



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2024-0387; FRL-12923-01-R4]

Air Plan Approval; Alabama; Standards for Granting Permits and Major New Source Review Permit Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Alabama State Implementation Plan (SIP) submitted by the Alabama Department of Environmental Management (ADEM) on December 20, 2023. The proposed SIP revision consists of minor changes to certain air permit regulations that have been revised by the State agency since EPA last approved those provisions. EPA is proposing to approve the SIP revision pursuant to the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2024-0387 at [regulations.gov](https://www.regulations.gov). Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [regulations.gov](https://www.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 <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Faith Goddard, Multi-Air Pollutant Coordination 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) 562-8757. Ms. Goddard can also be reached via electronic mail at goddard.faith@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On December 20, 2023, ADEM submitted a revision to Alabama Administrative Code (Ala. Admin. Code) Chapter 335-3-14 in the Alabama SIP.¹ In the Alabama SIP, Chapter 335-3-14 contains ADEM's SIP-approved air permit regulations. In the December 20, 2023, SIP revision, ADEM seeks to revise Rules 335-3-14-.03, 335-3-14-.04, and 335-3-14-.05 to correct administrative errors and update outdated information. Rule 335-3-14-.03 contains standards for granting air permits within the State. Rules 335-3-14-.04 and 335-3-14-.05 contain ADEM's CAA "New Source Review" (NSR) permitting program regulations for "major" stationary sources ("major NSR" program regulations). Section 335-3-14-.04 contains ADEM's "Prevention of Significant Deterioration" (PSD) permitting program regulations, and Section 335-3-14-.05 contains ADEM's "Nonattainment NSR" (NNSR) permitting program regulations.

The CAA NSR program is a preconstruction review and air permitting program that applies to certain new and modified stationary sources of air pollution regulated under the CAA.

¹ The December 20, 2023, submittal contains revisions to other Alabama SIP-approved rules that are not addressed in this notice of proposed rulemaking (NPRM). EPA will act on those changes in separate rulemakings. The December 20, 2023, SIP revision addressed in this NPRM originally transmitted changes to Ala. Admin. Code Chapters 335-3-14 and 335-3-15. On March 8, 2024, ADEM submitted a letter withdrawing the changes to Chapter 335-3-15 and certain changes to Chapter 335-3-14. The March 8, 2024, withdrawal letter is in the rulemaking docket for this proposed action (the March 8, 2024, withdrawal letter incorrectly notes the SIP submittal date as December 19, 2023). In this NPRM, EPA is proposing action on the changes to Chapter 335-3-14 remaining before EPA for consideration.

CAA section 110(a)(2)(C) provides that SIPs must include a program to regulate the construction and modification of any stationary source as necessary to assure that the national ambient air quality standards (NAAQS) are achieved and cites to more detailed CAA permitting requirements that pertain to the construction of major sources of air pollution, known collectively as the CAA NSR program. The CAA NSR program consists of the following three programs: (1) PSD for major stationary sources and major modifications in attainment and unclassifiable areas; (2) NNSR for major stationary sources and major modifications locating in or impacting nonattainment areas, and (3) minor NSR, which applies generally to attainment, unclassifiable, and nonattainment areas for new sources and modifications that fall below major NSR thresholds. Federal regulations setting forth these NSR programs are prescribed at 40 CFR part 51, subpart I, *Review of New Sources and Modifications*, and Appendix S to part 51, *Emission Offset Interpretive Ruling*. Specifically, 40 CFR 51.165 prescribes minimum SIP requirements for NNSR programs in conjunction with Appendix S to part 51, and 40 CFR 51.166 prescribes minimum SIP requirements for PSD programs. The regulations at 40 CFR 51.160-164 are generally applicable to all NSR programs, but because of more specific implementing regulations for the NNSR and PSD programs at 40 CFR 51.165 and 51.166, respectively, they serve primarily as the basis for EPA's evaluation of minor NSR programs. In this NPRM, EPA is evaluating minor changes to ADEM's standards for granting permits and major NSR permit rules and is proposing to approve these revisions because they meet all the applicable CAA requirements. *See* CAA section 110(k)(3).

II. Analysis of the State's SIP Submittal

A. Rule 335-3-14-.03, Standards for Granting Permits

In the December 20, 2023, SIP revision, ADEM seeks to revise Rule 335-3-14-.03 to correct a cross-reference citation at Rule 335-3-14-.03(1)(g)1 to the significant impact levels

listed in subparagraph (1)(g).² EPA proposes to approve this administrative correction as consistent with CAA requirements.³

B. Rule 335-3-14-.04, Air Permits Authorizing Construction in Clean Air Areas [Prevention of Significant Deterioration Permitting (PSD)]

In the December 20, 2023, SIP revision, ADEM seeks to revise Rule 335-3-14-.04 to make administrative changes at Rules 335-3-14-.04(2)(a)1 and 335-3-14-.04(2)(bbb) and a clarifying change at Rule 335-3-14-.04(15)(e).⁴ ADEM revises the definition of “major stationary source” at Rule 335-3-14-.04(2)(a)1 by numbering the list of major stationary source categories, renumbering subsequent parts of the definition, removing the word “and,” and correcting typographical errors by removing an unnecessary hyphen and changing “changes” to “change.” ADEM also changes “section” to “subparagraph” at Rule 335-3-14-.04(2)(bbb) and clarifies that the “baseline concentration” for evaluation of the maximum allowable increase at Rule 335-3-14-.04(15)(e) is the “minor source baseline concentration,” consistent with the federal PSD regulations.⁵ EPA proposes to approve these administrative and clarifying changes as consistent with CAA requirements.

C. Rule 335-3-14-.05, Air Permits Authorizing Construction in or Near Nonattainment Areas

In the December 20, 2023, SIP revision, ADEM seeks to revise Rule 335-3-14-.05 to make administrative changes at Rules 335-3-14-.05(1)(k) and 335-3-14-.05(4)(d), correct a spelling error at Rule 335-3-14-.05(3), and update outdated information and references at Rule 335-3-14-.05(4)(e).⁶ ADEM revises Rule 335-3-14-.05(1)(k) by numbering the stationary source

² Section 335-3-14-.03 was originally approved into the SIP on May 31, 1972, with periodic revisions approved through September 26, 2012. *See* 37 FR 10842, 77 FR 59100.

³ Changes to Rule 335-3-14-.03(1)(h) were withdrawn by ADEM from the December 20, 2023, SIP revision on March 8, 2024.

⁴ Section 335-3-14-.04 was originally approved into the SIP on November 10, 1981, with periodic revisions approved through July 3, 2019. *See* 46 FR 55517, 84 FR 31741.

⁵ *See* 40 CFR 51.166(p)(4).

⁶ Section 335-3-14-.05 was originally approved into the SIP on November 26, 1979, with periodic revisions approved through December 14, 2018. *See* 44 FR 67375, 83 FR 64285.

categories listed therein, corrects a typographical error at Rule 335-3-14-.05(3) by changing “nonattainment are” to “nonattainment area,” and changes “section” to “paragraph” at Rule 335-3-14-.05(4)(d). ADEM also updates Rule 335-3-14-.05(4)(e) to provide that a source may obtain an emissions credit, also referred to as an offset credit, in cases where a hydrocarbon is replaced by a compound listed as having negligible photochemical reactivity in 40 CFR 51.100(s), consistent with the federal NNSR regulations. This update deletes an outdated reference to EPA’s “Recommended Policy on Control of Volatile Organic Compounds.”⁷ See 42 FR 35314, July 8, 1977. EPA proposes to approve these administrative changes, the correction, and the offset credit update as consistent with CAA requirements.

III. Proposed Action

For the reasons discussed in Section II of this NPRM, EPA is proposing to approve ADEM’s December 20, 2023, SIP revision with changes to Ala. Admin. Code Rules 335-3-14-.03, .04, and .05. EPA is proposing to approve Rule 335-3-14-.03, as revised to incorporate an administrative correction; Rule 335-3-14-.04, as revised to incorporate administrative and clarifying changes; and Rule 335-3-14-.05, as revised to incorporate administrative changes, a correction, and an offset credit update. Given the nature of these changes, they will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable CAA requirement.⁸

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, and as discussed in Sections I through III of this preamble, EPA is proposing to incorporate by reference Ala. Admin. Code Rule 335-3-14-.03, *Standards for Granting Permits*, state-effective February 12, 2024, except that EPA is not proposing to incorporate by reference the February 12,

⁷ See 40 CFR 51.165(a)(3)(ii)(D), 40 CFR 51.100(s).

⁸ See CAA section 110(l).

2024, state-effective version of Rule 335-3-14-.03(1)(h).⁹ EPA is also proposing to incorporate by reference Ala. Admin. Code Rule 335-3-14-.04, *Air Permits Authorizing Construction in Clean Air Areas [Prevention of Significant Deterioration Permitting (PSD)]*, state-effective February 12, 2024, with the following exceptions: EPA is not proposing to incorporate by reference Rule 335-3-14-.04(2)(w)1, which lists a 100 tons per year significance threshold for regulated NSR pollutants not otherwise specified at Rule 335-3-14-.04(2)(w);¹⁰ the second and third sentences of paragraph 335-3-14-.04(2)(bbb)2 and the second and fourth sentences of paragraph 335-3-14-.04(2)(bbb)3;¹¹ or the significant impact levels at Rule 335-3-14-.04(10)(b).¹² Finally, EPA is proposing to incorporate by reference Ala. Admin. Code Rule 335-3-14-.05, *Air Permits Authorizing Construction in or Near Nonattainment Areas*, state-effective February 12, 2024, with the following exceptions: EPA is not proposing to incorporate by reference Rule 335-3-14-.05(1)(h), the actual-to-potential test for projects that only involve existing emissions units;¹³ the portion of Rule 335-3-14-.05(1)(k)20 stating “excluding ethanol production facilities that produce ethanol by natural fermentation”;¹⁴ Rule 335-3-14-.05(2)(c)3 addressing fugitive emission increases and decreases;¹⁵ the last sentence at Rule 335-3-14-.05(3)(g), stating “Interpollutant offsets shall be determined based upon the following ratios:”; or the NNSR interpollutant ratios at Rule 335-3-14-.05(3)(g)1–4.¹⁶ EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the

⁹ The February 12, 2024, state-effective version of Rule 335-3-14-.03(1)(h) was withdrawn by ADEM from the December 20, 2023, SIP revision on March 8, 2024. If EPA takes final action to approve the December 20, 2023, SIP revision, the Agency will update the SIP table at 40 CFR 52.50(c) to reflect the retention of the May 23, 2011, state-effective version of Rule 335-3-14-.03(1)(h).

¹⁰ See the SIP table at 40 CFR 52.50(c). For more information, see 73 FR 23957 (May 1, 2008).

¹¹ Portions of Rule 335-3-14-.04(2)(bbb) are currently excluded from the SIP table at 40 CFR 52.50(c), specifically, the second sentence of paragraph 335-3-14-.04(2)(bbb)2 and the second and fourth sentences of paragraph 335-3-14-.04(2)(bbb)3. However, in a July 3, 2019, rulemaking, EPA excluded from approval the second and third sentences of paragraph 335-3-14-.04(2)(bbb)2, as well as the second and fourth sentences of paragraph 335-3-14-.04(2)(bbb)3. For more information, see 84 FR 31741. If EPA takes final action to approve the December 20, 2023, SIP revision, the Agency will correct the SIP table at 40 CFR 52.50(c) to reflect this.

¹² See the SIP table at 40 CFR 52.50(c). For more information, see 77 FR 59100 (September 26, 2012).

¹³ See the SIP table at 40 CFR 52.50(c). For more information, see 81 FR 1124 (January 11, 2016).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

EPA Region 4 office (please contact the person identified in the “**For Further Information Contact**” section of this preamble for more information).

V. 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, 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 Order 12866 (58 FR 51735, October 4, 1993);
- Is not subject to Executive Order 14192 (90 FR 9065, February 6, 2025) because SIP actions are exempt from review under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and

- 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.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rule does not have Tribal implications 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: August 11, 2025.

Kevin McOmer,
Regional Administrator,
Region 4.

[FR Doc. 2025-15987 Filed: 8/20/2025 8:45 am; Publication Date: 8/21/2025]