provisions of 40 CFR 97.702 through 97.735. The first exception is that Alabama rules 335-3-8-.13 and 335-3-5-.12, which generally address the amounts of emissions budgets and related quantities, omit the provisions of 40 CFR 97.410 and 97.710 setting forth the amounts of the Phase 1 emissions budgets, NUSAs, and variability limits for Alabama; the amounts of the Phase 2 NUSAs for Alabama; and the amounts

of all emissions budgets, NUSAs, Indian country NUSAs, and variability limits for other states. Omission of the Alabama Phase 1 emissions budget and NUSA amounts is appropriate because Alabama's state trading programs do not apply to emissions occurring in Phase 1 of CSAPR. Omission of the default Alabama NUSA amounts under the federal trading program regulations is appropriate because the allocation procedures under Alabama's state trading programs establish NUSA amounts differently. Omission of the budget, NUSA, Indian country NUSA, and variability limit provisions for other states from state trading programs in which only Alabama units participate does not undermine the completeness of the state trading programs.

The second exception is that Alabama rules 335-3-8-.14 and 335-3-5-.13, generally addressing allowance allocations, omit 40 CFR 97.411(b)(2) and 97.412(b) and 97.711(b)(2) and 97.712(b), concerning EPA's administration of Indian country NUSAs. Omission of these provisions from Alabama's state trading program rules is required, as discussed in section IV.B.9 below.

The third exception is that Alabama rules 335-3-8-.24 and 335-3-5-.22, which generally incorporate by reference the federal trading programs' recordation schedule provisions, exclude from incorporation by reference 40 CFR 97.421(a), (b), (h), and (i) and 97.721(a), (b), (h), and (i), respectively, concerning EPA's schedule for recording certain allowance allocations. The federal trading program provisions at §§ 97.421(a) and (b) and 97.721(a) and (b), which address recordation of allocations to units considered existing units for CSAPR purposes of allowances for the compliance periods in 2015 and 2016, do not need to be included in Alabama's state trading program rules because those allocations have already been recorded. The federal trading program provisions at §§ 97.421(h) and 97.721(h), which address recordation of allocations from Indian country NUSAs, are appropriately excluded from state trading programs because a state

may not administer an Indian country NUSA. The federal trading program provisions at §§ 97.421(i) and 97.721(i), which address recordation of second-round NUSA allocations, are not needed in Alabama's state trading program rules because Alabama would provide EPA the amounts of its NUSA allocations on the earlier schedule applicable to allocations to units considered existing units for CSAPR purposes.³⁸ Omission of these provisions from Alabama's state trading programs therefore does not undermine the completeness of the state trading programs.

Because none of the omissions undermines the completeness of the Alabama's state trading programs and because, as discussed in section IV.B.6 above, EPA has determined that Alabama's SIP revision makes no other substantive changes to the provisions of the federal trading program regulations beyond the provisions addressing allowance allocations, Alabama's SIP revision meets the condition under 40 CFR 52.38(a)(5) and 52.39(i) that the SIP revision must adopt complete state trading program regulations substantively identical to the complete federal trading program regulations at 40 CFR 97.402 through 97.435, 97.502 through 97.535, 97.602 through 97.635, or 97.702 through 97.735, as applicable, except for permissible differences in allowance allocation and/or applicability provisions.

8. Only non-substantive substitutions for the term "State"

Paragraphs 335-3-8-.08(1)(a)1. and 335-3-5-.07(1)(a)1. of the Alabama rules substitute the term "the State of Alabama", and paragraphs 335-3-8-.08(1)(b) and 335-3-5-.07(1)(b) of the Alabama rules similarly substitute the term "the State" (meaning Alabama), for the phrase "a State (or Indian country within the borders of such State)" in the corresponding federal trading

³⁸ For the same reason, Alabama's state rules could permissibly omit 40 CFR 97.421(g) and 97.721(g), which address recordation of first-round NUSA allocations. Note that notwithstanding the lack of provisions addressing recordation of NUSA allocations in Alabama's state trading program rules, EPA would retain authority to complete the recordation of 2016 NUSA allocations to Alabama units because EPA has already started recording allocations to Alabama units of allowances for the compliance periods in 2016. *See* 40 CFR 52.38(a)(7); § 52.39(k).

program regulations at 40 CFR 97.410(a)(1) and 97.710(a)(1) and at §§ 97.410(b) and 97.710(b), respectively. These provisions of the Alabama rules define the units that are required to participate in Alabama’s CSAPR state trading programs. The substitutions appropriately exclude units located in other states and units located in Indian country with the borders of Alabama or any other state, thereby limiting the applicability of Alabama’s state trading programs to units that are subject to Alabama’s jurisdiction. These substitutions do not substantively change the provisions of CSAPR’s federal trading program regulations. The remaining Alabama rules do not substitute for the term “State” as used in the federal trading program regulations. Alabama’s SIP revision therefore meets the condition under 40 CFR 52.38(a)(5)(iii) and 52.39(i)(3) that the SIP revision may substitute the name of the state for the term “State” as used in the federal trading program regulations, but only to the extent that EPA determines that the substitutions do not substantively change the provisions of the federal trading program regulations.

9. Exclusion of provisions addressing units in Indian country

The Alabama rules do not set forth any full text provisions directly addressing units in Indian country within the state’s borders. As discussed in section IV.B.8 above, paragraphs 335-3-8-.08(1)(a)1. and 335-3-5-.07(1)(a)1. of the Alabama rules define the units required to participate in Alabama’s state trading programs in a manner that appropriately excludes units located in Indian country within Alabama’s borders from coverage under Alabama’s CSAPR state trading programs. Although various other provisions of the CSAPR federal trading program regulations incorporated by reference into the Alabama rules without modification refer to units in Indian country, the clear exclusion of any such units from coverage under the state trading program applicability provisions – in other words, the fact that such units are not “TR NO_x Annual units” or “TR SO₂ Group 2 units” for purposes of the state trading programs – renders

the remaining provisions of Alabama's state trading program rules inoperative as to the units. EPA therefore interprets the Alabama rules as not imposing any requirements on units located in Indian country within the state's borders.

As discussed in section IV.B.7 above, Alabama rules 335-3-8-.14 and 335-3-5-.13, which address allowance allocations under the state trading programs, contain no provisions replacing 40 CFR 97.411(b)(2), 97.412(b), 97.711(b)(2), or 97.712(b), the portions of the corresponding federal trading program regulations governing allocations of allowances from Indian country NUSAs. Thus, the Alabama rules do not include any express state rule provisions concerning administration of Indian country NUSAs. Further, Alabama rules 335-3-8-.24 and 335-3-5-.22, which generally incorporate by reference the federal trading programs' recordation schedule provisions, exclude 40 CFR 97.421(h) and 97.721(h), respectively, provisions addressing recordation of Indian country NUSA allocations. EPA notes that paragraphs 335-3-8-.14(3)(i) and 335-3-5-.13(3)(i) of the Alabama rules, which incorporate by reference the federal trading program regulations generally addressing corrections of incorrect allocations, fail to exclude 40 CFR 97.411(c)(5)(iii) and 97.711(c)(5)(iii), addressing corrections of certain incorrect Indian country NUSA allocations. However, the regulations governing approval of CSAPR-related SIP revisions do not expressly require exclusion of these federal trading program provisions (unlike the Indian country NUSA allocation provisions) and, further, the provisions are inoperative as to Alabama because the CSAPR federal trading program regulations do not currently establish Indian country NUSAs for Alabama.³⁹ EPA therefore interprets the Alabama state rules as

³⁹ Since promulgating the current CSAPR regulations, EPA has learned of Indian country within Alabama's borders. If any units were to locate in that area of Indian country in the future, EPA would determine at that time what actions, if any, should be taken to make CSAPR NO_x Annual allowances and CSAPR SO₂ Group 2 allowances available for allocation to those units.

sufficiently excluding provisions addressing administration of the Indian country NUSA provisions under the federal trading programs.

In summary, EPA has determined that Alabama's SIP revision adequately meets the condition under 40 CFR 52.38(a)(5)(iv) and 52.39(i)(4) of not including references to or imposing requirements on any unit in any Indian country within the state's borders and not including the federal trading program provisions governing allocation of allowances from any Indian country NUSA for the state.

V. EPA's proposed action on Alabama's submittal

EPA is proposing to approve the portions of Alabama's October 26, 2015, SIP submittal concerning the establishment for Alabama units of CSAPR state trading programs for annual NO_x and SO₂ emissions for compliance periods in 2017 and later years. The proposed revision would adopt into the SIP the state trading program rules codified in ADEM Administrative Code rules 335-3-8-.07 through 335-3-8-.38 (establishing Alabama's "TR NO_x Annual Trading Program") and 335-3-5-.06 through 335-3-5-.36 (establishing Alabama's "TR SO₂ Group 2 Trading Program").⁴⁰ These Alabama CSAPR state trading programs would be integrated with the federal CSAPR NO_x Annual Trading Program and the federal CSAPR SO₂ Group 2 Trading Program, respectively, and would be substantively identical to the federal trading programs except with regard to the allowance allocation provisions. Following approval of these portions of the proposed SIP revision, Alabama units therefore would generally be required to meet requirements under Alabama's CSAPR state trading programs equivalent to the requirements the units otherwise would have been required to meet under the corresponding CSAPR federal trading programs, but allocations to Alabama units of CSAPR NO_x Annual allowances for

⁴⁰ Consistent with the current CSAPR regulatory text, the Alabama rules use the terms "Transport Rule" and "TR" instead of the updated terms "Cross-State Air Pollution Rule" and "CSAPR".

compliance periods in 2017 and later years would be determined according to the SIP's allocation provisions at Alabama rule 335-3-8-.14 instead of EPA's default allocation provisions at 40 CFR 97.411(a), 97.411(b)(1), and 97.412(a), and allocations to Alabama units of CSAPR SO₂ Group 2 allowances would be determined according to the SIP's allocation provisions at Alabama rule 335-3-5-.13 instead of EPA's default allocation provisions at 40 CFR 97.711(a), 97.711(b)(1), and 97.712(a). EPA is proposing to approve these portions of the SIP revision because they meet the requirements of the CAA and EPA's regulations for approval of a CSAPR full SIP revision replacing a federal trading program with a state trading program that is integrated with and substantively identical to the federal trading program except for permissible differences with respect to emission allowance allocation provisions, as discussed in section IV above.

EPA promulgated the FIPs requiring Alabama units to participate in the federal CSAPR NO_x Annual Trading Program and the federal CSAPR SO₂ Group 2 Trading Program in order to address Alabama's obligations under CAA section 110(a)(2)(D)(i)(I) with respect to the 1997 and 2006 PM_{2.5} NAAQS in the absence of SIP provisions addressing those requirements. Approval of the portions of Alabama's SIP submittal adopting CSAPR state trading program rules for annual NO_x and SO₂ substantively identical to the corresponding CSAPR federal trading program regulations (or differing only with respect to the allowance allocation methodology) would correct the same deficiency in the SIP that otherwise would be corrected by those CSAPR FIPs. Under the CSAPR regulations, upon EPA's full and unconditional approval of a SIP revision as correcting the SIP's deficiency that is the basis for a particular CSAPR FIP, the obligation to participate in the corresponding CSAPR federal trading program is automatically eliminated for units subject to the state's jurisdiction (but not for any units located

in any Indian country within the state's borders).⁴¹ The proposed approval of the portions of Alabama's SIP submittal establishing CSAPR state trading program rules for annual NO_x and SO₂ emissions therefore would result in automatic termination of the obligations of Alabama units to participate in the federal CSAPR NO_x Annual Trading Program and the federal CSAPR SO₂ Group 2 Trading Program. Approval of these portions of the SIP revision would therefore satisfy Alabama's obligation pursuant to CAA section 110(a)(2)(D)(i)(I) to prohibit emissions which will significantly contribute to nonattainment or interfere with maintenance of the 1997 and 2006 PM_{2.5} NAAQS in any other state.

As noted in section II above, the Phase 2 SO₂ budget established for Alabama in the CSAPR rulemaking has been remanded to EPA for reconsideration.⁴² If EPA finalizes approval of these portions of the SIP revision as proposed, Alabama will have fulfilled its obligations to provide a SIP that address the interstate transport provisions of CAA section 110(a)(2)(D)(i)(I) with respect to the 1997 and 2006 PM_{2.5} NAAQS. Thus, EPA would no longer be under an obligation to (nor would EPA have the authority to) address those transport requirements through implementation of a FIP, and approval of these portions of the SIP revision would eliminate Alabama units' obligations to participate in the federal CSAPR NO_x Annual Trading Program and the federal CSAPR SO₂ Group 2 Trading Program. Elimination of Alabama units' obligations to participate in the federal trading programs would include elimination of the federally-established Phase 2 budgets capping allocations of CSAPR NO_x Annual allowances and CSAPR SO₂ Group 2 allowances to Alabama units under those federal trading programs. As approval of these portions of the SIP revision would eliminate Alabama's remanded federally-

⁴¹ 40 CFR 52.38(a)(6); § 52.39(j); *see also* § 52.54(a)(1); § 52.55(a).

⁴² *EME Homer City Generation, L.P. v. EPA*, 795 F.3d 118, 138 (D.C. Cir. 2015).

established Phase 2 SO₂ budget and eliminate EPA's authority to subject units in Alabama to a FIP, it is EPA's opinion that finalization of approval of this SIP action would address the judicial remand of Alabama's federally-established Phase 2 SO₂ budget.⁴³ Large electricity generating units in Alabama are subject to an additional CSAPR FIP requiring them to participate in the federal CSAPR NO_x Ozone Season Trading Program. While Alabama's SIP submittal also seeks to replace the CSAPR FIP requirements addressing Alabama units' ozone-season NO_x emissions, EPA is not proposing to act on that portion of the SIP submittal at this time. Approval of this SIP revision concerning other CSAPR trading programs would have no effect on the CSAPR NO_x Ozone Season Trading Program as applied to Alabama units, and the FIP requiring the units to participate in that program would remain in place.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submittal 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 submittals, 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

⁴³ Although the court in *EME Homer City Generation* remanded Alabama's Phase 2 SO₂ budget because it determined that the budget was too stringent, nothing in the court's decision affects Alabama's authority to seek incorporation into its SIP of a state-established budget as stringent as the remanded federally-established budget or limits EPA's authority to approve such a SIP revision. *See* 42 U.S.C. 7416, 7410(k)(3).

- 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).

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, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate Matter, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: June 10, 2016.

Heather McTeer Toney,
Regional Administrator,
Region 4.

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