

President's priorities, or the principles set forth in the Executive Order.

### Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act. In addition to affecting individuals, this document would affect mainly large insurance companies. Further, where small entities would be involved, they would not be impacted significantly since an inconsequential portion of their business would be with VA. Accordingly, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

### Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.005, Grants to States for the Construction of State Homes; 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.016, Veterans State Hospital Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; and 64.022, Veterans Home Based Primary Care.

### List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and Dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: March 30, 2007.

**Gordon H. Mansfield,**

*Deputy Secretary of Veterans Affairs.*

For the reasons set forth in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR part 17 as follows:

### PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

**Authority:** 38 U.S.C. 501, 1721, and as noted in specific sections.

2. Add an undesignated center heading and § 17.86 to read as follows:

#### Care During Certain Disasters and Emergencies

##### § 17.86 Provision of hospital care and medical services during certain disasters and emergencies under 38 U.S.C. 1785.

(a) This section sets forth regulations regarding the provision of hospital care and medical services under 38 U.S.C. 1785.

(b) During and immediately following a disaster or emergency referred to in paragraph (c) of this section, VA under 38 U.S.C. 1785 may furnish hospital care and medical services to individuals (including those who otherwise do not have VA eligibility for such care and services) responding to, involved in, or otherwise affected by that disaster or emergency.

(c) For purposes of this section, a "disaster" or "emergency" means:

(1) A major disaster or emergency declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) ("Stafford Act"); or

(2) A disaster or emergency in which the National Disaster Medical System established pursuant to section 2811(b) of the Public Health Service Act (42 U.S.C. 300hh-11 (b)) is activated either by the Secretary of Health and Human Services under paragraph (3)(A) of that section or as otherwise authorized by law.

(d) For purposes of paragraph (b) of this section, the terms "hospital care" and "medical services" have the meanings given such terms by 38 U.S.C. 1701(5) and 1701(6).

(e) Unless the cost of care is charged at rates agreed upon in a sharing agreement as described in § 17.102(e), the cost of hospital care and medical services provided under this section to an officer or employee of a department or agency of the United States (other than VA) or to a member of the Armed Forces shall be calculated in accordance with the provisions of § 17.102(c) and (h). Other individuals who receive hospital care or medical services under this section are responsible for the cost of the hospital care or medical services when charges are mandated by Federal law (including applicable appropriation acts) or when the cost of care or services is not reimbursed by other-than-VA Federal departments or agencies. When

individuals are responsible under this section for the cost of hospital care or medical services, VA will bill in the amounts calculated in accordance with the provisions of § 17.102(h), without applying the exception provided in the first paragraph of § 17.102.

(f) VA may furnish care and services under this section to a veteran without regard to whether that individual is enrolled in the VA healthcare system under 38 U.S.C. 1705 and § 17.36 of this part.

(Authority: 38 U.S.C. 501, 1785)

#### § 17.102 [Amended]

3. Amend § 17.102 by:

a. In paragraph (b)(1), removing "§ 17.43(c)(1)" and adding, in its place, "§ 17.43(b)(1)".

b. In the first sentence of paragraph (h), adding "§ 17.86 and under" after "charges under"; removing "Cost Distribution Report" and adding, in its place, "Monthly Program Cost Report (MPCR)"; and removing "and outpatient visit" and adding, in its place, ", and actual basic costs and rates for outpatient care visits or prescriptions filled".

c. In the fifth sentence of paragraph (h), removing "Cost Distribution Report" and adding, in its place, "MPCR".

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### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[EPA-R04-OAR-2007-0359-200716; FRL-8338-8]

#### Approval of Implementation Plans of Alabama: Clean Air Interstate Rule

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a revision to the Alabama State Implementation Plan (SIP) submitted on March 7, 2007. This revision addresses the requirements of EPA's Clean Air Interstate Rule (CAIR), promulgated on May 12, 2005, and subsequently revised on April 28, 2006, and December 13, 2006. The Alabama Department of Environmental Management (ADEM) also previously submitted a final submittal dated June 16, 2006, which was subsequently updated in a prehearing request for parallel processing on November 16, 2006, to comply with EPA's revisions to the

model rule. Alabama's final March 7, 2007, submittal replaces the State's June 16, 2006, and November 16, 2006, submittals. EPA is proposing to determine that the SIP revision fully implements the CAIR requirements for Alabama. Therefore, as a consequence of the SIP approval, EPA will also withdraw the CAIR Federal Implementation Plans (CAIR FIPs) concerning sulfur dioxide (SO<sub>2</sub>), nitrogen oxides (NO<sub>x</sub>) annual and NO<sub>x</sub> ozone season emissions for Alabama. The CAIR FIPs for all states in the CAIR region were promulgated on April 28, 2006, and subsequently revised on December 13, 2006.

CAIR requires states to reduce emissions of SO<sub>2</sub> and NO<sub>x</sub> that significantly contribute to nonattainment of, and interfere with maintenance of, the national ambient air quality standards (NAAQS) for fine particulates and/or ozone in any downwind state. CAIR establishes state budgets for SO<sub>2</sub> and NO<sub>x</sub> and requires states to submit SIP revisions that implement these budgets in states that EPA concluded did contribute to nonattainment in downwind states. States have the flexibility to choose which control measures to adopt to achieve the budgets, including participating in the EPA-administered cap-and-trade programs. In the SIP revision that EPA is proposing to approve, Alabama would meet CAIR requirements by participating in the EPA-administered cap-and-trade programs addressing SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season emissions.

**DATES:** Comments must be received on or before August 13, 2007.

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

1. [www.regulations.gov](http://www.regulations.gov): Follow the on-line instructions for submitting comments.
2. E-mail: [harder.stacy@epa.gov](mailto:harder.stacy@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. 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. 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 a.m. to 4:30 p.m., 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 [www.regulations.gov](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 [www.regulations.gov](http://www.regulations.gov) or e-mail, information that you consider to be CBI or otherwise protected. The [www.regulations.gov](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 [www.regulations.gov](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 and any form of encryption and should 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 [www.regulations.gov](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 [www.regulations.gov](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 a.m. to 4:30 p.m., 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](mailto:harder.stacy@epa.gov).

#### SUPPLEMENTARY INFORMATION:

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#### I. What Action Is EPA Proposing to Take?

EPA is proposing to approve a revision to Alabama's SIP, submitted on March 7, 2007. In its SIP revision, Alabama would meet CAIR requirements by requiring certain electric generating units (EGUs) to participate in the EPA-administered State CAIR cap-and-trade programs addressing SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season emissions. EPA is proposing to determine that the SIP, as revised, will meet the applicable requirements of CAIR. Any final action approving the SIP will be taken by the Regional Administrator for Region 4. As a consequence of the SIP approval, the Administrator of EPA will also issue a final rule to withdraw the FIPs concerning SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season emissions for Alabama. This action will delete and reserve 40 CFR 52.54 and 40 CFR 52.55. The withdrawal of the CAIR FIPs for Alabama is a conforming amendment that must be made once the SIP is approved because EPA's authority to issue the FIPs was premised on a deficiency in the SIP for Alabama. Once the SIP is fully approved, EPA no longer

has authority for the FIPs. Thus, EPA will not have the option of maintaining the FIPs following the full SIP approval. Accordingly, EPA does not intend to offer an opportunity for a public hearing or an additional opportunity for written public comment on the withdrawal of the FIPs. EPA will take action in a separate rulemaking regarding revisions to Chapters 335-3-1 and 335-3-17.

## II. What Is the Regulatory History of CAIR and the CAIR FIPs?

The CAIR rule was published by EPA 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 national ambient air quality standards (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 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.

CAIR explains to subject states what must be included in SIPs to address the requirements of section 110(a)(2)(D) of the Clean Air Act (CAA) with regard to interstate transport with respect to the 8-hour ozone and PM<sub>2.5</sub> NAAQS. EPA made national findings, effective on May 25, 2005, that the states had failed to submit SIPs meeting the requirements of section 110(a)(2)(D). The SIPs were due in July 2000, three years after the promulgation of the 8-hour ozone and PM<sub>2.5</sub> NAAQS. These findings started a two-year clock for EPA to promulgate a FIP to address the requirements of section 110(a)(2)(D). Under CAA section 110(c)(1), EPA may issue a FIP anytime after such findings are made and must do so within two years, unless a SIP revision correcting the deficiency is approved by EPA before the FIP is promulgated.

On April 28, 2006, EPA promulgated FIPs for all states covered by CAIR in order to ensure the emissions reductions required by CAIR are achieved on schedule. Each CAIR state is subject to the FIPs until the state fully adopts, and EPA approves, a SIP revision meeting the requirements of CAIR. The CAIR FIPs require EGUs to participate in the EPA-administered CAIR SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season trading programs, as appropriate. The CAIR FIP SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season trading programs impose essentially the same requirements as, and are integrated with, the respective CAIR SIP trading programs. The integration of the FIP and SIP trading programs means that these trading programs will work together to create effectively a single trading program for each regulated pollutant (SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season) in all states covered by the CAIR FIP or SIP trading program for that pollutant. The CAIR FIPs also allow states to submit abbreviated SIP revisions that, if approved by EPA, will automatically replace or supplement certain CAIR FIP provisions (e.g., the methodology for allocating NO<sub>x</sub> allowances to sources in the state), while the CAIR FIP remains in place for all other provisions.

On April 28, 2006, EPA published two additional CAIR-related final rules that added the States of Delaware and New Jersey to the list of states subject to CAIR for PM<sub>2.5</sub> and announced EPA's final decisions on reconsideration of five issues, without making any substantive changes to the CAIR requirements.

## III. What Are the General Requirements of CAIR and the CAIR FIPs?

CAIR establishes state-wide emission budgets for SO<sub>2</sub> and NO<sub>x</sub> and is to be implemented in two phases. The first phase of NO<sub>x</sub> reductions starts in 2009 and continues through 2014, while the first phase of SO<sub>2</sub> reductions starts in 2010 and continues through 2014. The second phase of reductions for both NO<sub>x</sub> and SO<sub>2</sub> starts in 2015 and continues thereafter. CAIR requires states to implement the budgets by either: (1) Requiring EGUs to participate in the EPA-administered cap-and-trade programs; or (2) adopting other control measures of the state's choosing and demonstrating that such control measures will result in compliance with the applicable state SO<sub>2</sub> and NO<sub>x</sub> budgets.

The May 12, 2005, and April 28, 2006, CAIR rules provide model rules that states must adopt (with certain limited changes, if desired) if they want to

participate in the EPA-administered trading programs.

With two exceptions, only states that choose to meet the requirements of CAIR through methods that exclusively regulate EGUs are allowed to participate in the EPA-administered trading programs. One exception is for states that adopt the opt-in provisions of the model rules to allow non-EGUs individually to opt into the EPA-administered trading programs. The other exception is for states that include all non-EGUs from their NO<sub>x</sub> SIP Call trading programs in their CAIR NO<sub>x</sub> ozone season trading programs.

## IV. What Are the Types of CAIR SIP Submittals?

States have the flexibility to choose the type of control measures they will use to meet the requirements of CAIR. EPA anticipates that most states will choose to meet the CAIR requirements by selecting an option that requires EGUs to participate in the EPA-administered CAIR cap-and-trade programs. For such states, EPA has provided two approaches for submitting and obtaining approval for CAIR SIP revisions. States may submit full SIP revisions that adopt the model CAIR cap-and-trade rules. If approved, these SIP revisions will fully replace the CAIR FIPs. Alternatively, states may submit abbreviated SIP revisions. These SIP revisions will not replace the CAIR FIPs; however, the CAIR FIPs provide that, when approved, the provisions in these abbreviated SIP revisions will be used instead of or in conjunction with, as appropriate, the corresponding provisions of the CAIR FIPs (e.g., the NO<sub>x</sub> allowance allocation methodology).

A state submitting a full SIP revision may either adopt regulations that are substantively identical to the model rules or incorporate by reference the model rules. CAIR provides that states may only make limited changes to the model rules, if the states want to participate in the EPA-administered trading programs. A full SIP revision may change the model rules only by altering their applicability and allowance allocation provisions to:

1. Include NO<sub>x</sub> SIP Call trading sources that are not EGUs under CAIR in the CAIR NO<sub>x</sub> ozone season trading program;

2. Provide for state allocation of NO<sub>x</sub> annual or ozone season allowances using a methodology chosen by the state;

3. Provide for state allocation of NO<sub>x</sub> annual allowances from the compliance supplement pool (CSP) using the state's

choice of allowed, alternative methodologies; or

4. Allow units that are not otherwise CAIR units to opt individually into the CAIR SO<sub>2</sub>, NO<sub>x</sub> annual, or NO<sub>x</sub> ozone season trading programs under the opt-in provisions in the model rules.

An approved CAIR full SIP revision addressing EGUs' SO<sub>2</sub>, NO<sub>x</sub> annual, or NO<sub>x</sub> ozone season emissions will replace the CAIR FIP for that state for the respective EGU emissions.

## V. Analysis of Alabama's CAIR SIP Submittal

### A. State Budgets for Allowance Allocations

The CAIR NO<sub>x</sub> annual and ozone season budgets were developed from historical heat input data for EGUs. Using these data, EPA calculated annual and ozone season regional heat input values, which were multiplied by 0.15 pounds per million British thermal units (lb/mmBtu), for phase 1, and 0.125 lb/mmBtu, for phase 2, to obtain regional NO<sub>x</sub> budgets for 2009–2014 and for 2015 and thereafter, respectively. EPA derived the state NO<sub>x</sub> annual and ozone season budgets from the regional budgets using state heat input data adjusted by fuel factors.

The CAIR state SO<sub>2</sub> budgets were derived by discounting the tonnage of emissions authorized by annual allowance allocations under the Acid Rain Program under title IV of the CAA. Under CAIR, each allowance allocated in the Acid Rain Program for the years in phase 1 of CAIR (2010 through 2014) authorizes 0.5 ton of SO<sub>2</sub> emissions in the CAIR trading program, and each Acid Rain Program allowance allocated for the years in phase 2 of CAIR (2015 and thereafter) authorizes 0.35 ton of SO<sub>2</sub> emissions in the CAIR trading program.

In this action, EPA is proposing approval of Alabama's SIP revision that adopts the budgets established for the State in CAIR, *i.e.*, 69,020 (2009–2014) and 57,517 (2015–thereafter) tons for NO<sub>x</sub> annual emissions, 34,510 (2009–2014) and 29,146 (2015–thereafter) tons for NO<sub>x</sub> ozone season emissions, and 157,582 (2010–2014) and 110,307 (2015–thereafter) tons for SO<sub>2</sub> emissions. Alabama's SIP revision sets these budgets as the total amounts of allowances available for allocation for each year under the EPA-administered cap-and-trade programs.

### B. CAIR Cap-and-Trade Programs

The CAIR NO<sub>x</sub> annual and ozone-season model trading rules both largely mirror the structure of the NO<sub>x</sub> SIP Call model trading rule in 40 CFR part 96,

subparts A through I. While the provisions of the NO<sub>x</sub> annual and ozone-season model rules are similar, there are some differences. For example, the NO<sub>x</sub> annual model rule (but not the NO<sub>x</sub> ozone season model rule) provides for a compliance supplement pool (CSP), which is discussed below and under which allowances may be awarded for early reductions of NO<sub>x</sub> annual emissions. As a further example, the NO<sub>x</sub> ozone season model rule reflects the fact that the CAIR NO<sub>x</sub> ozone season trading program replaces the NO<sub>x</sub> SIP Call trading program after the 2008 ozone season and is coordinated with the NO<sub>x</sub> SIP Call program. The NO<sub>x</sub> ozone season model rule provides incentives for early emissions reductions by allowing banked, pre-2009 NO<sub>x</sub> SIP Call allowances to be used for compliance in the CAIR NO<sub>x</sub> ozone-season trading program. In addition, states have the option of continuing to meet their NO<sub>x</sub> SIP Call requirement by participating in the CAIR NO<sub>x</sub> ozone season trading program and including all their NO<sub>x</sub> SIP Call trading sources in that program.

The provisions of the CAIR SO<sub>2</sub> model rule are also similar to the provisions of the NO<sub>x</sub> annual and ozone season model rules. However, the SO<sub>2</sub> model rule is coordinated with the ongoing Acid Rain SO<sub>2</sub> cap-and-trade program under CAA title IV. The SO<sub>2</sub> model rule uses the title IV allowances for compliance, with each allowance allocated for 2010–2014 authorizing only 0.50 ton of emissions and each allowance allocated for 2015 and thereafter authorizing only 0.35 ton of emissions. Banked title IV allowances allocated for years before 2010 can be used at any time in the CAIR SO<sub>2</sub> cap-and-trade program, with each such allowance authorizing 1 ton of emissions. Title IV allowances are to be freely transferable among sources covered by the Acid Rain Program and sources covered by the CAIR SO<sub>2</sub> cap-and-trade program.

EPA also used the CAIR model trading rules as the basis for the trading programs in the CAIR FIPs. The CAIR FIP trading rules are virtually identical to the CAIR model trading rules, with changes made to account for federal rather than state implementation. The CAIR model SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season trading rules and the respective CAIR FIP trading rules are designed to work together as integrated SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season trading programs.

In the SIP revision, Alabama chooses to implement its CAIR budgets by requiring EGUs to participate in EPA-administered cap-and-trade programs

for SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season emissions. Alabama has adopted a full SIP revision that adopts, with certain allowed changes discussed below, the CAIR model cap-and-trade rules for SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season emissions.

### C. Applicability Provisions for non-EGU NO<sub>x</sub> SIP Call Sources

In general, the CAIR model trading rules apply to any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990, or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 Megawatt electrical (MWe) producing electricity for sale.

States have the option of bringing in, for the CAIR NO<sub>x</sub> ozone season program only, those units in the state's NO<sub>x</sub> SIP Call trading program that are not EGUs as defined under CAIR. EPA advises states exercising this option to add the applicability provisions in the state's NO<sub>x</sub> SIP Call trading rule for non-EGUs to the applicability provisions in 40 CFR 96.304 in order to include in the CAIR NO<sub>x</sub> ozone season trading program all units required to be in the state's NO<sub>x</sub> SIP Call trading program that are not already included under 40 CFR 96.304. Under this option, the CAIR NO<sub>x</sub> ozone season program must cover all large industrial boilers and combustion turbines, as well as any small EGUs (*i.e.* units serving a generator with a nameplate capacity of 25 MWe or less) that the state currently requires to be in the NO<sub>x</sub> SIP Call trading program.

Alabama has chosen to expand the applicability provisions of the CAIR NO<sub>x</sub> ozone season trading program to include all non-EGUs in the State's NO<sub>x</sub> SIP Call trading program.

### D. NO<sub>x</sub> Allowance Allocations

Under the NO<sub>x</sub> allowance allocation methodology in the CAIR model trading rules and in the CAIR FIP, NO<sub>x</sub> annual and ozone season allowances are allocated to units that have operated for five years, based on heat input data from a three-year period that are adjusted for fuel type by using fuel factors of 1.0 for coal, 0.6 for oil, and 0.4 for other fuels. The CAIR model trading rules and the CAIR FIP also provide a new unit set-aside from which units without five years of operation are allocated allowances based on the units' prior year emissions.

States may establish in their SIP submissions a different NO<sub>x</sub> allowance allocation methodology that will be used to allocate allowances to sources in the states, if certain requirements are

met concerning the timing of submission of units' allocations to the Administrator for recordation and the total amount of allowances allocated for each control period. In adopting alternative NO<sub>x</sub> allowance allocation methodologies, states have flexibility with regard to:

1. The cost to recipients of the allowances, which may be distributed for free or auctioned;
2. The frequency of allocations;
3. The basis for allocating allowances, which may be distributed, for example, based on historical heat input or electric and thermal output; and
4. The use of allowance set-asides and, if used, their size.

Alabama has chosen to replace the provisions of the CAIR NO<sub>x</sub> annual model trading rule concerning the allocation of NO<sub>x</sub> annual allowances with its own methodology. Alabama has chosen to distribute NO<sub>x</sub> annual allowances based upon allocation methods for existing, replacement, and new units. ADEM defines a baseline NO<sub>x</sub> unit as one that commenced operation on, or before January 1, 2004, or submitted an acceptable application to the Department before August 1, 2005. For the control periods in 2009 through 2014, ADEM will allocate NO<sub>x</sub> allowances to baseline CAIR units based in an amount equaling 0.15 lb/mmBtu, or the unit's permitted NO<sub>x</sub> limit, whichever amount is less, multiplied by the heat input and an adjustment ratio (to ensure that the total number of CAIR NO<sub>x</sub> Ozone Season allowances allocated under this paragraph equals the number of tons of CAIR NO<sub>x</sub> Ozone Season emissions in the State trading program budget) and rounded to the nearest whole NO<sub>x</sub> allowance as appropriate. For units with multiple allowable emissions limits, the allowances may be calculated based on actual operating data. For each control period in 2015 and thereafter, ADEM will allocate allowances equaling 0.125 lb/mmBtu, or the unit's NO<sub>x</sub> limit, whichever is less, multiplied by the heat input and an adjustment ratio.

A replacement unit is defined as a NO<sub>x</sub> unit, or the portion of a NO<sub>x</sub> unit, which replaces a baseline unit at the same facility, and has the same or greater maximum design heat input capacity. Allowances will be allocated for replacement units after all baseline units have received allowances. These allowances will be distributed from the Retired Unit Allowance Pool. After all baseline and replacement units have received allocations, ADEM will allocate allowances to new units from allowances remaining in the Retired Unit Allowance Pool.

ADEM defines a new unit as one that does not meet the definition for an existing unit or a replacement unit. New unit allocations, for each applicable control period, will be equal to 0.15 lb/mmBtu or the unit's permitted NO<sub>x</sub> limit, whichever is less, multiplied by the heat input and an adjustment ratio and rounded to the nearest whole NO<sub>x</sub> allowance as appropriate.

Allowances were to be allocated by October 31, 2006, for control periods of 2009, 2010 and 2011. Allowances will be allocated by October 31, 2008, for control periods 2012, 2013 and 2014. By October 31, 2011, and subsequently, on October 31 of every third year thereafter, NO<sub>x</sub> allowance allocations will be submitted for the control periods in the three years that are four, five, and six years, respectively, after the year of the applicable deadline for submission. Alabama has chosen not to use set-asides in their NO<sub>x</sub> annual allocations.

Alabama has chosen to replace the provisions of the CAIR NO<sub>x</sub> ozone season model trading rule concerning allowance allocations with its own methodology. Alabama has chosen to distribute NO<sub>x</sub> annual allowances based upon allocation methods for existing, replacement, and new units. ADEM defines a baseline NO<sub>x</sub> unit as one that commenced operation on, or before January 1, 2004, or submitted an acceptable application to the Department before August 1, 2005. For the control periods in 2009 through 2014, ADEM will allocate NO<sub>x</sub> allowances to baseline CAIR units based in an amount equaling 0.15 lb/mmBtu (0.17 lb/mmBtu, if the unit's maximum design heat input is greater than 250 mmBtu/hr), or the unit's permitted NO<sub>x</sub> limit, whichever amount is less, multiplied by the heat input and an adjustment ratio (to ensure that the total number of CAIR NO<sub>x</sub> Ozone Season allowances allocated under this paragraph equals the number of tons of CAIR NO<sub>x</sub> Ozone Season emissions in the State trading program budget) and rounded to the nearest whole NO<sub>x</sub> allowance as appropriate. For units with multiple allowable emissions limits, the allowances may be calculated based on actual operating data. For each control period in 2015 and thereafter, ADEM will allocate allowances equaling 0.125 lb/mmBtu, or the unit's NO<sub>x</sub> limit, whichever is less, multiplied by the heat input and an adjustment ratio.

A replacement unit is defined as one which replaces a baseline ozone season unit at the same facility, and has the same or greater maximum design heat input.

A new unit is defined as a unit that does not meet the definition of either an existing unit or a replacement unit.

NO<sub>x</sub> ozone season allowances were to be allocated by October 31, 2006, for control periods 2009, 2010, and 2011. Only the difference between the ozone season allowance allocations and the 2009 budget trading program will be submitted in 2009. By October 31, 2008, allocations for 2012, 2013, and 2014 will be submitted. Finally, by October 31, 2011, and October 31 of every third year thereafter, allocations will be submitted for control periods in the three years that are four, five, and six years after the applicable deadline for submission. Alabama has chosen not to use set-asides in their ozone season allocations.

#### *E. Allocation of NO<sub>x</sub> Allowances From Compliance Supplement Pool*

CAIR establishes a CSP to provide an incentive for early reductions in NO<sub>x</sub> annual emissions. The CSP consists of 200,000 CAIR NO<sub>x</sub> annual allowances of vintage 2009 for the entire CAIR region, and a state's share of the CSP is based upon the projected magnitude of the emission reductions required by CAIR in that State. States may distribute CSP allowances, one allowance for each ton of early reduction, to sources that make NO<sub>x</sub> reductions during 2007 or 2008 beyond what is required by any applicable state or Federal emission limitation. States also may distribute CSP allowances based upon a demonstration of need for an extension of the 2009 deadline for implementing emission controls.

The CAIR annual NO<sub>x</sub> model trading rule establishes specific methodologies for allocations of CSP allowances. States may choose an allowed, alternative CSP allocation methodology to be used to allocate CSP allowances to sources in the states.

Alabama has chosen to modify the provisions of the CAIR NO<sub>x</sub> annual model trading rule concerning the allocation of allowances from the CSP. Alabama has chosen to distribute CSP allowances using an allocation methodology that allows the Department to allocate up to 10,166 additional CAIR NO<sub>x</sub> allowances for the control period in 2009. CAIR NO<sub>x</sub> units that achieve emissions reductions in 2007 and 2008, that are not necessary to comply with applicable emissions limitations during those years, may request early reduction credits. The units requesting CSP allocations must submit a request by May 1, 2009, to ADEM. Sources are eligible to receive CSP allowances only to the extent that the total number of allowances

issued does not exceed 15 percent of the total number of NO<sub>x</sub> allowances issued to that unit from the initial allowance allocation. Any remaining CSP allowances after the initial distribution will be allocated to eligible units on a pro rata basis, provided that no unit is issued more allowances than the early reduction credits requested by that unit in accordance with ADEM's CSP provisions.

#### F. Individual Opt-In Units

The opt-in provisions of the CAIR SIP model trading rules allow certain non-EGUs (i.e., boilers, combustion turbines, and other stationary fossil-fuel-fired devices) that do not meet the applicability criteria for a CAIR trading program to participate voluntarily in (i.e., opt into) the CAIR trading program. A non-EGU may opt into one or more of the CAIR trading programs. In order to qualify to opt into a CAIR trading program, a unit must vent all emissions through a stack and be able to meet the monitoring, recordkeeping, and recording requirements of 40 CFR part 75. The owners and operators seeking to opt a unit into a CAIR trading program must apply for a CAIR opt-in permit. If the unit is issued a CAIR opt-in permit, the unit becomes a CAIR unit, is allocated allowances, and must meet the same allowance-holding and emissions monitoring and reporting requirements as other units subject to the CAIR trading program. The opt-in provisions provide for two methodologies for allocating allowances for opt-in units, one methodology that applies to opt-in units in general and a second methodology that allocates allowances only to opt-in units that the owners and operators intend to repower before January 1, 2015.

States have several options concerning the opt-in provisions. States may adopt the CAIR opt-in provisions entirely or may adopt them but exclude one of the methodologies for allocating allowances. States may also decline to adopt the opt-in provisions at all.

Alabama has chosen to allow non-EGUs meeting certain requirements to opt into the CAIR NO<sub>x</sub> annual trading program, including both of the opt-in allocation methods in the model rule.

Alabama has chosen to allow non-EGUs meeting certain requirements to opt into the CAIR NO<sub>x</sub> ozone season trading program, including both of the opt-in allocation methods in the model rule.

Alabama has chosen to allow certain non-EGUs to opt into the CAIR SO<sub>2</sub> trading program, and has chosen to incorporate the Federal rule by reference.

## VI. Proposed Actions

EPA is proposing to approve Alabama's full CAIR SIP revision submitted on March 7, 2007. Under this SIP revision, Alabama is choosing to participate in the EPA-administered cap-and-trade programs for SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season emissions. The SIP revision meets the applicable requirements in 40 CFR 51.123(o) and (aa), with regard to NO<sub>x</sub> annual and NO<sub>x</sub> ozone season emissions, and 40 CFR 51.124(o), with regard to SO<sub>2</sub> emissions. EPA is proposing to determine that the SIP, as revised, will meet the requirements of CAIR. As a consequence of the SIP approval, the Administrator of EPA will also issue, without providing an opportunity for a public hearing or an additional opportunity for written public comment, a final rule to withdraw the CAIR FIPs concerning SO<sub>2</sub>, NO<sub>x</sub> annual and NO<sub>x</sub> ozone season emissions for Alabama. That withdrawal will delete and reserve 40 CFR 52.54 and 40 CFR 52.55.

## VII. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely proposes to approve State law as meeting Federal requirements and would impose no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action proposes to approve pre-existing requirements under State law and would not impose any additional enforceable duty beyond that required by State law, it 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).

This proposal also does not have tribal implications because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes,

as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This proposed action also does not have Federalism implications because it would 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 (64 FR 43255, August 10, 1999). This action merely proposes to approve a State rule implementing a Federal standard and will result, as a consequence of that approval, in the Administrator's withdrawal of the CAIR FIP. It does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it would approve a State rule implementing a Federal Standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule would not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Electric utilities, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

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

Dated: July 3, 2007.

**J.I. Palmer Jr.,**

*Regional Administrator, Region 4.*

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