



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2024-0387; FRL-12923-02-R4]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the Alabama State Implementation Plan (SIP) submitted by the Alabama Department of Environmental Management (ADEM) on December 20, 2023. The 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 approving the SIP revision pursuant to the Clean Air Act (CAA or Act).

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2024-0387. All documents in the docket are listed on the regulations.gov web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the 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. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Faith Goddard, Multi-Air Pollutant Coordination Section, Air Planning and Implementation Branch, Air and Radiation Division, Region 4, U.S. Environmental Protection Agency, 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. This Action

In this final rule, EPA is approving a revision to the Alabama SIP submitted by ADEM on December 20, 2023, which makes changes to Alabama Administrative Code (Ala. Admin. Code) Rules 335-3-14-.03, .04, and .05.¹ EPA is approving 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.²

II. Background

Through a notice of proposed rulemaking (NPRM) published on August 21, 2025 (90 FR 40793), EPA proposed to approve ADEM's December 20, 2023, SIP revision with changes to Ala. Admin. Code Rule 335-3-14-.03, *Standards for Granting Permits*, Rule 335-3-14-.04, *Air Permits Authorizing Construction in Clean Air Areas [Prevention of Significant Deterioration*

¹ The December 20, 2023, submittal contains revisions to other Alabama SIP-approved rules that are not addressed in this rulemaking. EPA will act on those changes in separate rulemakings.

² See CAA section 110(l).

Permitting (PSD)], and Rule 335-3-14-.05, *Air Permits Authorizing Construction in or Near Nonattainment Areas*. The details of Alabama’s submission, as well as EPA’s rationale for approving the changes, are described in more detail in the August 21, 2025, NPRM. Comments on the NPRM were due on or before September 11, 2025. EPA received three comments: one in support, one not relevant to the action, and one potentially adverse.³ EPA addresses the potentially adverse comment in the following section.

III. Response to Comments

EPA summarizes and responds to the potentially adverse comment below.

The commenter “recommend[s] under no circumstances permits be issued under these proposed rules” because “[a]llowing construction before environmental review gives polluters a right of way to damage American environments and American citizens[’] health.” However, it is not clear whether the comment is adverse because the commenter frames the comment as a “recommend[ation]” and does not explain why the changes EPA proposed to approve to the Alabama SIP in the August 21, 2025, NPRM would allow construction before environmental review occurs or would damage health or the environment. In fact, the purpose of the new source review (NSR) preconstruction review program is to require that the State provide environmental review of proposed projects consistent with CAA requirements prior to issuing a permit. As explained in the August 21, 2025, NPRM, the changes proposed to the Alabama NSR program are minor, clarifying in nature, and consistent with the CAA. Therefore, EPA is finalizing approval of the changes to the Alabama SIP transmitted in the December 20, 2023, submittal.

IV. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, and as discussed in Sections I and II of this preamble, EPA is finalizing the incorporation by reference of Ala. Admin. Code Rule

³ EPA received two identical comments which are not related to this action from one commenter.

335-3-14-.03, *Standards for Granting Permits*, state-effective February 12, 2024, except that EPA is not incorporating by reference the February 12, 2024, state-effective version of Rule 335-3-14-.03(1)(h).⁴ EPA is also finalizing the incorporation by reference of 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 incorporating 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);⁵ 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;⁶ or the significant impact levels at Rule 335-3-14-.04(10)(b).⁷ Finally, EPA is finalizing the incorporation by reference of 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 incorporating by reference Rule 335-3-14-.05(1)(h), the actual-to-potential test for projects that only involve existing emissions units;⁸ the portion of Rule 335-3-14-.05(1)(k)20 stating “excluding ethanol production facilities that produce ethanol by natural fermentation”;⁹ Rule 335-3-14-.05(2)(c)3 addressing fugitive emission increases and decreases;¹⁰ 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)1–4.¹¹ EPA has made, and will continue to make, these materials generally available

⁴ 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. With this action, the Agency is updating 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).

⁵ See the SIP table at 40 CFR 52.50(c). For more information, see 73 FR 23957 (May 1, 2008).

⁶ 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. With this action, the Agency is correcting the SIP table at 40 CFR 52.50(c) to reflect this.

⁷ See the SIP table at 40 CFR 52.50(c). For more information, see 77 FR 59100 (September 26, 2012).

⁸ See the SIP table at 40 CFR 52.50(c). For more information, see 81 FR 1124 (January 11, 2016).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

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). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA’s approval, and will be incorporated by reference in the next update to the SIP compilation.¹²

V. Final Action

EPA is approving Alabama’s December 20, 2023, SIP revision consisting of the aforementioned changes to Ala. Admin. Code Rules 335-3-14-.03, .04, and .05 for the reasons discussed above.

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, this 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 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

¹² *See* 62 FR 27968 (May 22, 1997).

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).

This action is subject to the Congressional Review Act, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the *Federal Register*]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be

filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

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.

Dated: September 22, 2025.

Kevin McOmber,
Regional Administrator,
Region 4.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

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

Subpart B - Alabama

2. In § 52.50(c), amend the table by revising the entries for “Section 335-3-14-.03”, “Section 335-3-14-.04”, and “Section 335-3-14-.05” to read as follows:

§ 52.50 Identification of plan.

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(c) * * *

Table 1 to Paragraph (c)—EPA-Approved Alabama Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanation
**	**	*	*	*
Chapter No. 335-3-14 Air Permits				
**	**	*	*	*
Section 335-3-14-.03	Standards for Granting Permits	2/12/2024	[Insert date of publication in the Federal Register], 90 FR [Insert Federal Register page where the document begins]	Except for paragraph 335-3-14-.03(1)(h) which was approved on 9/26/2012 with a state effective date of 5/23/2011.

Section 335-3-14-.04	Air Permits Authorizing Construction in Clean Air Areas [Prevention of Significant Deterioration Permitting (PSD)]	2/12/2024	[Insert date of publication in the Federal Register], 90 FR [Insert Federal Register page where the document begins]	Except for changes to 335-3-14-.04(2)(w)1., state effective July 11, 2006, which lists a 100 ton per year significant net emissions increase for regulated NSR pollutants not otherwise specified at 335-3-14-.04(2)(w). Except for the significant impact levels at 335-3-14-.04(10)(b). Except for 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., which include changes from the vacated federal ERP rule.
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Section 335-3-14-.05	Air Permits Authorizing Construction in or Near Nonattainment Areas	2/12/2024	[Insert date of publication in the Federal Register], 90 FR [Insert Federal Register page where the document begins]	Except for the portion of 335-3-14-.05(1)(k)20 stating “excluding ethanol production facilities that produce ethanol by natural fermentation”; and 335-3-14-.05(2)(c)3 (addressing fugitive emission increases and decreases). Except for 335-3-14-.05(1)(h) (the actual-to-potential test for projects that only involve existing emissions units); the last sentence at 335-3-14-.05(3)(g), stating “Interpollutant offsets shall be determined based upon the following ratios”; and the NNSR interpollutant ratios at 335-3-14-.05(3)(g)1-4.
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[FR Doc. 2025-19227 Filed: 10/1/2025 8:45 am; Publication Date: 10/2/2025]