



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2017-0415; FRL-9966-45-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, and May 19, 2017, State Implementation Plan (SIP) revisions from Alabama replacing the Cross-State Air Pollution Rule (CSAPR) federal implementation plan (FIP). Under CSAPR, large electricity generating units (EGUs) in Alabama are subject to FIP provisions requiring the units to participate in a federal allowance trading program for ozone season emissions of nitrogen oxides (NO<sub>x</sub>). This action would approve into Alabama's SIP the State's regulations requiring Alabama's affected units to participate in a new state allowance trading program for ozone season NO<sub>x</sub> emissions integrated with the CSAPR federal trading programs, replacing the corresponding CSAPR FIP requirements for Alabama. This state trading program is substantively identical to the federal trading program except with regard to the provisions allocating emission allowances among Alabama units. Under the CSAPR regulations, final approval of these portions of the SIP revisions would automatically eliminate Alabama units' FIP requirements to participate in CSAPR's federal allowance trading program for ozone season NO<sub>x</sub> emissions. Approval would also fully satisfy Alabama's good neighbor obligation under the Clean Air Act (CAA or Act) to prohibit emissions which will significantly contribute to nonattainment or interfere with maintenance of the 1997 8-hour Ozone National Ambient Air

Quality Standards (NAAQS) in any other state; and would partially satisfy Alabama's good neighbor obligation under the CAA to prohibit emissions which will significantly contribute to nonattainment or interfere with maintenance of the 2008 8-hour Ozone NAAQS in any other state.

**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-2017-0415 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>.

**FOR FURTHER INFORMATION CONTACT:** Ashten Bailey, Air Regulatory Management Section, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Ms. Bailey can be reached by telephone at (404) 562-9164 or via electronic mail at [bailey.ashten@epa.gov](mailto:bailey.ashten@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Summary**

EPA is proposing to approve the portions of the October 26, 2015, and May 19, 2017, SIP revisions from Alabama concerning CSAPR<sup>1</sup> allowance trading programs for ozone season emissions of NO<sub>x</sub>. Large EGUs in Alabama are currently subject to CSAPR FIPs that require the units to participate in the federal CSAPR NO<sub>x</sub> Group 2 Ozone Season Trading Program. The CSAPR regulations provide 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 revisions proposed for approval would incorporate into Alabama's SIP state allowance trading program regulations for ozone season NO<sub>x</sub> emissions that would replace EPA's federal trading program regulations for those emissions from Alabama units. EPA is proposing to approve these portions of the SIP revisions, as clarified in a letter provided on August 4, 2017, 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 revisions would automatically eliminate the obligations of EGUs in Alabama (but not any units in Indian country

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<sup>1</sup> Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS (CSAPR Update), 81 FR 74504 (October 26, 2016) (codified as amended at 40 CFR 52.38 and 52.39 and subparts AAAAA through EEEEE of 40 CFR part 97); *see also* Federal Implementation Plans; Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals, 76 FR 48208 (August 8, 2011). EPA previously approved a SIP revision that replaced the CSAPR FIPs for the annual trading programs in Alabama. *See* 81 FR 59869 (Aug. 31, 2016).

within Alabama's borders) to participate in CSAPR's federal trading programs for ozone season NOx emissions under the corresponding CSAPR FIPs. EPA proposes to find that approval of these portions of the SIP revisions 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 8-hour Ozone NAAQS in any other state. EPA also proposes to find that approval of these portions of the SIP revisions would partially 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 2008 8-hour Ozone NAAQS in any other state.

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. Section V addresses incorporation by reference. Section VI sets forth EPA's proposed action on the submittal. Section VII addresses statutory and Executive Order reviews.

## **II. Background on CSAPR and CSAPR-related SIP revisions**

EPA issued CSAPR in July 2011 and the CSAPR Update<sup>2</sup> in 2016 to address the requirements of CAA section 110(a)(2)(D)(i)(I) concerning interstate transport of air pollution

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<sup>2</sup> See 81 FR 74504 (October 26, 2016). The CSAPR Update was promulgated to address interstate pollution with respect to the 2008 8-hour Ozone NAAQS and to address a judicial remand of certain original CSAPR ozone season NOx budgets promulgated with respect to the 1997 8-hour Ozone NAAQS. *Id.* at 74505. The CSAPR Update established new emission reduction requirements addressing the more recent ozone NAAQS and coordinated them with the remaining emission reduction requirements addressing the older NAAQS, so that starting in 2017, CSAPR

for specific NAAQS. As amended (including by the 2016 CSAPR Update), CSAPR requires 27 eastern states to limit their statewide emissions of sulfur dioxide (SO<sub>2</sub>) and/or NO<sub>x</sub> in order to mitigate transported air pollution unlawfully impacting other states' ability to attain or maintain four NAAQS: the 1997 annual PM<sub>2.5</sub> NAAQS, the 2006 24-hour PM<sub>2.5</sub> NAAQS, the 1997 8-hour Ozone NAAQS, and the 2008 8-hour Ozone NAAQS. The CSAPR emissions limitations are defined in terms of maximum statewide "budgets" for emissions of annual SO<sub>2</sub>, annual NO<sub>x</sub>, and/or ozone season NO<sub>x</sub> by each covered state's large EGUs. The CSAPR state budgets are implemented in two phases of generally increasing stringency: the Phase 1 budgets apply to emissions in 2015 and 2016; and the Phase 2 and CSAPR Update budgets apply to emissions in 2017 and later years. As a mechanism for achieving compliance with the emissions limitations, CSAPR establishes five federal emissions trading programs: a program for annual NO<sub>x</sub> emissions; two geographically separate programs for annual SO<sub>2</sub> emissions; and two geographically separate programs for ozone season NO<sub>x</sub> emissions. CSAPR also establishes FIP requirements applicable to the large EGUs in each covered state.<sup>3</sup> Currently, the CSAPR FIP provisions require each state's units to participate in up to three of the five 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

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includes two geographically separate trading programs for ozone season NO<sub>x</sub> emissions covering EGUs in a total of 23 states. *See* 40 CFR 52.38(b)(1)-(2).

<sup>3</sup> States are required to submit good neighbor SIPs three years after a NAAQS is promulgated. CAA section 110(a)(1) and (2). Where EPA finds that a state fails to submit a required SIP or disapproves a SIP, EPA is obligated to promulgate a FIP addressing the deficiency. CAA section 110(c). EPA found that Alabama failed to make timely submissions required to address the good neighbor provision with respect to the 1997 annual PM<sub>2.5</sub> and 8-hour ozone NAAQS (70 FR 21147, Apr. 25, 2005), and the 2008 8-hour ozone NAAQS (80 FR 39961, June 13, 2015). In addition, EPA disapproved Alabama's SIP revision submitted to address the good neighbor provision with respect to the 2006 24-hour PM<sub>2.5</sub> NAAQS. *See* 76 FR 43128 (July 20, 2011). Accordingly, as a part of CSAPR and the CSAPR Update, EPA promulgated FIPs applicable to sources in Alabama addressing the good neighbor provision with respect to these standards.

meet their transport-related obligations using either CSAPR’s federal emissions trading programs or state emissions trading programs integrated with the federal programs, provided that the SIP revisions meet all relevant criteria.<sup>4</sup> 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 programs for ozone season NOx emissions (or an integrated state trading program), a state may also expand trading program applicability to include certain smaller EGUs.<sup>5</sup> If a state wants to replace the CSAPR FIP requirements with SIP 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 federal trading programs may submit SIP revisions to modify or replace either some or all of those FIP requirements.

States can submit two basic forms of CSAPR-related SIP revisions effective for emissions control periods in 2017 or later years.<sup>6</sup> 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

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<sup>4</sup> 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.

<sup>5</sup> States covered by both the CSAPR Update and the NOx SIP Call have the additional option to expand applicability under the CSAPR NOx Ozone Season Group 2 Trading Program to include non-EGUs that would have participated in the NOx Budget Trading Program.

<sup>6</sup> CSAPR also provides for a third, more streamlined form of SIP revision that is effective only for control periods in 2016 (or 2018 for CSAPR NOx Ozone Season Group 2 units) and is not relevant here. See § 52.38(a)(3), (b)(3), (b)(7); § 52.39(d), (g).

approval replaces the default allowance allocation and/or applicability provisions of a CSAPR federal trading program for the state.<sup>7</sup> 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.<sup>8</sup> For purposes of a full SIP revision, a state may either adopt state rules 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 set of CSAPR FIP requirements, 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 revision as meeting the requirements of the CSAPR regulations is full and unconditional.<sup>9</sup> Second, approval of a full SIP revision does not terminate the obligation to participate in the corresponding CSAPR federal

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<sup>7</sup> 40 CFR 52.38(a)(4), (b)(4), (b)(8); 52.39(e), (h).

<sup>8</sup> 40 CFR 52.38(a)(5), (b)(5), (b)(9); 52.39(f), (i).

<sup>9</sup> 40 CFR 52.38(a)(6), (b)(10)(i); 52.39(j).

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.<sup>10</sup> 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.<sup>11</sup>

### **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.<sup>12</sup> This SIP submission deadline is inoperative in the case of a 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

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<sup>10</sup> 40 CFR 52.38(a)(5)(iv)-(v), (a)(6), (b)(5)(v)-(vi), (b)(9)(vi)-(vii), (b)(10)(i); 52.39(f)(4)-(5), (i)(4)-(5), (j).

<sup>11</sup> 40 CFR 52.38(a)(7), (b)(11); 52.39(k).

<sup>12</sup> 40 CFR 52.38(a)(4)(ii), (a)(5)(vi), (b)(4)(iii), (b)(5)(vii), (b)(8)(iv), (b)(9)(viii); 52.39(e)(2), (f)(6), (h)(2), (i)(6).

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 units<sup>13</sup> at 40 CFR 97.411(a), 97.511(a), 97.611(a), 97.711(a), or 97.811(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), 97.711(b)(1) and 97.712(a), or 97.811(b)(1) and 97.812(a), as applicable.<sup>14</sup> 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 may be made available for allocation by the state after EPA has carried out the Indian country NUSA allocation procedures.<sup>15</sup>

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<sup>13</sup> 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 document describing EPA’s default allocations to existing units is available at [https://www.epa.gov/sites/production/files/2017-05/documents/csapr\\_allowance\\_allocations\\_final\\_rule\\_tsd.pdf](https://www.epa.gov/sites/production/files/2017-05/documents/csapr_allowance_allocations_final_rule_tsd.pdf).

<sup>14</sup> 40 CFR 52.38(a)(4)(i), (a)(5)(i), (b)(4)(ii), (b)(5)(ii), (b)(8)(iii), (b)(9)(iii); 52.39(e)(1), (f)(1), (h)(1), (i)(1).

<sup>15</sup> See 40 CFR 97.412(b)(10)(ii), 97.512(b)(10)(ii), 97.612(b)(10)(ii), 97.712(b)(10)(ii), 97.812(b)(10)(ii).

- 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) generally 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.<sup>16</sup> 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. Under the CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program only, additional allowances may be allocated if the state elects to expand applicability to non-EGUs that would have been subject to the NO<sub>x</sub> Budget Trading Program established for compliance with the NO<sub>x</sub> SIP Call.<sup>17</sup>
- 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.<sup>18</sup> Note that the submission deadlines differ

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<sup>16</sup> 40 CFR 52.38(a)(4)(i)(A), (a)(5)(i)(A), (b)(4)(ii)(A), (b)(5)(ii)(A), (b)(8)(iii)(A), (b)(9)(iii)(A); 52.39(e)(1)(i), (f)(1)(i), (h)(1)(i), (i)(1)(i).

<sup>17</sup> 40 CFR 52.38(b)(8)(iii)(A), (b)(9)(iii)(A).

<sup>18</sup> 40 CFR 52.38(a)(4)(i)(B)-(C), (a)(5)(i)(B)-(C), (b)(4)(ii)(B)-(C), (b)(5)(ii)(B)-(C), (b)(8)(iii)(B)-(C), (b)(9)(iii)(B)-(C); 52.39(e)(1)(ii)-(iii), (f)(1)(ii)-(iii), (h)(1)(ii)-(iii), (i)(1)(ii)-(iii).

for amounts allocated or auctioned to units considered existing units for CSAPR purposes and amounts allocated or auctioned to other units.

| <b>CSAPR NO<sub>x</sub> Annual, CSAPR NO<sub>x</sub> Ozone Season Group 1, CSAPR SO<sub>2</sub> Group 1, and CSAPR SO<sub>2</sub> Group 2 Trading Programs:</b> |                                   |                                                                         |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------|-------------------------------------------------------------------------|
| <b>Units</b>                                                                                                                                                    | <b>Year of the Control Period</b> | <b>Deadline for Submission to EPA of Allocations or Auction Results</b> |
| 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                                |

| <b>CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program:</b> |                                   |                                                                         |
|-------------------------------------------------------------------|-----------------------------------|-------------------------------------------------------------------------|
| <b>Units</b>                                                      | <b>Year of the Control Period</b> | <b>Deadline for Submission to EPA of Allocations or Auction Results</b> |
| Existing                                                          | 2019 and 2020                     | June 1, 2018                                                            |
|                                                                   | 2021 and 2022                     | June 1, 2019                                                            |
|                                                                   | 2023 and 2024                     | June 1, 2020                                                            |
|                                                                   | 2025 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.<sup>19</sup>
- *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.<sup>20</sup> Any new definitions adopted in the SIP revision (in addition to the federal trading program's

<sup>19</sup> 40 CFR 52.38(a)(4)(i)(D), (a)(5)(i)(D), (b)(4)(ii)(D), (b)(5)(ii)(D), (b)(8)(iii)(D), (b)(9)(iii)(D); 52.39(e)(1)(iv), (f)(1)(iv), (h)(1)(iv), (i)(1)(iv).

<sup>20</sup> 40 CFR 52.38(a)(4), (a)(5), (b)(4), (b)(5), (b)(8), (b)(9); 52.39(e), (f), (h), (i).

definitions) may apply only for purposes of the SIP revision's allocation or auction provisions.<sup>21</sup>

In addition to the general submittal conditions, a CSAPR-related abbreviated or full SIP revision seeking to expand applicability under the CSAPR NO<sub>x</sub> Ozone Season Group 1 or CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Programs (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 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.<sup>22</sup> In addition or alternatively, applicability under the CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program may be expanded to non-EGUs that would have been subject to the NO<sub>x</sub> Budget Trading Program established for compliance with the NO<sub>x</sub> SIP Call.<sup>23</sup>
- *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.<sup>24</sup>

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<sup>21</sup> 40 CFR 52.38(a)(4)(i), (a)(5)(ii), (b)(4)(ii), (b)(5)(iii), (b)(8)(iii), (b)(9)(iv); 52.39(e)(1), (f)(2), (h)(1), (i)(2).

<sup>22</sup> 40 CFR 52.38(b)(4)(i), (b)(5)(i), (b)(8)(i), (b)(9)(i).

<sup>23</sup> 40 CFR 52.38(b)(8)(ii), (b)(9)(ii).

<sup>24</sup> 40 CFR 52.38(b)(4), (b)(5), (b)(8), (b)(9).

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, 97.702 through 97.735, or 97.802 through 97.835, 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.<sup>25</sup>
- *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.<sup>26</sup>
- *Exclusion of provisions addressing units in Indian country.* The SIP revision may not 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.<sup>27</sup>

#### **IV. Alabama’s SIP submittal and EPA’s analysis**

##### *A. Alabama’s SIP submittal*

In the CSAPR rulemaking, among other findings, EPA determined that air pollution transported from Alabama would unlawfully affect other states’ ability to attain or maintain the

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<sup>25</sup> 40 CFR 52.38(a)(5), (b)(5), (b)(9); 52.39(f), (i).

<sup>26</sup> 40 CFR 52.38(a)(5)(iii), (b)(5)(iv), (b)(9)(v); 52.39(f)(3), (i)(3).

<sup>27</sup> 40 CFR 52.38(a)(5)(iv), (b)(5)(v), (b)(9)(vi); 52.39(f)(4), (i)(4).

1997 8-hour Ozone NAAQS.<sup>28</sup> In the CSAPR Update rulemaking, EPA determined that air pollution transported from Alabama would unlawfully affect other states' ability to attain or maintain the 2008 8-hour Ozone NAAQS and established an ozone season NO<sub>x</sub> budget for Alabama's EGUs representing a partial remedy for the State's interstate transport obligations with respect to that NAAQS;<sup>29</sup> determined that Alabama's previous ozone season NO<sub>x</sub> budget established in the CSAPR rulemaking as a partial remedy for the State's interstate transport obligations with respect to the 1997 8-hour Ozone NAAQS now represented a full remedy with respect to that NAAQS;<sup>30</sup> and coordinated compliance requirements by allowing compliance with the new CSAPR Update budget to serve the purpose of addressing the State's obligations with respect to both NAAQS.<sup>31</sup> Alabama units meeting the CSAPR applicability criteria are consequently subject to CSAPR FIP requirements for participation in the CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program in order to address the State's interstate transport obligations with respect to both the 1997 8-hour Ozone NAAQS (full remedy) and the 2008 8-hour Ozone NAAQS (partial remedy).<sup>32</sup>

On October 26, 2015, Alabama submitted to EPA a SIP revision including provisions that, if approved, would incorporate into Alabama's SIP state trading program regulations that would replace the CSAPR federal trading program regulations with regard to Alabama units'

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<sup>28</sup> See 76 FR 48208, 48210, 48213 (August 8, 2011). EPA also determined in the CSAPR rulemaking that air pollution transported from Alabama would unlawfully affect other states' ability to attain or maintain the 1997 annual PM<sub>2.5</sub> NAAQS and the 2006 24-hour PM<sub>2.5</sub> NAAQS. Alabama previously submitted, and EPA previously approved, a SIP revision that replaces the CSAPR FIPs for the annual trading programs in Alabama. See 81 FR 59869 (August 31, 2016).

<sup>29</sup> CSAPR Update, 81 FR at 74507-08.

<sup>30</sup> *Id.* at 74525.

<sup>31</sup> *Id.* at 74563 n.169.

<sup>32</sup> 40 CFR 52.38(b)(2), (b)(2)(iii); 52.54(a), (b).

ozone season NO<sub>x</sub> emissions.<sup>33</sup> On May 19, 2017, Alabama submitted to EPA a SIP revision that supersedes portions of the October 26, 2015, submittal to reflect changes from the CSAPR Update.<sup>34</sup> On August 4, 2017, Alabama sent a letter clarifying the State’s interpretation concerning the allowances for the Indian country NUSA for Alabama. The Alabama ozone season submittals include duly adopted state rules at rules 335-3-8-.39 through 335-3-8-.70, which establish Alabama’s “TR NO<sub>x</sub> Ozone Season Group 2 Trading Program.”<sup>35</sup> In general, each individual rule in Alabama’s 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 the set of rules is designed to collectively replace all sections of the corresponding federal trading program regulations at subpart EEEEE of 40 CFR part 97 (i.e., 40 CFR 97.801 through 97.835).

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 the Alabama CSAPR state ozone season 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

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<sup>33</sup> As discussed above, the October 26, 2015 submittal also contained provisions related to the annual NO<sub>x</sub> and SO<sub>2</sub> trading programs, which EPA approved in a separate rulemaking. *See* 81 FR 59869 (August 31, 2016).

<sup>34</sup> For the purposes of this rulemaking, the October 26, 2015, and May 19, 2017, submittals together may also be referred to as the “Alabama ozone season submittals.”

<sup>35</sup> 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.

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.<sup>36</sup> Finally, the Alabama rules omit a number of federal trading program provisions not applicable to Alabama's 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.

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

EPA has previously approved portions of Alabama's October 26, 2015, submittal replacing the FIPs for the CSAPR NO<sub>x</sub> Annual Trading Program and the CSAPR SO<sub>2</sub> Group 2 Trading Program for Alabama.<sup>37</sup>

B. *EPA's analysis of Alabama's submittals*

As described in section IV.A above, at this time EPA is taking action on the portions of Alabama's ozone season submittals designed to replace the federal CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program. The analysis discussed in this section addresses only the portions of Alabama's ozone season submittals on which EPA is taking action at this time. For simplicity, throughout this section EPA refers to the portions of the submittals on which EPA is proposing

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<sup>36</sup> EPA notes that in the CSAPR Update, the allocations of Alabama's allowance budget to the state's units under the federal CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program were determined using a methodology similar to the methodology in Alabama's October 26, 2015 SIP submittal, 81 FR at 74564.

<sup>37</sup> See 81 FR 59869 (August 31, 2016).

to take action as “the Alabama ozone season submittals” or “the SIP revisions” 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

Together, the Alabama ozone season submittals seek in part to replace the default allowance allocation provisions in the CSAPR federal trading program regulations for ozone season NO<sub>x</sub> emissions as applied to Alabama units with state regulations establishing a different state-determined methodology, starting with the control periods in 2019. Under 40 CFR 52.38(b)(9)(iii)(B), the deadline for submission of state-determined allowance allocations for the 2019 and 2020 control periods is June 1, 2018, which under § 52.38(b)(9)(viii) makes December 1, 2017, the deadline for submission to EPA of a complete SIP revision establishing state-determined allocations for those control periods. Alabama submitted its SIP revisions on October 26, 2015 and May 19, 2017, and EPA has determined that the submittals comply with the applicable minimum completeness criteria in section 2.1 of appendix V to 40 CFR part 51. Because Alabama’s SIP revisions were timely submitted and meet the applicable completeness criteria, they meet the conditions under 40 CFR 52.38(b)(9)(viii) for timely submission of a complete SIP revision.

2. Methodology covering all allowances potentially requiring allocation

Paragraph 335-3-8-.46(1) of the Alabama rules sets forth total amounts of 13,211 CSAPR NO<sub>x</sub> Ozone Season Group 2 allowances that would be allocated to Alabama units for each control period in 2019 and later years according to the allocation procedures set forth under the remaining paragraphs of Alabama rule 335-3-8-.46 (Paragraph 335-3-8-.45(1) sets forth the same amounts as the respective state emissions budgets, in conjunction with the corresponding

variability limits). These totals match the amounts of the Phase 2 emissions budgets for Alabama established under the federal trading program regulations for ozone NOx 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.<sup>38</sup> In addition, Alabama's rule – through provisions that create an iterative process for allocating allowances – addresses the disposition of otherwise unallocated allowances from an Indian country NUSA. The allocation provisions in the Alabama rules therefore enable Alabama's SIP revision to meet the condition under 40 CFR 52.38(b)(9)(iii) that the state's allocation or auction methodology must cover all allowances potentially requiring allocation by the state.

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

As discussed in section IV.B.2 above, paragraph 335-3-8-.46(1) of the Alabama rules sets forth the total amount of CSAPR Ozone Season Group 2 NOx allowances to be allocated to Alabama units for each control period under the state trading program and this amount equals the amount of the ozone season NOx emissions budget established for Alabama units under the CSAPR federal trading program regulations. Although under the State's rules, Alabama will provide EPA with allocations for allowances equal to the total amount of the state budget, the State has clarified in its August 4, 2017, letter that, under the State's interpretation of its rules, the allocations of a portion of the total state budget equal to the Indian country NUSA are to be implemented by EPA only if and when the total quantity of allowances in the State's Indian country NUSA is released for state allocation pursuant to 40 CFR 97.812(b)(10)(ii), and if that total quantity of allowances is not released for state allocation, then the State's allocations of that

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<sup>38</sup> 40 CFR 97.810(a)(1)(i).

portion of the budget are void.<sup>39</sup> To clarify the separate, contingent nature of the State's allocations of the Indian country NUSA allowances, the State will submit its allocations of those allowances to the EPA as a separate set of allocations from the allocations of the remaining allowances in the state budget.<sup>40</sup> EPA has not yet allocated or recorded CSAPR allowances for the control periods in 2019 or later years. As interpreted by the State, the allocation methodology in Alabama's SIP revision therefore meets the condition under 40 CFR 52.38(b)(9)(iii)(A) that 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-.46(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 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(b)(9)(iii)(B) for allocations to units considered existing units for CSAPR purposes and the submission deadlines under §52.38(b)(9)(iii)(C) for allocations to other units). Alabama's SIP revision therefore meets the conditions under 40 CFR

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<sup>39</sup> August 4, 2017, Letter from R. Gore (ADEM) to B. Banister (EPA, Region 4), available in the docket for this action.

<sup>40</sup> *Id.*

52.38(b)(9)(iii)(B) and (C) 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(b)(9)(iii)(D).

6. No other substantive changes to federal trading program provisions

With the exception of the provisions addressing the allowance allocation methodology 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.<sup>41</sup> 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 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 program's allocation provisions that are not used in the federal trading program regulations, as expressly permitted under the CSAPR regulations.<sup>42</sup> Most of the

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<sup>41</sup> The CSAPR federal regulations explicitly provide that terms in the federal CSAPR regulations that include "CSAPR" are considered synonymous with otherwise identical terms in approved SIP revisions that include "TR" instead of "CSAPR". 40 CFR 97.802 (introductory text).

<sup>42</sup> 40 CFR 52.38(b)(9)(iv).

remaining differences between the Alabama rules and the corresponding sections of the federal trading program regulations consist of non-substantive renumbering of the provisions.<sup>43</sup>

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-.40(1)(c), 335-3-8-.41(1)(a), and 335-3-8-.66(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. In addition, paragraph 335-3-8-.42(e) of the Alabama rules allow the Department to extend on-site storage of records beyond five years. 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-.52(2)(a), and 335-3-8-.55(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 responsibility under the state trading programs. EPA therefore considers these additions to be non-substantive changes.

Third, paragraph 335-3-8-.61 of the Alabama rule substitutes references to Alabama rule 335-3-8-.46(3)(i) (the Alabama rule addressing units incorrectly allocated allowances). Because the Alabama rule substitution seeks to replace 40 CFR 97.811(c) with 333-3-8.46(3)(i), which in

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<sup>43</sup> 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.

turn incorporates by reference 40 CFR 97.811(c), EPA proposes to find that the provisions are substantively identical.

Fourth, paragraph 335-3-8-.65 of the Alabama rules substitutes references for Alabama rule 335-3-8-.41 (the Alabama rule covering retired unit exemptions). This substitution is appropriate as it substitutes Alabama's retired unit exemption for the CSAPR retired unit exemptions at 40 CFR 97.805. With the exception of the notification required above and changes related to identification of the state trading program instead of the federal trading program, Alabama has incorporated the text of 40 CFR 97.805 into Alabama Rule 335-3-8-.41. Because the referenced provisions are substantively identical, EPA proposes to determine that these substitutions have no substantive effect.

Finally, paragraphs 335-3-8-.42(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 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 proposes to determine that these substitutions have no substantive effect.

For the reasons discussed above, EPA has preliminarily 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 condition under 40 CFR 52.38(b)(9) 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 ozone season NO<sub>x</sub> emissions either incorporate by reference or adopt full-text replacements for all of the provisions of 40 CFR 97.802 through 97.835. The first exception is that Alabama rule 335-3-8-.46, which generally addresses the amount of emissions budget and related quantities, omits the provisions of 40 CFR 97.810 setting forth the amounts of all emissions budgets, NUSAs, Indian country NUSAs, and variability limits for other states. 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 rule 335-3-8-.46, generally addressing allowance allocations, omits 40 CFR 97.811(b)(2) and 97.812(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 rule 335-3-8-.56, which generally incorporates by reference the federal trading programs' recordation schedule provisions, excludes from incorporation by reference 40 CFR 97.821(a), (b), (h), (i) and (j) concerning EPA's schedule for recording certain allowance allocations. The federal trading program provisions at §97.821(a) and (b), which address recordation of allocations to units considered existing units for CSAPR purposes of allowances for the compliance periods in 2017 and 2018, do not need to be included

in Alabama’s state trading program rules because those allocations have already been recorded. The federal trading program provision at §97.821(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 provision at §97.821(i) and (j), 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.<sup>44</sup> 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 Alabama’s state trading programs and because, as discussed in section IV.B.6 above, EPA has preliminarily 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(b)(9) that the SIP revision must adopt complete state trading program regulations substantively identical to the complete federal trading program regulations at 40 CFR 97.802 through 97.835, except for permissible differences in allowance allocation and/or applicability provisions.

8. Only non-substantive substitutions for the term “State”

Paragraph 335-3-8-.40(1)(a)1 of the Alabama rules substitute the term “the State of Alabama,” and paragraph 335-3-8-.40(1)(b) of the Alabama rules similarly substitute the term

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<sup>44</sup> For the same reason, Alabama’s state rules could permissibly omit 40 CFR 97.821(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 2017 NUSA allocations to Alabama units because EPA has already started recording allocations to Alabama units of allowances for the compliance periods in 2017. *See* 40 CFR 52.38(b)(11)(i).

“the State” (meaning Alabama), for the phrase “a State (or Indian country within the borders of such State)” in the corresponding federal trading program regulations at 40 CFR 97.810(a)(1) and (b). 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 within 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. EPA proposes to find that Alabama’s SIP revision therefore meets the condition under 40 CFR 52.38(b)(9)(v) 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, paragraph 335-3-8-.40(1)(a)1 of the Alabama rule 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<sub>x</sub> Ozone Season Group 2

units” for purposes of the state trading program – 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 rule 335-3-8-.46, which addresses allowance allocations under the state trading programs, contains no provisions replacing 40 CFR 97.811(b)(2) or 97.812(b), the portions of the 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-.56, which generally incorporate by reference the federal trading programs’ recordation schedule provisions, excludes 40 CFR 97.821(h), addressing recordation of Indian country NUSA allocations. Similarly, paragraph 335-3-8-.46(3)(i) of the Alabama rules, which incorporates by reference the federal trading program regulations generally addressing corrections of incorrect allocations, excludes 40 CFR 97.811(c)(5)(iii), addressing corrections of certain incorrect Indian country NUSA allocations. EPA therefore interprets the Alabama state rules as sufficiently excluding provisions addressing administration of the Indian country NUSA provisions under the federal trading programs.

In summary, EPA has preliminarily determined that Alabama’s SIP revision adequately meets the condition under 40 CFR 52.38(b)(9)(vi) that a SIP submittal must not impose any requirement on any unit in Indian country within the borders of the State and must exclude certain provisions related to administration of Indian country NUSAs.

## **V. Incorporation by Reference**

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference ADEM Administrative Code rules 335-3-8-.39 through 335-3-8-.70, state effective on June 9, 2017, comprising Alabama's TR NOx Ozone Season Trading Program. EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and/or at the EPA Region 4 office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information).

#### **VI. EPA's proposed action on Alabama's submittal**

EPA is proposing to approve the portions the Alabama ozone season submittals concerning the establishment for Alabama units of CSAPR state trading programs for ozone season NOx emissions for compliance periods in 2019 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-.39 through 335-3-8-.70 (establishing Alabama's "TR NOx Ozone Group 2 Trading Program"), as interpreted by the State in the August 5, 2017, clarification letter.<sup>45</sup> This Alabama CSAPR state trading program would be integrated with the federal CSAPR NOx Ozone Season Group 2 Trading Program and would be substantively identical to the federal trading program except with regard to the allowance allocation provisions. If EPA approves these portions of the SIP revisions, Alabama units would generally be required to meet requirements under Alabama's CSAPR state trading program equivalent to the requirements the units otherwise would have been required to meet under the corresponding CSAPR federal trading program, but allocations to Alabama units of CSAPR NOx Ozone Season Group 2 allowances for compliance periods in 2019 and later years would be determined according to the

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<sup>45</sup> The Alabama rules use the terms "Transport Rule" and "TR" instead of the updated terms "Cross-State Air Pollution Rule" and "CSAPR," which is permissible under the CSAPR Update. 81 FR at 74579.

SIP's allocation provisions at Alabama rule 335-3-8-.46 instead of EPA's default allocation provisions at 40 CFR 97.811(a), 97.811(b)(1), and 97.812(a). EPA is proposing to approve these portions of the SIP revisions because, as clarified by the State's August 4, 2017, letter, 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 FIP provisions requiring Alabama units to participate in the federal CSAPR NO<sub>x</sub> Ozone Season 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 8-hour Ozone NAAQS and the 2008 8-hour Ozone NAAQS in the absence of SIP provisions addressing those requirements. 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).<sup>46</sup> Approval of the portions of Alabama's SIP submittal adopting CSAPR state trading program rules for ozone season NO<sub>x</sub> substantively identical to the corresponding CSAPR federal trading program regulations (or differing only with respect to the allowance allocation methodology) 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 8-hour Ozone NAAQS in any other state. This proposed approval would also partially satisfy Alabama's obligation pursuant to CAA section

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<sup>46</sup> 40 CFR 52.38(b)(10); *see also* 40 CFR 52.54(b)(1) & (2).

110(a)(2)(D)(i)(I) to prohibit emissions which will significantly contribute to nonattainment or interfere with maintenance of the 2008 8-hour Ozone NAAQS in any other state. Thus, the proposed approval would correct the same deficiency in the SIP that otherwise would be corrected by those CSAPR FIPs. The proposed approval of the portions of Alabama's SIP submittal establishing CSAPR state trading program rules for ozone season NO<sub>x</sub> emissions therefore would result in automatic termination of the obligations of Alabama units to participate in the federal CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program.

## **VII. 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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).

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, Reporting and recordkeeping requirements.

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

Dated: August 7, 2017.

V. Anne Heard,

Acting Regional Administrator,

Region 4.

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