

federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely disapproves certain State requirements for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this action.

*F. Executive Order 13175, Coordination With Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175 (59 FR 22951, November 9, 2000), because the SIP EPA is proposing to disapprove would not apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

*G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks*

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new regulations but simply disapproves certain State requirements for inclusion into the SIP.

*H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use*

This proposed rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a

significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The EPA believes that this action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the Clean Air Act.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this proposed action. In reviewing SIP submissions, EPA’s role is to approve or disapprove state choices, based on the criteria of the Clean Air Act. Accordingly, this action merely proposes to disapprove certain State requirements for inclusion into the SIP under section 110 and subchapter I, part D of the Clean Air Act and will not in-and-of itself create any new requirements. Accordingly, it 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.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon Monoxide, Hydrocarbons, Intergovernmental relations, Lead, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: September 8, 2009.

**Lawrence E. Starfield,**

*Acting Regional Administrator, Region 6.*

[FR Doc. E9–22806 Filed 9–22–09; 8:45 am]

**BILLING CODE 6560–50–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA–R04–OAR–2007–0359; FRL–8960–8]

**Approval and Promulgation of Implementation Plans, Alabama: Clean Air Interstate Rule**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a portion of the State Implementation Plan (SIP) revision submitted by the State of Alabama, through the Alabama Department of Environmental Management (ADEM), on March 7, 2007. This action proposes to approve the portion of the March 7, 2007, submittal that addresses State reporting requirements under the Nitrogen Oxide (NO<sub>x</sub>) SIP Call and the Clean Air Interstate Rule (CAIR) found in 40 CFR 51.122 and 51.125 as amended by the CAIR rulemakings. Specifically, in this action EPA is proposing to approve revisions to Chapter 335–3–1 “General Provisions.” In previous rulemakings, EPA took action on the other portions of the March 7, 2007, SIP submittal, which included revisions to Chapters 335–3–5, and 335–3–8 (October 1, 2007, 72 FR 55659) and Chapter 335–3–17 (March 26, 2009, 74 FR 13118). Although the DC Circuit Court found CAIR to be flawed, the rule was remanded without vacatur and thus remains in place. Thus, EPA is continuing to approve CAIR provisions into SIPs as appropriate. CAIR, as promulgated, requires States to reduce emissions of sulfur dioxide (SO<sub>2</sub>) and NO<sub>x</sub> that significantly contribute to, or interfere with maintenance of, the national ambient air quality standards (NAAQS) for fine particulates and/or ozone in any downwind state. CAIR establishes budgets for SO<sub>2</sub> and NO<sub>x</sub> for States that contribute significantly to

nonattainment in downwind States and requires the significantly contributing States to submit SIP revisions that implement these budgets. States have the flexibility to choose which control measures to adopt to achieve the budgets, including participation in EPA-administered cap-and-trade programs addressing SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season emissions. This action is being taken pursuant to section 110 of the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before October 23, 2009.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2007-0359, by one of the following methods:

1. *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.

2. *E-mail: benjamin.lynorae@epa.gov*.

3. *Fax: 404-562-9019*.

4. *Mail: "EPA-R04-OAR-2007-0359,"* Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960.

5. *Hand Delivery or Courier:* Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

**Instructions:** Direct your comments to Docket ID No. "EPA-R04-OAR-2007-0359." EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail

address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

**Docket:** All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.*, CBI 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 in *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management 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 to 4:30, excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Ms. Stacy Harder, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9042. Ms. Harder can also be reached via electronic mail at *harder.stacy@epa.gov*. For information pertaining to the Alabama State SIP, please contact Mr. Zuri Farngalo, by phone at (404) 562-9152, or electronic mail at *farngalo.zuri@epa.gov*.

#### **SUPPLEMENTARY INFORMATION:**

I. What Action Is EPA Proposing To Take?

II. What Is the Regulatory History of CAIR?

III. What Is EPA's Analysis of Alabama's Submission?

IV. Proposed Action

V. Statutory and Executive Order Reviews

#### **I. What Action Is EPA Proposing To Take?**

EPA is proposing to approve a SIP revision submitted by ADEM, on March 7, 2007, pertaining to rules for CAIR. The revisions include changes to Chapter 335-3-1 "General Provisions." Specifically, ADEM is amending Section 335-3-1-.14 "Emissions Reporting Requirements Relating to Budgets for NO<sub>x</sub> Emissions," and adding a new Section 335-3-1-.16 "Emissions Reporting Requirements Relating to Budgets for SO<sub>2</sub> and NO<sub>x</sub> Emissions." These revisions became State effective on April 3, 2007.

#### **II. What Is the Regulatory History of CAIR?**

EPA published CAIR on May 12, 2005 (70 FR 25162). In this rule, EPA determined that 28 States and the District of Columbia contribute significantly to nonattainment and interfere with maintenance of the NAAQS for fine particles (PM<sub>2.5</sub>) and/or 8-hour ozone in downwind States in the eastern part of the country. As a result, EPA required those upwind States to revise their SIPs to include control measures that reduce emissions of SO<sub>2</sub>, which is a precursor to PM<sub>2.5</sub> formation, and/or NO<sub>x</sub>, which is a precursor to both ozone and PM<sub>2.5</sub> formation. For jurisdictions that contribute significantly to downwind PM<sub>2.5</sub> nonattainment, CAIR sets annual State-wide emission reduction requirements (*i.e.*, budgets) for SO<sub>2</sub> and annual State-wide emission reduction requirements for NO<sub>x</sub>. Similarly, for jurisdictions that contribute significantly to 8-hour ozone nonattainment, CAIR sets State-wide emission reduction requirements or budgets for NO<sub>x</sub> for the ozone season (May 1st to September 30th). Under CAIR, States may implement these reduction requirements by participating in the EPA-administered cap-and-trade programs or by adopting any other control measures.

EPA was sued by a number of parties on various aspects of CAIR, and on July 11, 2008, the U.S. Court of Appeals for the District of Columbia Circuit issued its decision to vacate and remand both CAIR and the associated CAIR Federal Implementation Plans (FIP) in their entirety. *North Carolina v. EPA*, 531 F.3d 836 (DC Cir. Jul. 11, 2008). However, in response to EPA's petition for rehearing, the Court issued an order remanding CAIR to EPA without vacating either CAIR or the CAIR FIPs. *North Carolina v. EPA*, 550 F.3d 1176 (DC Cir. Dec. 23, 2008). The Court

thereby left CAIR in place in order to “temporarily preserve the environmental values covered by CAIR” until EPA replaces it with a rule consistent with the Court’s opinion. *Id.* at 1178. The Court directed EPA to “remedy CAIR’s flaws” consistent with its July 11, 2008, opinion, but declined to impose a schedule on EPA for completing that action. *Id.*

According to 40 CFR 51.125, each state submitting a CAIR SIP revision must provide for emissions reporting requirements of SO<sub>2</sub> and NO<sub>x</sub> emissions data. EPA is proposing to approve revisions to Alabama’s Section 335–3–1–.14 and addition of Section 335–3–1–.16 to fulfill this requirement. Consistent with 40 CFR 51.121, these rule revisions allow the State to make the transition from the NO<sub>x</sub> budget trading program (NO<sub>x</sub> SIP Call) to the CAIR NO<sub>x</sub> ozone season trading program, beginning with the 2009 ozone season. Alabama’s NO<sub>x</sub> budget trading program does not apply to any ozone season after the 2008 ozone season.

This proposed action is consistent with the Court’s decision in *North Carolina v. EPA* discussed above. While the Court identified several issues with CAIR, the rule was not vacated because of the loss of environmental benefit generated by the rule. As EPA works to remedy CAIR to satisfy the Court, CAIR remains in effect, including its trading programs. Currently, Alabama’s NO<sub>x</sub> SIP Call trading program ends after the 2008 ozone season, and so to continue the environmental benefits of the trading program, consistent with CAIR and the Court’s opinion, Alabama must revise its SIP, as proposed, to transition into the CAIR NO<sub>x</sub> trading program.

#### IV. Proposed Action

EPA is proposing to approve the aforementioned revisions, specifically, Chapter 335–3–1, Sections 335–3–1–.14, and 335–3–1–.16 into the Alabama SIP. These revisions were submitted by ADEM on March 7, 2007, and are consistent with EPA regulations, policy, and guidance.

#### 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 Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements

beyond those imposed by state law. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- 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 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).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: September 11, 2009.

**J. Scott Gordon,**

*Acting Regional Administrator, Region 4.*

[FR Doc. E9–22904 Filed 9–22–09; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R06–OAR–2005–TX–0032; FRL–8958–6]

### Approval and Promulgation of Implementation Plans; Texas; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Flexible Permits

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing disapproval of submittals from the State of Texas, through the Texas Commission on Environmental Quality (TCEQ) to revise the Texas SIP to include a new type of NSR permitting program, Flexible Permits (the Texas Flexible Permits State Program or the Program). EPA proposes disapproval of the Texas Flexible Permits State Program because it does not meet the Minor NSR SIP requirements nor does it meet the NSR SIP requirements for a substitute Major NSR SIP revision. We are proposing action under section 110, part C, and part D, of the Federal Clean Air Act (the Act or CAA). EPA is taking comments on this proposal and intends to take a final action.

**DATES:** Any comments must arrive by November 23, 2009.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R06–OAR–2005–TX–0032 by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *U.S. EPA Region 6 “Contact Us” Web site:* <http://epa.gov/region6/r6coment.htm>. Please click on “6PD” (Multimedia) and select “Air” before submitting comments.

- *E-mail:* Mr. Stanley M. Spruiell at [spruiell.stanley@epa.gov](mailto:spruiell.stanley@epa.gov).

- *Fax:* Mr. Stanley M. Spruiell, Air Permits Section (6PD–R), at fax number 214–665–7263.

- *Mail:* Mr. Stanley M. Spruiell, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.

- *Hand or Courier Delivery:* Stanley M. Spruiell, Air Permits Section (6PD–R), Environmental Protection Agency,