

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R04-OAR-2019-0214; FRL-10006-31-Region 4]

**Air Plan Approval; Alabama: Revisions to Cross-State Air Pollution Rule**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving revisions to the Alabama State Implementation Plan (SIP), submitted by the State of Alabama, through the Alabama Department of Environmental Management (ADEM), via two letters dated August 27, 2018, and October 25, 2018. The SIP revisions make technical amendments to the State's Cross-State Air Pollution Rule (CSAPR) regulations. This action is being taken pursuant to the Clean Air Act (CAA or Act).

**DATES:** This rule is effective April 13, 2020.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2019-0214. 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, Region 4, U.S. Environmental Protection Agency, 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**

On November 26, 2019 (84 FR 65061), EPA proposed to approve changes to the Alabama SIP that were provided to EPA through two letters dated August 27, 2018, and October 25, 2018.<sup>1</sup> Specifically, EPA proposed to approve two SIP revisions that include changes to Alabama's CSAPR regulations, found in ADEM Administrative Code Rules 335-3-5-.13, 335-3-8-.14, 335-3-8-.40, and 335-3-8-.46.<sup>2</sup>

Alabama's August 27, 2018, SIP revision makes changes to ADEM's CSAPR regulations by adding the term "Group 2" in several places to Rule 335-3-8-.40 to make the terminology consistent with EPA's CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program regulations. Alabama's October 25, 2018, SIP revision changes the CSAPR regulations in Rules 335-3-5-.13, 335-3-8-.14, and 335-3-8-.46 by explicitly addressing the disposition of any allowances that remain after allocations to all existing units have reached their historical emission caps as well as any allowances set aside for new units in Indian country within the State and not used for that purpose. In addition, the October 25, 2018, SIP revision makes minor and administrative changes, such as correcting typographical errors.

The details of the Alabama submission and the rationale for EPA's action are explained in the notice of proposed rulemaking. Comments on the proposed rulemaking were due on or before December 26, 2019. EPA received one adverse comment on the proposed action.

**II. Response to Comments**

EPA received one adverse comment from an anonymous commenter on the proposed rule published on November 26, 2019. *See* 84 FR 65061. This comment has been included in the docket for this action.

*Comment:* The Commenter asserts that CSAPR has been vacated by the recent rulings in *Wisconsin v. EPA* and *New York v. EPA* and states that EPA is therefore precluded from approving Alabama's requested changes because the State's program is based on an illegal federal plan. The Commenter makes several additional statements that

<sup>1</sup> EPA received ADEM's submissions on September 7, 2018 and October 30, 2018, respectively.

<sup>2</sup> EPA notes that the Agency received other revisions to the Alabama SIP submitted with the August 27, 2018, letter. EPA will consider action on the remaining revisions in separate actions.

are outside the scope of this action, including references to *Aloha Power v. EPA*.

*Response:* EPA disagrees with this comment. In *Wisconsin v. EPA*, the court remanded the CSAPR Update to EPA but did not vacate it, and the remand does not concern any aspect of the CSAPR Update rulemaking relevant to the minor SIP changes at issue in this action. 938 F.3d 303, 336 (D.C. Cir. 2019). In *New York v. EPA*, the court vacated a related action known as the CSAPR Close-out, but the vacatur does not extend to CSAPR or the CSAPR Update. 781 Fed. Appx. 4 (D.C. Cir. 2019). Thus, the Wisconsin and New York decisions do not bar approval of the requested changes to Alabama's SIP.

With respect to the commenter's discussion on endangerment findings, the comment is out of scope of this action, as EPA's action did not relate to an endangerment finding. Further, to the extent the Commenter intended to raise concerns other than those related to endangerment findings in its discussion of a possible U.S. Supreme Court decision named *Aloha Power v. EPA*, the commenter did not provide a citation and EPA is unable to find such a decision based on the description provided by the Commenter.

**III. 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 ADEM Administrative Code Rules 335-3-5-.13, 335-3-8-.14, and 335-3-8-.46, state effective on December 7, 2018, and 335-3-8-.40, state effective on October 5, 2018, which make the following revisions to Alabama's SIP: Add the term "Group 2" to the State's rules, consistent with EPA's CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program regulations; address the disposition of any allowances that remain after allocations to all existing units have reached their historical emission caps as well as any allowances set aside for new CSAPR NO<sub>x</sub> Ozone Season Group 2 units in Indian country within Alabama and not used for that purpose; and make other minor changes. 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, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into

that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.<sup>3</sup>

**IV. Final Action**

EPA is approving the aforementioned changes to ADEM Administrative Code Rules 335-3-5-.13, 335-3-8-.14, 335-3-8-.40, and 335-3-8-.46. These changes are consistent with the CAA.

**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. See 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. These actions merely approve state law as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law. For that reason, these actions:

- Are not significant regulatory actions 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);
- Are not Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory actions because SIP approvals are exempted under Executive Order 12866;
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having significant economic impacts on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandates or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are 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
- Do 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**. These actions are 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 May 11, 2020. 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. These actions 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: February 27, 2020.

**Mary S. Walker,**  
*Regional Administrator, Region 4.*

40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

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

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

**Subpart B—Alabama**

- 2. In § 52.50 amend the table in paragraph (c) by revising the entries for "335-3-5-.13, TR SO<sub>2</sub> Allowance Allocations", "335-3-8-.14, TR NO<sub>x</sub> Annual Allowance Allocations", "335-3-8-.40, TR NO<sub>x</sub> Ozone Season Group 2 Trading Program—Applicability", and "335-3-8-.46, TR NO<sub>x</sub> Ozone Season Group 2 Allowance Allocations" to read as follows:

**§ 52.50 Identification of plan.**

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

**EPA-APPROVED ALABAMA REGULATIONS**

State citation	Title/subject	State effective date	EPA approval date	Explanation
335-3-5-.13	TR SO <sub>2</sub> Allowance Allocations	12/7/2018	3/12/2020, [Insert citation of publication].	Both sections of 335-3-5-.13 are included in the approved SIP.

<sup>3</sup> See 62 FR 27968 (May 22, 1997).

EPA-APPROVED ALABAMA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
335-3-8-.14	TR NO <sub>x</sub> Annual Allowance Allocations.	12/7/2018	3/12/2020, [Insert citation of publication].	Both sections of 335-3-8-.14 are included in the approved SIP.
335-3-8-.40	TR NO <sub>x</sub> Ozone Season Group 2 Trading Program—Applicability.	10/5/2018	3/12/2020, [Insert citation of publication].	
335-3-8-.46	TR NO <sub>x</sub> Ozone Season Group 2 Allowance Allocations.	12/7/2018	3/12/2020, [Insert citation of publication].	

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 [FR Doc. 2020-04854 Filed 3-11-20; 8:45 am]  
 BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R04-OAR-2019-0270; FRL-10006-33-Region 4]

**Air Plan Approval; Tennessee: Open Burning and Definitions Revisions for Chattanooga**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a revision to the Chattanooga portion of the Tennessee State Implementation Plan (SIP), provided by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC) from the Chattanooga/Hamilton County Air Pollution Control Bureau through a letter dated September 12, 2018. The submission revises the open burning regulations in the Chattanooga portion of the Tennessee SIP. EPA is approving the changes because they are consistent with the Clean Air Act (CAA or Act).

**DATES:** This rule is effective April 13, 2020.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R04-OAR-2019-0270. All documents in the docket are listed on the *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* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division (formerly the 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:** Andres Febres, 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) 562-8966. Mr. Febres can also be reached via electronic mail at *febres-martinez.andres@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

EPA is taking final action to approve changes to the Chattanooga-Hamilton County portion of the Tennessee SIP that were provided to EPA through a letter dated September 12, 2018.<sup>1</sup> EPA is finalizing approval of the portions of this SIP revision that make changes relating to open burning at Chattanooga Ordinance Part II, Chapter 4, Article II,

Section 4-41, Rule 6—“Prohibition of Open Burning.”<sup>2 3</sup>

In a notice of proposed rulemaking (NPRM) published on November 25, 2019 (84 FR 64806), EPA proposed to approve changes to open burning at Chattanooga Ordinance Part II, Chapter 4, Article II, Section 4-41, Rule 6—“Prohibition of Open Burning” in the Chattanooga-Hamilton County portion of the Tennessee SIP.<sup>4</sup> The NPRM provides additional details regarding EPA's action. Comments on the NPRM were due on or before December 26, 2019.

<sup>2</sup> In this final action, EPA is also approving substantively identical changes in the following sections of the Air Pollution Control Regulations/ Ordinances for the remaining jurisdictions within the Bureau, which were locally effective as of the relevant dates below: Hamilton County—Section 41, Rule 6 (9/6/17); City of Collegedale—Section 14-341, Rule 6 (10/16/17); City of East Ridge—Section 8-41, Rule 6 (10/12/17); City of Lakesite—Section 14-41, Rule 6 (11/2/17); City of Red Bank—Section 20-41, Rule 6 (11/21/17); City of Soddy-Daisy—Section 8-41, Rule 6 (10/5/17); City of Lookout Mountain—Section 41, Rule 6 (11/14/17); City of Ridgeside Section 41, Rule 6 (1/16/18); City of Signal Mountain Section 41, Rule 6 (10/20/17); and Town of Walden Section 41, Rule 6 (10/16/17).

<sup>3</sup> Because the air pollution control regulations/ ordinances adopted by the jurisdictions within the Bureau are substantively identical, EPA refers solely to Chattanooga and the Chattanooga rules throughout the notice as representative of the other ten jurisdictions for brevity and simplicity.

<sup>4</sup> In a November 25, 2019, NPRM, EPA provided clarification on its May 20, 2019 (84 FR 22786), proposed approval of part of the September 12, 2018, submittal relating to the SIP-approved definition of “volatile organic compounds” at Chattanooga Air Pollution Control Ordinance Part II, Chapter 4, Article I, Section 4-2—“Definitions.” Specifically, in the November 25, 2019, NPRM, EPA clarified that its proposed approval of Chattanooga's revised definition of “volatile organic compounds” also includes substantively identical revisions to the regulations/ordinances of the other ten jurisdictions within the Bureau. EPA is finalizing its proposals related to the definition of volatile organic compounds for Chattanooga in a separate rulemaking.

<sup>1</sup> EPA received the SIP revision on September 18, 2018.