



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2020-0129; FRL-10020-85-Region 4]

Air Plan Approval; AL; NO_x SIP Call and Removal of CAIR

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Alabama through a letter dated February 27, 2020, to add regulations maintaining compliance with the State's Nitrogen Oxide (NO_x) SIP Call obligations for large non-electricity generating units (non-EGUs), to repeal the State's previously sunsetted NO_x Budget Trading Program regulations, and to repeal the State's Clean Air Interstate Rule (CAIR) regulations. EPA is also proposing to conditionally approve into the SIP state regulations that establish monitoring and reporting requirements for units subject to the NO_x SIP Call, including alternative monitoring options for certain sources for NO_x SIP Call purposes. In addition, EPA is proposing to make ministerial changes to reflect the State's renumbering of an existing regulation for "New Combustion Sources."

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-2020-0129 at 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 www2.epa.gov/dockets/commenting-epa-dockets.

FOR FURTHER INFORMATION CONTACT: Steven Scofield, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9034. Mr. Scofield can also be reached via electronic mail at scofield.steve@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Under Clean Air Act (CAA or Act) section 110(a)(2)(D)(i)(I), also called the good neighbor provision, states are required to address the interstate transport of air pollution. Specifically, the good neighbor provision requires that each state's implementation plan contain adequate provisions to prohibit air pollutant emissions from within the state that will significantly contribute to nonattainment of the national ambient air quality standards (NAAQS), or that will interfere with maintenance of the NAAQS, in any other state.

In October 1998 (63 FR 57356), EPA finalized the "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone" (NO_x SIP Call). The NO_x SIP Call required eastern states, including Alabama, to submit SIPs that prohibit excessive emissions of ozone season NO_x by implementing statewide emissions budgets.¹ The NO_x SIP Call addressed the good neighbor provision for the 1979 ozone NAAQS and was designed to mitigate the

¹ See 63 FR 57356 (October 27, 1998).

impact of transported NO_x emissions, one of the precursors of ozone.² EPA developed the NO_x Budget Trading Program, an allowance trading program that states could adopt to meet their obligations under the NO_x SIP Call. This trading program allowed the following sources to participate in a regional cap and trade program: generally EGUs with capacity greater than 25 megawatts (MW); and large industrial non-EGUs, such as boilers and combustion turbines, with a rated heat input greater than 250 million British thermal units per hour (MMBtu/hr). The NO_x SIP Call also identified potential reductions from cement kilns and stationary internal combustion engines.

To comply with the NO_x SIP Call requirements, in 2001, the Alabama Department of Environmental Management (ADEM) submitted a revision to add new rule sections to the SIP-approved version of Alabama Administrative Code Chapter 335-3-1, General Provisions, and Chapter 335-3-8, Control of Nitrogen Oxides Emissions. EPA approved the revision as compliant with Phase I of the NO_x SIP Call in 2001. *See* 66 FR 36919 (July 16, 2001). The approved revision required EGUs and large non-EGUs in the State to participate in the NO_x Budget Trading Program beginning in 2004. In 2005, Alabama submitted, and EPA approved, a SIP revision to address additional emissions reductions required for the NO_x SIP Call under Phase II. *See* 70 FR 76694 (Dec. 28, 2005).

In 2005, EPA published CAIR, which required several eastern states, including Alabama, to submit SIPs that prohibited emissions consistent with revised ozone season (and annual) NO_x budgets. *See* 70 FR 25162 (May 12, 2005); *see also* 71 FR 25328 (April 28, 2006). CAIR addressed the good neighbor provision for the 1997 ozone NAAQS and 1997 fine particulate matter (PM_{2.5}) NAAQS and was designed to mitigate the impact of transported NO_x emissions with respect to ozone and PM_{2.5}. CAIR established several trading programs that EPA implemented through federal implementation plans (FIPs) for EGUs greater than 25 MW in each

² As originally promulgated, the NO_x SIP Call also addressed good neighbor obligations under the 1997 8-hour ozone NAAQS, but EPA subsequently stayed and later rescinded the rule's provisions with respect to that standard. *See* 65 FR 56245 (September 18, 2000); 84 FR 8422 (March 8, 2019).

affected state, but not large non-EGUs; states could submit SIPs to replace the FIPs that achieved the required emission reductions from EGUs and/or other types of sources.³ When the CAIR trading program for ozone season NO_x was implemented beginning in 2009, EPA discontinued administration of the NO_x Budget Trading Program; however, the requirements of the NO_x SIP Call continued to apply.

On October 1, 2007 (72 FR 55659), EPA approved revisions to Alabama's SIP that incorporated requirements for CAIR. Consistent with CAIR's requirements, EPA approved a SIP revision in which Alabama regulations: (1) Sunset its NO_x Budget Trading Program requirements, and (2) incorporated CAIR annual and ozone season NO_x state trading programs. *See* 72 FR 55659. Participation of EGUs in the CAIR ozone season NO_x trading program addressed the State's obligation under the NO_x SIP Call for those units, and Alabama also chose to require non-EGUs subject to the NO_x SIP Call to participate in the same CAIR trading program. In this manner, Alabama's CAIR rules incorporated into the SIP addressed the State's obligations under the NO_x SIP Call with respect to both EGUs and non-EGUs.

The United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) initially vacated CAIR in 2008, but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR. *See North Carolina v. EPA*, 531 F.3d 896, *modified on rehearing*, 550 F.3d 1176 (D.C. Cir. 2008). The ruling allowed CAIR to remain in effect temporarily until a replacement rule consistent with the court's opinion was developed. While EPA worked on developing a replacement rule, the CAIR program continued to be implemented with the NO_x annual and ozone season trading programs beginning in 2009 and the SO₂ annual trading program beginning in 2010.

Following the D.C. Circuit's remand of CAIR, EPA promulgated the Cross-State Air Pollution Rule (CSAPR) to replace CAIR and address good neighbor obligations for the 1997

³ CAIR had separate trading programs for annual sulfur dioxide emissions, seasonal NO_x emissions, and annual NO_x emissions.

ozone NAAQS, the 1997 PM_{2.5} NAAQS, and the 2006 PM_{2.5} NAAQS. *See* 76 FR 48208 (August 8, 2011). Through FIPs, CSAPR required EGUs in eastern states, including Alabama, to meet annual and ozone season NO_x emission budgets and annual SO₂ emission budgets implemented through new trading programs. Implementation of CSAPR began on January 1, 2015.⁴ CSAPR also contained provisions that would sunset CAIR-related obligations on a schedule coordinated with the implementation of the CSAPR compliance requirements. Participation by a state's EGUs in the CSAPR trading program for ozone season NO_x generally addressed the state's obligation under the NO_x SIP Call for EGUs. CSAPR did not initially contain provisions allowing states to incorporate large non-EGUs into that trading program to meet the requirements of the NO_x SIP Call for non-EGUs. EPA also stopped administering CAIR trading programs with respect to emissions occurring after December 31, 2014.⁵

To comply with CSAPR, Alabama adopted SO₂ and NO_x CSAPR trading program rules, including budgets, in ADEM Administrative Code Chapters 335-3-5 and 335-3-8. On August 31, 2016, EPA approved Alabama's CSAPR annual SO₂ and annual NO_x trading program rules into the SIP.⁶ *See* 81 FR 59869. Because EPA stopped administering the CAIR trading programs after 2014, the approved CAIR rules in the State's SIP have not been implemented for several years. Furthermore, ADEM repealed all CAIR and CAIR-related regulations from Alabama Administrative Code Chapters 335-3-1, 335-3-5, and 335-3-8 on December 9, 2011.⁷ Even though the CAIR programs were not being implemented in Alabama, ozone season NO_x emissions have remained well below the NO_x SIP Call budget levels.

After litigation that reached the Supreme Court, the D.C. Circuit generally upheld CSAPR but remanded several state budgets to EPA for reconsideration. *EME Homer City*

⁴ *See* 79 FR 71663 (December 3, 2014).

⁵ *See* 79 FR 71663 (December 3, 2014) and 81 FR 13275 (March 14, 2016).

⁶ In the 2016 action, EPA did not act 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 NO_x emissions.

⁷ Although CAIR-related regulations were repealed from ADEM Administrative Code on December 11, 2011, the repeal of the regulations was not effective until February 20, 2015. EPA is now proposing to remove the repealed regulations from the SIP.

Generation, L.P. v. EPA, 795 F.3d 118, 129-30 (D.C. Cir. 2015). EPA addressed the remanded ozone season NO_x budgets in the Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS (CSAPR Update), which also partially addressed eastern states' good neighbor obligations for the 2008 ozone NAAQS. *See* 81 FR 74504 (October 26, 2016). The air quality modeling for the CSAPR Update demonstrated that Alabama contributes significantly to nonattainment and/or interferes with maintenance of the 2008 ozone NAAQS in other states. The CSAPR Update reestablished an option for most states to meet their ongoing obligations for non-EGUs under the NO_x SIP Call by including the units in the CSAPR Update trading program.

The CSAPR Update trading program replaced the original CSAPR trading program for ozone season NO_x for most covered states. On October 6, 2017, EPA approved Alabama's CSAPR Update ozone season NO_x trading program rules for EGUs into the State's SIP.⁸ *See* 82 FR 46674. Alabama's EGUs participate in the CSAPR Update trading program, generally also addressing the state's obligations under the NO_x SIP Call for EGUs. However, Alabama elected not to include its large non-EGUs in the CSAPR Update ozone season trading program. Because Alabama's large non-EGUs no longer participate in any CSAPR or CSAPR Update trading program for ozone season NO_x emissions, the NO_x SIP Call regulations at 40 CFR 51.121(r)(2) as well as anti-backsliding provisions at 40 CFR 51.905(f) and 40 CFR 51.1105(e) require these non-EGUs to maintain compliance with NO_x SIP Call requirements in some other way.

Under 40 CFR 51.121(f)(2) of the NO_x SIP Call regulations, where a State's SIP contains control measures for EGUs and large non-EQU boilers and combustion turbines, the SIP must contain enforceable limits on the ozone season NO_x mass emissions from these sources. In addition, under 40 CFR 51.121(i)(4) of the NO_x SIP Call regulations as originally promulgated, the SIP also had to require these sources to monitor emissions according to the provisions of 40

⁸ This action approved CSAPR and CSAPR Update-related provisions of Alabama SIP submissions dated October 26, 2015, and May 19, 2017.

CFR part 75, which generally entails the use of continuous emission monitoring systems (CEMS). Alabama triggered these requirements by including control measures in its SIP for these types of sources, and the requirements have remained in effect despite the discontinuation of the NO_x Budget Trading Program after the 2008 ozone season. On March 8, 2019, EPA revised some of the regulations that were originally promulgated in 1998 to implement the NO_x SIP Call.⁹ The revision gave states covered by the NO_x SIP Call greater flexibility concerning the form of the NO_x emissions monitoring requirements that the states must include in their SIPs for certain emissions sources. The revision amended 40 CFR 51.121(i)(4) to make Part 75 monitoring, recordkeeping, and reporting optional, such that SIPs may establish alternative monitoring requirements for NO_x SIP Call budget units that meet the general requirements of 40 CFR 51.121(f)(1) and (i)(1). Under the updated provision, a state's implementation plan still needs to include some form of emissions monitoring requirements for these types of sources, consistent with the NO_x SIP Call's general enforceability and monitoring requirements at §§ 51.121(f)(1) and (i)(1), respectively, but states are no longer be required to satisfy these general NO_x SIP Call requirements specifically through the adoption of 40 CFR part 75 monitoring requirements.

After evaluating the various options available following EPA's March 8, 2019, revision to the NO_x SIP Call requirements, ADEM revised its regulations to address NO_x SIP Call requirements and adopt alternative monitoring options for certain large non-EGUs. The changes require large non-EGUs in the State to address the NO_x SIP Call's requirements for enforceable limits on ozone season NO_x mass emissions in a manner that does not rely on the administration of an interstate trading program. In addition, Alabama had previously revised its regulations to remove NO_x Budget Trading Program and CAIR trading program provisions after EPA stopped administering those programs. The February 27, 2020 SIP revision submitted by ADEM

⁹ See "Emissions Monitoring Provisions in State Implementation Plans Required Under the NO_x SIP Call," 84 FR 8422 (March 8, 2019).

requests approval into the SIP of all of these rule changes. The contents of the submittal and EPA's analysis is further discussed in Section III.

II. Why is EPA Proposing These Actions?

ADEM's February 27, 2020, letter¹⁰ requests that EPA approve into the SIP changes to ADEM Administrative Code Chapter 335-3-8 to include Rule 335-3-8-.71, "NO_x Budget Program," and Rule 335-3-8-.72, "NO_x Budget Program Monitoring and Reporting," to maintain state compliance with the federal NO_x SIP Call regulations at 40 CFR 51.121 and 51.122, and to provide alternative monitoring options for certain large non-EGUs. Additionally, Alabama requests that EPA approve the removal from the SIP of the State's repealed CAIR trading program and NO_x Budget Trading Program rules, as those state regulations have been replaced by CSAPR for EGUs and by the State's new rules for non-EGUs. ADEM also requests that EPA approve the State's renumbering of the existing regulation titled "New Combustion Sources" from Rule 335-3-8-.14 to Rule 335-3-8-.05. The submission includes a demonstration under CAA section 110(l) intended to show that the revision does not interfere with any applicable CAA requirements. As discussed later, EPA has reviewed these changes, preliminarily finds them consistent with the CAA and regulations governing the NO_x SIP Call, with one exception, and is proposing to approve the revisions to incorporate the NO_x SIP Call regulations into the State's implementation plan and to remove the NO_x Budget Trading Program and CAIR trading program regulations from the SIP. The exception is that EPA is proposing to conditionally approve the regulations that establish monitoring and reporting requirements for NO_x budget units.

III. Analysis of Alabama's Submission

¹⁰ On February 27, 2020, Alabama also submitted other SIP revisions which will be addressed in separate actions. This submission also includes amended regulations which are not part of the federally-approved SIP and are therefore not addressed in this notice.

As discussed above, ADEM has revised its regulations to require non-EGUs to maintain compliance with NOx SIP Call requirements without participation in an interstate trading program. ADEM updated Chapter 335-3-8, “Control of Nitrogen Oxides Emissions” by revising Chapter 335-3-8 to add Rule 335-3-8-.71, “NOx Budget Program” and Rule 335-3-8-.72, “NOx Budget Program Monitoring and Reporting,” to maintain state compliance with the federal NOx SIP Call regulations at 40 CFR 51.121 and 51.122 for large non-EGUs and to adopt an alternative monitoring option for certain large non-EGUs. EPA previously approved Alabama’s sunsetting of the State’s NOx Budget Trading Program regulations when that program was replaced by the CAIR trading program for ozone season NOx. The State subsequently repealed its NOx Budget Trading Program regulations from Alabama Administrative Code Chapters 335-3-1 and 335-3-8 and now requests removal of those regulations from the SIP. Also, because EPA has stopped administering the CAIR trading programs, the State repealed all CAIR and CAIR-related regulations from Alabama Administrative Code Chapters 335-3-1, 335-3-5, and 335-3-8 and now requests removal of these regulations from the SIP as well.¹¹ Lastly, ADEM requests that EPA approve a ministerial change that would update the SIP to reflect the State’s renumbering of the existing regulation titled, “New Combustion Sources” from Rule 335-3-8-.14 to Rule 335-3-8-.05.

1. Revised State Regulations

ADEM added Rule 335-3-8-.71, “NOx Budget Program,” to establish a state control program for sources that are subject to the NOx SIP Call, but not covered under the CSAPR Update trading program. ADEM Rule 335-3-8-.71 is designed to ensure that the State’s large

¹¹ EPA is proposing to approve removal of the following rules related to the NOx Budget Trading Program and CAIR from Alabama’s SIP: 335-3-1-.14, 335-3-1-.16, 335-3-5-.06 through 335-3-5-.08, 335-3-5-.11 through .14, 335-3-8-.05 through 335-3-8-.13, 335-3-8-.16 through 335-3-8-.18, 335-3-8-.20, 335-3-8-.21, 335-3-8-.23 through 335-3-8-.27, 335-3-8-.29, 335-3-8-.30, 335-3-8-.32, and 335-3-8-.33. Other Alabama rules that share many of the same rule numbers would not be removed from the SIP; these rules relate to the State’s CSAPR and CSAPR Update trading programs.

non-EGUs will continue to satisfy NOx SIP Call requirements for enforceable limits on ozone season NOx mass emissions.

ADEM Rule 335-3-8-.71(4) and (5) contain the rule's applicability provisions, generally covering all existing and new non-EGUs (including cogeneration units) that would have been subject to the NOx Budget Trading Program and that are not subject to the CSAPR Update trading program. ADEM Rule 335-3-8-.71(6)(a) defines the budget for the State at 2,328 tons per ozone season, which is the portion of the State's trading budget under the NOx Budget Trading Program assigned to non-EGUs, and restricts the collective emissions from the State's affected large non-EGUs from exceeding the budget during each control period. ADEM Rule 335-3-8-.71(6)(a) also states that Alabama will conduct an annual review of the actual NOx emissions to ensure that the state budget has not been exceeded. Further, in the event of an exceedance, Alabama will submit a revised SIP to EPA which compensates for any potential budget shortfall and ensures the state program budget is met in all future years. ADEM Rule 335-3-8-.71(6)(b) requires monitoring and reporting of NOx emissions from covered units according to the methods specified in ADEM Rule 335-3-8-.72. Other provisions of ADEM Rule 335-3-8-.71 address definitions, recordkeeping requirements, and liability.

ADEM Rule 335-3-8-.72, "NOx Budget Program Monitoring and Reporting," requires all owners and operators of covered NOx budget units to implement a monitoring and reporting system necessary to attribute ozone season NOx mass emissions to each individual NOx budget unit at the source and provide a compliance certification report following each ozone season. ADEM Rule 335-3-8-.72(1) requires units to monitor and report ozone season NOx mass emissions determined under one of the following alternatives: (1) 40 CFR Part 75; (2) NOx CEMS, with a requirement to convert the NOx concentration or NOx emission rate derived from the CEMS to mass emissions; or (3) the use of approved emissions factors, with a requirement to convert the emission factors to mass emissions. ADEM Rule 335-3-8-.72(1)(a) requires units to monitor and report under Part 75 if required by any other regulation or permit, and allows any

other unit to choose to report under Part 75. ADEM Rules 335-3-8-.72(1)(b) and 335-3-8-.72(1)(c) together provide the requirements for units that are required to, or choose to, operate a CEMS outside of Part 75 requirements. ADEM Rule 335-3-8-.72(1)(c) requires NOx budget units operating a CEMS to comply with any applicable monitoring and reporting regulations, and outlines the methods by which a NOx budget unit shall calculate the NOx mass emissions (in tons) for compliance under the NOx Budget Program. ADEM Rule 335-3-8-.72(1)(b) outlines additional quality assurance and compliance requirements for NOx budget units that choose to operate a CEMS. Last, ADEM Rule 335-3-8-.72(1)(d) provides that any unit not covered under ADEM Rule 335-3-8-.72(1)(a), (b), or (c), must calculate NOx mass emissions through the use of emissions factors. In addition, ADEM Rule 335-3-8-.72(1)(e) requires units to submit a monitoring protocol to ADEM for review and approval. For all compliance options, ADEM Rule 335-3-8-.72(2) requires units to submit their ozone season NOx emissions to ADEM as part of an annual compliance report and certification no later than November 30th following each ozone season.

As discussed above, in order to address the requirements of the NOx SIP Call for sources that are not covered under a CSAPR trading program for ozone season NOx emissions, SIP revisions must provide for enforceable emissions limitations and require emissions monitoring consistent with the NOx SIP Call's general enforceability and monitoring requirements.¹² In this notice, EPA is proposing to find that ADEM Rule 335-3-8-.71 meets the requirement under 40 CFR 51.121(f)(2) for enforceable limits on the subject units' collective emissions of ozone season NOx mass emissions. Thus, EPA is proposing to approve ADEM rule 335-3-8-.71 into the SIP.

Further, EPA is proposing to find that ADEM Rule 335-3-8-.72 meets the State's ongoing obligations under the NOx SIP Call with respect to monitoring to ensure compliance with required limitations, with the following exception. While ADEM Rule 335-3-8-.72

¹² See 40 CFR 51.121(f)(2)(ii) and 51.121(i)(4).

generally addresses the State's ongoing obligations under the NOx SIP Call with respect to monitoring, EPA identified one issue impacting monitoring under ADEM's rule. Accordingly, on September 15, 2020, ADEM sent a letter¹³ requesting that EPA conditionally approve ADEM Rule 335-3-8-.72 under CAA section 110(k)(4), as ADEM inadvertently added stack testing requirements for units choosing to operate a CEMS outside of Part 75 requirements rather than for units using emissions factors, as intended. In that letter, ADEM also commits to EPA that it will make a final submission to EPA within twelve (12) months of the grant of conditional approval of the February 27, 2020 submittal to correct this stack testing issue. Based on the State's commitment to submit a SIP revision addressing the identified deficiency, EPA is proposing to conditionally approve the February 27, 2020 submission, as clarified by the State's September 15, 2020 letter. If Alabama meets its commitment to submit a SIP revision addressing the deficiency by 12 months from the date of final approval of this action, ADEM Rule 335-3-8-.72 will remain a part of the SIP until EPA takes final action approving or disapproving the new SIP revision. However, if the State fails to submit this revision on or before 12 months from the date of final approval of this action, the conditional approval will become a disapproval and EPA will issue a notice to that effect. If the conditional approval becomes a disapproval, the disapproval triggers the requirement for EPA to issue a federal implementation plan (FIP) under CAA section 110(c) to correct the deficiency.

2. Removal of NOx Budget Trading Program and CAIR Trading Program Regulations from Alabama's SIP

EPA proposes to approve the removal from the SIP of the State's repealed NOx Budget Trading Program and CAIR trading program regulations. With respect to the State's NOx Budget Trading Program regulations, removal from the SIP would have no substantive effect because EPA previously approved the sunset of these regulations when Alabama began to

¹³ See ADEM's September 15, 2020, letter from Lance R. LeFleur, Director, to Mary S. Walker, Regional Administrator, US EPA Region 4, available in the docket for this proposed action.

meet its ongoing NO_x SIP Call requirements for both EGUs and large non-EGUs through its CAIR regulations instead. With respect to the State's CAIR regulations, EPA proposes to find removal from the SIP is appropriate because the State's ongoing NO_x SIP Call obligations for EGUs are now being met through the State's SIP-approved CSAPR regulations, the State's ongoing NO_x SIP Call obligations for non-EGUs would be met through the rules proposed for approval into the SIP in this action, as discussed above, and EPA is no longer administering the CAIR trading programs.

CAA section 110(l) provides that EPA cannot approve a SIP revision if the revision would interfere with any applicable requirement concerning attainment or reasonable further progress (RFP), or any other applicable requirement of the CAA. EPA generally considers whether the SIP revision would worsen, preserve, or improve the status quo in air quality.

ADEM's February 27, 2020 submission seeks to remove the SIP-approved portions of the state trading program rules adopted to comply with annual CAIR programs from Alabama's SIP because the CAIR annual programs have been replaced by the CSAPR annual programs. In addition, ADEM's February 27, 2020 submission seeks to remove the SIP-approved portions of the State's trading program rules adopted to comply with ozone season CAIR programs from Alabama's SIP because the CAIR program has been replaced by CSAPR for EGUs, and, if approved, Alabama's state control program would address the outstanding NO_x SIP Call requirements for non-EGUs. With respect to non-EGUs, ADEM's February 27, 2020 submission contains a technical demonstration showing that no increase in NO_x ozone season emissions is expected to result from the removal of CAIR because the combined potential to emit from non-EU sources remains below CAIR budget levels.

In this notice, EPA is proposing to approve the removal of the CAIR-related provisions from Alabama's SIP because removal of these provisions is appropriate and consistent with all applicable requirements, including 40 CFR 51.121 and CAA section 110(l). As explained above, the D.C. Circuit remanded CAIR to EPA in 2008; however, the court left CAIR in place while

EPA worked to develop a new interstate transport rule. CSAPR was promulgated to respond to the Court's concerns and to replace CAIR. The implementation of CSAPR was delayed for several years beyond its originally expected implementation timeframe of 2012, and therefore, the sunset of CAIR was also deferred. CAIR was implemented through the 2014 compliance periods and was replaced by CSAPR on January 1, 2015. EPA promulgated regulations to sunset the CAIR trading programs and is no longer administering them.¹⁴ EPA preliminarily concludes that approval of the February 27, 2020 Alabama submittal would not result in increased NOx emissions, and therefore, would have no impact on any requirements related to attainment, reasonable further progress (RFP), or any other NAAQS requirements under the CAA. EPA therefore proposes to approve the removal of Alabama's SIP provisions related to CAIR.

ADEM further provided an analysis to demonstrate that the monitoring flexibilities comply with CAA section 110(l). Given that several of the original large non-EGU sources are no longer subject to the NOx SIP Call due to shut-downs and that the remaining facilities, through compliance with federal permit restrictions, have potentials-to-emit that are well below the NOx SIP Call budget levels, accompanied by replacement monitoring requirements sufficient to ensure compliance with the unchanged emissions requirements, this SIP revision is not expected to result in increases in emissions. EPA also preliminarily concludes that Alabama's monitoring regulations related to the NOx SIP Call will not interfere with continued attainment of the NAAQS, RFP, or any other applicable requirement of the Clean Air Act.

3. Ministerial Change

EPA also proposes to approve into the SIP ADEM's non-substantive renumbering of the existing regulation titled, "New Combustion Sources" from Rule 335-3-8-.14 to Rule 335-3-8-.05.

¹⁴ 40 CFR 51.123(ff) and 52.35(f) (SIP and FIP requirements related to NOx); 40 CFR 51.124(s) and 52.36(e) (SIP and FIP requirements related to SO₂).

IV. Incorporation by Reference

In this document, 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 Alabama Administrative Code Rule 335-3-8-.71, “NOx Budget Program,” which reestablishes enforceable limits on ozone season NOx mass emission for certain units as required by EPA’s NOx SIP Call regulations, and Rule 335-3-8-.72, “NOx Budget Program Monitoring and Reporting,” which establishes alternative emission monitoring requirements for the units, effective April 13, 2020. Also in this document, EPA is proposing to remove from the SIP the State’s NOx Budget Trading Program and CAIR trading program regulations at 335-3-1-.14, 335-3-1-.16, 335-3-5-.06 through 335-3-5-.08, 335-3-5-.11 through 335-3-5-.14, 335-3-8-.05 through 335-3-8-.13, 335-3-8-.16 through 335-3-8-.18, 335-3-8-.20, 335-3-8-.21, 335-3-8-.23 through 335-3-8-.27, 335-3-8-.29, 335-3-8-.30, 335-3-8-.32, and 335-3-8-.33. EPA has made, and will continue to make, the SIP generally available through www.regulations.gov and at the EPA Region 4 Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

V. Proposed Actions

EPA is proposing to approve Alabama’s February 27, 2020 SIP revision to Rule 335-3-8-.71, “NOx Budget Program,” into the SIP, and conditionally approve Alabama’s February 27, 2020 SIP revision to Rule 335-3-8-.72, “NOx Budget Program Monitoring and Reporting,” into the SIP. In addition, EPA is proposing to remove from the SIP the State’s NOx Budget Trading Program and CAIR trading program regulations within Chapters 335-3-1, titled “General Provisions,” 335-3-5, titled “Control of Sulfur Compound Emissions,” and 335-3-8, titled “Control of Nitrogen Oxides Emissions,” as identified earlier. EPA is also proposing to update the SIP to reflect the State’s renumbering of the existing regulation titled “New Combustion Sources” from Rule 335-3-8-.14 to Rule 335-3-8-.05.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA 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, these proposed actions merely propose to approve, or conditionally approve, state law as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law. For that reason, these proposed actions:

- Are not significant regulatory actions 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);
- Do not impose information collection burdens under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having significant economic impacts on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandates or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are 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

- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, these proposed actions do not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, 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: February 25, 2021.

John Blevins,
Acting Regional Administrator,
Region 4.

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