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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2022-0145; FRL-9844-01-R4]

Air Plan Approval; Alabama; NOx SIP Call

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 the Alabama Department of Environmental Management (ADEM), in a letter dated October 18, 2021. The revision includes corrections to deficiencies to Alabama's regulation titled "NOx Budget Program Monitoring and Reporting" (AL NOx SIP Call Monitoring Rule), which EPA previously conditionally approved into the SIP. Specifically, the AL NOx SIP Call Monitoring Rule establishes monitoring and reporting requirements for units subject to the nitrogen oxides (NOx) SIP Call, including alternative monitoring options for certain sources of NOx. EPA is also proposing to convert the conditional approval to a full approval. In addition, EPA is proposing to approve other minor changes into the SIP.

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-2022-0145 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" (NOx SIP Call). The NOx SIP Call required eastern states, including Alabama, to submit SIPs that prohibit excessive emissions of ozone season NOx by implementing statewide emissions budgets.[1] The NOx 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 NOx emissions, one of the precursors of ozone.[2] EPA developed the NOx Budget Trading Program, an allowance trading program that states could adopt to meet their obligations under the NOx SIP Call. This trading program allowed the following sources to participate in a regional cap and trade program: generally, electricity generating units (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 NOx SIP Call also identified potential reductions from cement kilns and stationary internal combustion engines.

To comply with the NOx SIP Call requirements, in 2001, 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 NOx 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 NOx Budget Trading Program beginning in 2004. In 2005, Alabama submitted, and EPA approved, a SIP revision to address additional emissions reductions required for the NOx SIP Call under Phase II. *See* 70 FR 76694 (December 28, 2005).

In 2005, EPA published the Clean Air Interstate Rule (CAIR), which required several eastern states, including Alabama, to submit SIPs that prohibited emissions consistent with revised ozone season NOx budgets (as well as annual budgets for NOx and sulfur dioxide). *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 NOx 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 affected state, but not large

[2] As originally promulgated, the NOx 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).

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 NOx was implemented beginning in 2009, EPA discontinued administration of the NOx Budget Trading Program; however, the requirements of the NOx 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 NOx Budget Trading Program requirements, and (2) incorporated CAIR annual and ozone season NOx state trading programs. *See* 72 FR 55659. Participation of EGUs in the CAIR ozone season NOx trading program addressed the State's obligation under the NOx SIP Call for those units, and Alabama also chose to require non-EGUs subject to the NOx 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 NOx 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 NOx annual and ozone season trading programs beginning in 2009 and the SO_2 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 (SO_2) emissions, seasonal NOx emissions, and annual NOx 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 NOx emission budgets and annual SO_2 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 NOx generally addressed the state's obligation under the NOx 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 NOx 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 SO_2 and NOx 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 SO_2 and annual NOx 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 Alabama'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 NOx emissions have remained well below the NOx 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*

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[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 NOx 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 removed the repealed regulations from the SIP, effective August 6, 2021. *See* 86 FR 35610 (July 7, 2021).

Generation, L.P. v. EPA, 795 F.3d 118, 129-30 (D.C. Cir. 2015). EPA addressed the remanded ozone season NOx 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 NOx 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 NOx for most covered states. On October 6, 2017, EPA approved Alabama's CSAPR Update ozone season NOx trading program rules for EGUs into Alabama's SIP.[8] *See* 82 FR 46674.[9] Alabama's EGUs participate in the CSAPR Update trading program, generally also addressing the state's obligations under the NOx 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 NOx emissions, the NOx 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 NOx SIP Call requirements in some other way.

Under 40 CFR 51.121(f)(2) of the NOx SIP Call regulations, where a state's implementation plan contains control measures for EGUs and large non-EGU boilers and

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

[9] In subsequent litigation, the D.C. Circuit upheld the CSAPR Update in virtually all respects but remanded it because it was partial in nature and did not fully eliminate upwind states' significant contribution to nonattainment or interference with maintenance of the 2008 ozone NAAQS by "the relevant downwind attainment deadlines" in the CAA. *Wisconsin v. EPA*, 938 F.3d 303, 313-15 (D.C. Cir. 2019). To address the remand, in 2021 EPA issued the Revised CSAPR Update, in which the Agency determined (among other things) that the requirements established for Alabama in the CSAPR Update did in fact constitute a full remedy for the state's good neighbor obligations with respect to the 2008 ozone NAAQS. 86 FR 23054, 23054 (April. 30, 2021).

combustion turbines, the SIP must contain enforceable limits on the ozone season NOx mass emissions from these sources. In addition, under 40 CFR 51.121(i)(4) of the NOx SIP Call regulations as originally promulgated, the SIP also had to require these sources to monitor emissions according to the provisions of 40 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 NOx 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 NOx SIP Call.[10] The revision gave states covered by the NOx SIP Call greater flexibility concerning the form of the NOx 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 NOx 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 NOx SIP Call's general enforceability and monitoring requirements at 40 CFR 51.121(f)(1) and (i)(1), respectively, but states are no longer required to satisfy these general NOx SIP Call requirements specifically through the adoption of 40 CFR part 75 monitoring requirements.

Through a letter to EPA dated February 27, 2020, ADEM provided a SIP revision to incorporate changes to ADEM Administrative Code Chapter 335-3-8 to include 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

[10] *See* "Emissions Monitoring Provisions in State Implementation Plans Required Under the NOx SIP Call," 84 FR 8422 (March 8, 2019).

51.121 and 51.122, and to provide alternative monitoring options for certain large non-EGUs. Subsequently, on September 15, 2020, ADEM sent a letter requesting that EPA conditionally approve ADEM Rule 335-3-8-.72 and committing to provide a SIP revision to EPA by July 7, 2022 to address a deficiency related to misplacement of stack testing requirements within ADEM Rule 335-3-8-.72(1).[11] Based on the State's commitment to submit a SIP revision addressing the identified deficiency, EPA conditionally approved the February 27, 2017, submission. *See* 86 FR 35610.[12]

II. Why is EPA Proposing This Action?

In accordance with its commitment letter, ADEM submitted a SIP revision on October 18, 2021,[13] requesting that EPA approve into the SIP a revision that would correct the deficiency found in Rule 335-3-8-.72 by moving the stack testing requirement from 335-3-8-.72(1)(c) to 335-3-8-.72(1)(d) in order to satisfy the prior conditional approval. EPA is proposing to approve the October 18, 2021, SIP revision, as well as proposing to convert EPA's July 7, 2021, conditional approval to a full approval. In addition, EPA is proposing to approve other minor changes into the SIP which correct references to NOx mass emissions rather than NOx concentrations.

III. Analysis of Alabama's Submission

As discussed above, ADEM revised its regulations to include Rule 335-3-8-.71, "NOx Budget Program," and Rule 335-3-8-.72, "NOx Budget Program Monitoring and Reporting," which require non-EGUs to maintain compliance with NOx SIP Call requirements without participation in an interstate trading program. Through a letter to EPA dated February 27, 2020, ADEM provided a SIP revision to incorporate changes to ADEM Administrative Code Chapter

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[11] These stack testing requirements were mistakenly added to 335-3-8-.72(1)(c), which allows sources to fulfill NOx SIP call monitoring requirements by operating a NOx CEMS outside of Part 75 requirements, instead of 335-3-8-.72(1)(d), which uses emissions factors.

[12] In the same action, EPA approved removal of the CAIR trading program, removal of the NOx Budget Trading Program rules, and the State's renumbering of the existing regulation titled "New Combustion Sources" from Rule 335-3-8-.14 to Rule 335-3-8-.05.

[13] EPA notes that the October 18, 2021, submittal was received by EPA on October 20, 2021.

335-3-8 to include 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, and to provide alternative monitoring options for certain large non-EGUs. While ADEM Rule 335-3-8-.72 generally addressed the State's ongoing obligations under the NOx SIP Call, EPA identified one issue impacting monitoring under ADEM's rule. The version of Rule 335-3-72 provided in the SIP revision contained an error regarding the placement of stack testing requirements. These stack testing requirements were meant to be added to 335-3-8-.72(1)(d), which uses emissions factors, but instead, were mistakenly added to 335-3-8-.72(1)(c), which allows sources to fulfill NOx SIP call monitoring requirements by operating a NOx CEMS outside of Part 75 requirements. On September 15, 2020, [14] ADEM sent a letter requesting that EPA conditionally approve ADEM Rule 335-3-8-.72 and committing to provide a SIP revision to EPA by July 7, 2022 to address the aforementioned deficiency by moving the stack testing requirements from 35-3-8-.72(1)(c) to (d) In that letter, ADEM also committed to EPA that it would 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.

On October 18, 2021, ADEM submitted a SIP revision, requesting that EPA approve into the SIP a revision that would correct the deficiency found in Rule 335-3-8-.72, "NOx Budget Program Monitoring and Reporting," in order to satisfy the prior conditional approval. *See* 86 FR 35610 (July 7, 2021). In this revision, the stack testing requirement has been moved from Rule 335-3-8-.72(1)(c) to Rule 335-3-8-.72(d). This change ensures that stack testing is performed at least once every five years, which is necessary to verify historical NOx concentration and flow rate factors used to compute NOx mass emissions at units utilizing the alterative monitoring option under 335-3-8-.72(1)(d). Additionally, ADEM revised an incorrect

[14] *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.

reference to calculating the "NOx concentration" to correctly refer to "NOx mass emissions" in two instances in Rule 335-3-8-.72(d). In that rule, ADEM intends for sources to calculate NOx mass emissions utilizing NOx concentrations.

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, and that ADEM has addressed the previously identified deficiency. Thus, EPA is also proposing to convert the July 7, 2021, conditional approval of Alabama Rule 335-3-8-.72 to a full approval.

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-.72, "NOx Budget Program Monitoring and Reporting," which establishes emission monitoring requirements for units subject to the NOx SIP call, state effective December 13, 2021. EPA has made, and will continue to make, these materials 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 Action

EPA is proposing to approve Alabama's October 18, 2021, submission, which revises Alabama Rule 335-3-8-.72, "NOx Budget Program Monitoring and Reporting" to correct the stack testing requirement by moving it from 335-3-8-.72(1)(c) to 335-3-8-.72(1)(d) and correct language in 335-3-8-.72(d) to refer to NOx mass emissions. In addition, EPA is proposing to convert the July 7, 2021, conditional approval of Alabama Rule 335-3-8-.72 to a full approval. EPA requests comment on these proposals.

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. This proposed action merely proposes to approve 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, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

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

Dated: May 10, 2022.

Daniel Blackman,
Regional Administrator,
Region 4.

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