

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, Ozone, Particulate matter, Reporting and recordkeeping requirements and Volatile organic compounds.

Dated: June 28, 2021.  
**John Blevins,**  
*Acting Regional Administrator, Region 4.*

For the reason stated in the preamble, the EPA amends 40 CFR parts 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 K—Florida**

- 2. Section 52.520(e) is amended by adding four new entries for “110(a)(1) and (2) Infrastructure Requirements for

the 1997 8-Hour Ozone National Ambient Air Quality Standards,” “110(a)(1) and (2) Infrastructure Requirements for the 1997 Annual Fine Particulate Matter National Ambient Air Quality Standards,” “110(a)(1) and (2) Infrastructure Requirements for the 2006 24-hour Fine Particulate Matter National Ambient Air Quality Standards,” and “110(a)(1) and (2) Infrastructure Requirements for the 2008 8-Hour Ozone National Ambient Air Quality Standards” at the end of the table to read as follows:

**§ 52.520 Identification of plan.**

\* \* \* \* \*  
 (e) \* \* \*

**EPA-APPROVED FLORIDA NON-REGULATORY PROVISIONS**

Provision	State effective date	EPA approval date	Federal Register notice	Explanation
* 110(a)(1) and (2) Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards.	8/26/2020	7/7/2021	[Insert citation of publication].	* Approving SIP submission for sections 110(a)(2)(C) & 110(a)(2)(J) as it relates to GHG PSD permitting requirements.
110(a)(1) and (2) Infrastructure Requirements for the 1997 Annual Fine Particulate Matter National Ambient Air Quality Standards.	8/26/2020	7/7/2021	[Insert citation of publication].	Approving SIP submission for prong 3 of section 110(a)(2)(D)(i) as it relates to GHG PSD permitting requirements.
110(a)(1) and (2) Infrastructure Requirements for the 2006 24-hour Fine Particulate Matter National Ambient Air Quality Standards.	8/26/2020	7/7/2021	[Insert citation of publication].	Approving SIP submission for prong 3 of section 110(a)(2)(D)(i) as it relates to GHG PSD permitting requirements.
110(a)(1) and (2) Infrastructure Requirements for the 2008 8-Hour Ozone National Ambient Air Quality Standards.	8/26/2020	7/7/2021	[Insert citation of publication].	Approving SIP submission for section 110(a)(2)(C), prong 3 of 110(a)(2)(D)(i), and 110(a)(2)(J) as it relates to the regulation of GHG emissions.

**§ 52.522 [Amended]**

- 3. Section 52.522 is amended by removing and reserving paragraph (b).

**§ 52.523 [Removed and Reserved]**

- 4. Remove and reserve § 52.523. [FR Doc. 2021-14176 Filed 7-6-21; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R04-OAR-2020-0129; FRL-10025-80-Region 4]

**Air Plan Approval; AL; NO<sub>x</sub> SIP Call and Removal of CAIR**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action 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 oxides (NO<sub>x</sub>) SIP Call obligations for large non-electricity generating units (non-EGUs), to repeal the State’s previously sunsetted NO<sub>x</sub> Budget Trading Program regulations, and to repeal the State’s Clean Air Interstate Rule (CAIR) regulations. EPA is also conditionally approving into the SIP state regulations that establish monitoring and reporting requirements for units subject to the NO<sub>x</sub> SIP Call, including alternative monitoring options for certain sources for NO<sub>x</sub> SIP Call purposes. In addition, EPA is making ministerial changes to reflect the State’s renumbering of an existing

regulation for “New Combustion Sources.”

**DATES:** This rule is effective August 6, 2021.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2020-0129. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) website. 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](http://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:** 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](mailto:scofield.steve@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background and Purpose**

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<sub>x</sub> SIP Call). The NO<sub>x</sub> SIP Call required eastern states, including Alabama, to submit SIPs that prohibit excessive emissions of ozone season NO<sub>x</sub> by implementing statewide emissions budgets.<sup>1</sup> The NO<sub>x</sub> SIP Call addressed the good neighbor provision for the 1979 ozone NAAQS and was designed to mitigate the impact of transported NO<sub>x</sub> emissions, one of the precursors of ozone.<sup>2</sup> EPA developed the NO<sub>x</sub> Budget Trading Program, an allowance trading program that states could adopt to meet their obligations under the NO<sub>x</sub> 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<sub>x</sub> SIP Call also identified potential reductions from cement kilns and stationary internal combustion engines.

To comply with the NO<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> SIP Call under Phase II. *See* 70 FR 76694 (December 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<sub>x</sub> 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<sub>2.5</sub>) NAAQS and was designed to mitigate the impact of transported NO<sub>x</sub> emissions with respect to ozone and PM<sub>2.5</sub>. 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 non-EGUs; states could submit SIPs to replace the FIPs that achieved the required emission reductions from EGUs and/or other types of sources.<sup>3</sup> When the CAIR trading program for ozone season NO<sub>x</sub> was implemented beginning in 2009, EPA discontinued administration of the NO<sub>x</sub> Budget Trading Program; however, the requirements of the NO<sub>x</sub> SIP Call continued to apply.

On October 1, 2007 (72 FR 55659), EPA approved changes 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<sub>x</sub> Budget Trading Program requirements, and (2) incorporated CAIR annual and ozone season NO<sub>x</sub> state trading programs. *See* 72 FR 55659. Participation of EGUs in the CAIR ozone season NO<sub>x</sub> trading program addressed the State's obligation under the NO<sub>x</sub> SIP Call for those units, and Alabama also chose to require non-EGUs subject to the NO<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> annual and ozone season trading programs beginning in 2009 and the SO<sub>2</sub> 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 ozone NAAQS, the 1997 PM<sub>2.5</sub> NAAQS, and the 2006 PM<sub>2.5</sub> 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<sub>x</sub> emission budgets and annual SO<sub>2</sub> emission budgets implemented through new trading programs. Implementation of CSAPR began on January 1, 2015.<sup>4</sup> 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<sub>x</sub> generally addressed the state's obligation under the NO<sub>x</sub> 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<sub>x</sub> SIP Call for non-EGUs. EPA also stopped

<sup>1</sup> *See* 63 FR 57356 (October 27, 1998).

<sup>2</sup> As originally promulgated, the NO<sub>x</sub> 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).

<sup>3</sup> CAIR had separate trading programs for annual sulfur dioxide (SO<sub>2</sub>) emissions, seasonal NO<sub>x</sub> emissions, and annual NO<sub>x</sub> emissions.

<sup>4</sup> *See* 79 FR 71663 (December 3, 2014).

administering CAIR trading programs with respect to emissions occurring after December 31, 2014.<sup>5</sup>

To comply with CSAPR, Alabama adopted SO<sub>2</sub> and NO<sub>x</sub> 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<sub>2</sub> and annual NO<sub>x</sub> trading program rules into the SIP.<sup>6</sup> 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.<sup>7</sup> Even though the CAIR programs were not being implemented in Alabama, ozone season NO<sub>x</sub> emissions have remained well below the NO<sub>x</sub> 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 Generation, L.P. v. EPA*, 795 F.3d 118, 129–30 (D.C. Cir. 2015). EPA addressed the remanded ozone season NO<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> for most covered states. On October 6, 2017, EPA approved Alabama's CSAPR Update ozone season NO<sub>x</sub> trading program rules

for EGUs into the State's SIP.<sup>8</sup> See 82 FR 46674. Alabama's EGUs participate in the CSAPR Update trading program, generally also addressing the state's obligations under the NO<sub>x</sub> 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<sub>x</sub> emissions, the NO<sub>x</sub> 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<sub>x</sub> SIP Call requirements in some other way.

Under 40 CFR 51.121(f)(2) of the NO<sub>x</sub> 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<sub>x</sub> mass emissions from these sources. In addition, under 40 CFR 51.121(i)(4) of the NO<sub>x</sub> 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 NO<sub>x</sub> 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<sub>x</sub> SIP Call.<sup>9</sup> The revision gave states covered by the NO<sub>x</sub> SIP Call greater flexibility concerning the form of the NO<sub>x</sub> 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 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<sub>x</sub> SIP

Call's general enforceability and monitoring requirements at §§ 51.121(f)(1) and (i)(1), respectively, but states are no longer required to satisfy these general NO<sub>x</sub> 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<sub>x</sub> SIP Call requirements, ADEM revised its regulations to address NO<sub>x</sub> 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<sub>x</sub> SIP Call's requirements for enforceable limits on ozone season NO<sub>x</sub> 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<sub>x</sub> Budget Trading Program and CAIR trading program provisions after EPA stopped administering those programs. Alabama also revised its regulations non-substantively to renumber the regulation titled, "New Combustion Sources" from Rule 335–3–8–.14 to Rule 335–3–8–.05. The February 27, 2020, SIP revision submitted by ADEM requests approval into the SIP of all of these rule changes.

For a comprehensive discussion of EPA's analysis and rationale for approval of the State's submittal, please refer to EPA's March 3, 2021, notice of proposed rulemaking. See 86 FR 12305 (March 3, 2021). EPA received no comments on the proposed approval of Alabama's SIP.

## II. 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, EPA is finalizing the incorporation by reference of Alabama Administrative Code Rule 335–3–8–.71, "NO<sub>x</sub> Budget Program," which reestablishes enforceable limits on ozone season NO<sub>x</sub> mass emission for certain units as required by EPA's NO<sub>x</sub> SIP Call regulations, and conditionally approving Rule 335–3–8–.72, "NO<sub>x</sub> Budget Program Monitoring and Reporting," which establishes alternative emission monitoring requirements for the units, both state effective on April 13, 2020. Further, EPA is approving the renumbering of Rule 335–3–8–.14, "New Combustion Sources" to 335–3–8–.05, "New Combustion Sources," state effective January 16, 2012. Also in this document, EPA is finalizing the removal of provisions from the Alabama State

<sup>5</sup> See 79 FR 71663 (December 3, 2014) and 81 FR 13275 (March 14, 2016).

<sup>6</sup> 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<sub>x</sub> emissions.

<sup>7</sup> 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.

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

<sup>9</sup> See "Emissions Monitoring Provisions in State Implementation Plans Required Under the NO<sub>x</sub> SIP Call," 84 FR 8422 (March 8, 2019).

Implementation Plan regarding the State's NO<sub>x</sub> Budget Trading Program and CAIR trading program regulations at Rules 335-3-1-.14, 335-3-1-.16,<sup>10</sup> 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, which were incorporated by reference in accordance with the requirements of 1 CFR part 51. EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://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, the revised materials as stated above, 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 by the Director of the Federal Register in the next update to the SIP compilation.<sup>11</sup>

### III. Final Action

EPA is taking final action to approve revisions to Alabama's SIP, which the State submitted to EPA on February 27, 2020, regarding the NO<sub>x</sub> Budget Program. EPA has determined that these portions of Alabama's SIP meet the applicable requirements of sections 110 and 172 of the CAA and applicable regulatory requirements at 40 CFR part 51. In addition, EPA is conditionally approving certain revisions, as described above, regarding the NO<sub>x</sub> Budget Program's monitoring and reporting requirements, per Alabama's commitment through a letter dated September 15, 2020.

### IV. 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. See 42 U.S.C. 7410(k); 40 CFR 52.02(a).

<sup>10</sup> Rule 335-3-1-.16 was originally approved into the Alabama SIP on March 26, 2009 (74 FR 13118). However, inadvertently, Rule 335-3-1-.16 was never added to the table of EPA-Approved Alabama Regulations found at 40 CFR 52.50(c). In effect, there is no need to remove an entry for this Section from the table of EPA-Approved Alabama Regulations because EPA is now approving the removal of this Rule from the Alabama SIP and an approval entry was never included.

<sup>11</sup> See 62 FR 27968 (May 22, 1997).

Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. 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 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 (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).

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.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the

agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. 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 September 7, 2021. 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: June 28, 2021.

**John Blevins,**

*Acting Regional Administrator, Region 4.*

For the reasons stated in the preamble, the 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. Section 52.49 is added to read as follows:

#### § 52.49 Conditional approval.

EPA conditionally approved Rule 335-3-8-.72, NO<sub>x</sub> Budget Program Monitoring and Reporting, submitted by Alabama on February 27, 2020, into the Alabama SIP on July 7, 2021. This conditional approval is based on Alabama's September 15, 2020, commitment to the EPA to correct, within one year of the conditional

approval, the stack testing requirement, which was added to Rule 335-3-8-.72(1)(c) in error. If Alabama fails to meet its commitment by July 7, 2022, the conditional approval will become a disapproval on July 7, 2022 and EPA will issue a notification to that effect.

- 3. Section 52.50 is amended in the table in paragraph (c) by:
  - a. Removing the entries for Sections—
  - i. 335-3-1-.14, titled “Emissions Reporting Requirements Relating to Budgets for NO<sub>x</sub> Emissions”;
  - ii. 335-3-5-.06, titled “State Clean Air Interstate Rule (CAIR) SO<sub>2</sub> Trading Program General Provisions”;
  - iii. 335-3-5-.07, titled “CAIR Designated Representative for CAIR SO<sub>2</sub> Sources”;
  - iv. 335-3-5-.08, titled “Permits”;
  - v. 335-3-5-.11, titled “CAIR SO<sub>2</sub> Allowance Tracking System”;
  - vi. 335-3-5-.12, titled “CAIR SO<sub>2</sub> Allowance Transfers”;
  - vii. 335-3-5-.13, titled “Monitoring and Reporting”;
  - viii. 335-3-5-.14, titled “CAIR SO<sub>2</sub> Opt-In Units”;
  - ix. 335-3-8-.05, titled “NO<sub>x</sub> Budget Trading Program”;
  - x. 335-3-8-.06, titled “Authorized Account Representative for NO<sub>x</sub> Budget Sources”;
  - xi. 335-3-8-.07, titled “Permits”;
  - xii. 335-3-8-.08, titled “Compliance Certification”;

- xiii. 335-3-8-.09, titled “NO<sub>x</sub> Allowance Allocations”;
- xiv. 335-3-8-.10, titled “NO<sub>x</sub> Allowance Tracking System”;
- xv. 335-3-8-.11, titled “NO<sub>x</sub> Allowance Transfers”;
- xvi. 335-3-8-.12, titled “Monitoring and Reporting”;
- xvii. 335-3-8-.13, titled “Individual Unit Opt-ins”;
- xviii. 335-3-8-.14, titled “New Combustion Sources”;
- xix. 335-3-8-.16, titled “CAIR NO<sub>x</sub> Annual Budget Trading Program”;
- xx. 335-3-8-.17, titled “CAIR Designated Representative for CAIR NO<sub>x</sub> Sources”;
- xxi. 335-3-8-.18, titled “CAIR Permits”;
- xxii. 335-3-8-.20, titled “CAIR NO<sub>x</sub> Allowance Allocations”;
- xxiii. 335-3-8-.21, titled “CAIR NO<sub>x</sub> Allowance Tracking System”;
- xxiv. 335-3-8-.23, titled “CAIR Monitoring and Reporting”;
- xxv. 335-3-8-.24, titled “CAIR NO<sub>x</sub> Opt-in Units”;
- xxvi. 335-3-8-.25, titled “CAIR NO<sub>x</sub> Ozone Season Trading Program”;
- xxvii. 335-3-8-.26, titled “CAIR Designated Representative for CAIR NO<sub>x</sub> Ozone Season Sources”;
- xxviii. 335-3-8-.27, titled “CAIR NO<sub>x</sub> Ozone Season Permits”;
- xxix. 335-3-8-.29, titled “CAIR NO<sub>x</sub> Ozone Season Allowance Allocations”;

- xxx. 335-3-8-.30, titled “CAIR NO<sub>x</sub> Ozone Season Allowance Tracking System”;
- xxxi. 335-3-8-.32, titled “CAIR NO<sub>x</sub> Ozone Season Monitoring and Reporting”;
- xxxii. 335-3-8-.33, titled “CAIR NO<sub>x</sub> Ozone Season Opt-in Units”;
- b. Adding entries for Sections—
- i. 335-3-8-.05, titled “New Combustion Sources”;
- ii. 335-3-8-.71, titled “NO<sub>x</sub> Budget Program”;
- iii. 335-3-8-.72, titled “NO<sub>x</sub> Budget Program Monitoring and Reporting”;
- c. Revising the entries for Sections—
- i. 335-3-5-.06 through 335-3-5.08;
- ii. 335-3-5-.11 through 335-3-5.14;
- iii. 335-3-8-.07 through 335-3-8.14;
- iv. 335-3-8-.16 through 335-3-8.18;
- v. 335-3-8-.20 and 335-3-8-.21;
- vi. 335-3-8-.23 through 335-3-8.27;
- vii. 335-3-8-.29 and 335-3-8-.30;
- and
- d. Removing “Both sections of 335-3-8-.33 are included in the approved SIP.” in the “Explanation” column in the entry for Section 335-3-8-.33.

The revisions and additions read as follows:

**§ 52.50 Identification of plan.**

*	*	*	*	*
(c)	*	*	*	*
*	*	*	*	*

**EPA-APPROVED ALABAMA REGULATIONS**

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
<b>Chapter No. 335-3-5 Control of Sulfur Compound Emissions</b>				
*	*	*	*	*
Section 335-3-5-.06	TR SO <sub>2</sub> Trading Program—Purpose and Definitions	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335-3-5-.07	TR SO <sub>2</sub> Trading Program—Applicability	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335-3-5-.08	TR SO <sub>2</sub> Trading Program—Retired Unit Exemption	11/24/2015	8/31/2016, 81 FR 59869.	
*	*	*	*	*
Section 335-3-5-.11	Administrative Appeal Procedures	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335-3-5-.12	SO <sub>2</sub> Trading Budgets and Variability Limits	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335-3-5-.13	TR SO <sub>2</sub> Allowance Allocations	12/7/2018	3/12/2020, 85 FR 14418.	
Section 335-3-5-.14	Authorization of Designated Representative and Alternate Designated Representative.	11/24/2015	8/31/2016, 81 FR 59869.	
*	*	*	*	*
<b>Chapter No. 335-3-8 Control of Nitrogen Oxides Emissions</b>				
*	*	*	*	*
Section 335-3-8-.05	New Combustion Sources	1/16/2012	7/7/2021, [Insert citation of publication].	
*	*	*	*	*
Section 335-3-8-.07	TR NO <sub>x</sub> Annual Trading Program—Purpose and Definitions.	11/24/2015	8/31/2016, 81 FR 59869.	

EPA-APPROVED ALABAMA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
Section 335-3-8-.08 .....	TR NO <sub>x</sub> Annual Trading Program—Applicability .....	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335-3-8-.09 .....	TR NO <sub>x</sub> Annual Trading Program—Retired Unit Exemption.	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335-3-8-.10 .....	TR NO <sub>x</sub> Annual Trading Program—Standard Requirements.	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335-3-8-.11 .....	TR NO <sub>x</sub> Annual Trading Program—Computation of Time.	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335-3-8-.12 .....	Administrative Appeal Procedures .....	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335-3-8-.13 .....	NO <sub>x</sub> Annual Trading Budgets and Variability Limits	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335-3-8-.14 .....	TR NO <sub>x</sub> Annual Allowance Allocations .....	12/7/2018	3/12/2020, 85 FR 14418.	
Section 335-3-8-.16 .....	Authorization of Designated Representative and Alternate Designated Representative.	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335-3-8-.17 .....	Responsibilities of Designated Representative and Alternate Designated Representative.	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335-3-8-.18 .....	Changing Designated Representative and Alternate Designated Representative; Changes in Owners and Operators; Changes in Units at the Source.	11/24/2015	8/31/2016, 81 FR 59869.	
* * * * *				
Section 335-3-8-.20 .....	Objections Concerning Designated Representative and Alternate Designated Representative.	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335-3-8-.21 .....	Delegation by Designated Representative and Alternate Designated Representative.	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335-3-8-.23 .....	Establishment of Compliance Accounts, Assurance Accounts, and General Accounts.	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335-3-8-.24 .....	Recordation of TR NO <sub>x</sub> Annual Allowance Allocations and Auction Results.	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335-3-8-.25 .....	Submission of TR NO <sub>x</sub> Annual Allowance Transfers	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335-3-8-.26 .....	Recordation of TR NO <sub>x</sub> Annual Allowance Transfers.	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335-3-8-.27 .....	Compliance with TR NO <sub>x</sub> Annual Emissions Limitation.	11/24/2015	8/31/2016, 81 FR 59869.	
* * * * *				
Section 335-3-8-.29 .....	Banking .....	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335-3-8-.30 .....	Account Error .....	11/24/2015	8/31/2016, 81 FR 59869.	
* * * * *				
Section 335-3-8-.33 .....	General Monitoring, Recordkeeping, and Reporting Requirements.	11/24/2015	8/31/2016, 81 FR 59869.	
* * * * *				
Section 335-3-8-.71 .....	NO <sub>x</sub> Budget Program .....	4/13/2020	7/7/2021, [Insert citation of publication].	
Section 335-3-8-.72 .....	NO <sub>x</sub> Budget Program Monitoring and Reporting .....	4/13/2020	7/7/2021, [Insert citation of publication].	Conditionally approved.

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 [FR Doc. 2021-14180 Filed 7-6-21; 8:45 am]  
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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**  
**Centers for Medicare & Medicaid Services**  
**42 CFR Part 600**  
**[CMS-2438-FN]**  
**RIN 0938-ZB64**  
**Basic Health Program; Federal Funding Methodology for Program Year 2022**  
**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.  
**ACTION:** Final methodology.

**SUMMARY:** This document finalizes the methodology and data sources necessary to determine federal payment amounts to be made for program year 2022 to states that elect to establish a Basic Health Program under the Patient Protection and Affordable Care Act to offer health benefits coverage to low-income individuals otherwise eligible to purchase coverage through Health Insurance Exchanges, and incorporates the effects on such payment amounts the American Rescue Plan Act of 2021 (ARP).  
**DATES:** The methodology and data sources announced in this document are effective on January 1, 2022.