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.

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 (NOx) SIP Call obligations for large non-electricity generating units (non-EGUs), to repeal the State’s previously sunsetted NOx 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 NOx SIP Call, including alternative monitoring options for certain sources for NOx 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 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
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 NOX SIP Call also identified potential reductions from cement kilns and stationary internal combustion engines.

To comply with the NOX 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 NOx 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 NOx Budget Trading Program beginning in 2004. In 2005, Alabama submitted, and EPA approved, a SIP revision to address additional emissions reductions required for the NOx 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) NOx 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 (PM2.5) NAAQS, and was designed to mitigate the impact of transported NOx emissions with respect to ozone and PM2.5. 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. When the CAIR trading program for ozone season NOx was implemented beginning in 2009, EPA discontinued administration of the NOx Budget Trading Program; however, the requirements of the NOx SIP Call continued to apply.

On October 1, 2007 (72 FR 55659), EPA approved changes to Alabama’s SIP that incorporated requirements for

**I. Background and Purpose**

Under Clean Air Act (CAA or Act) section 110(a)(2)(D)(ii)(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” (NOx SIP Call). The NOx SIP Call required eastern states, including Alabama, to submit SIPs that prohibit excessive emissions of ozone season NOx by implementing statewide emissions budgets.1 The NOx SIP Call addressed the good neighbor provision for the 1979 ozone NAAQS and was designed to mitigate the impact of transported NOx emissions, one of the precursors of ozone.2 EPA developed the NOx Budget Trading Program, an allowance trading program that states could adopt to meet their obligations under the NOx SIP Call. This trading program allowed the following sources

1 See 63 FR 57356 (October 27, 1998).

2 As originally promulgated, the NOx 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).

3 CAIR had separate trading programs for annual sulfur dioxide (SO2) emissions, seasonal NOx emissions, and annual NOx emissions.

4 See 79 FR 71663 (December 3, 2014).
administering CAIR trading programs with respect to emissions occurring after December 31, 2014.\(^5\)

To comply with CSAPR, Alabama adopted SO\(_2\) and NO\(_x\) CSAPR trading program rules, including budgets, in ADEM Administrative Code Chapters 335–3–1, 335–3–2, 335–3–3, and 335–3–4. On August 31, 2016, EPA approved Alabama’s CSAPR annual SO\(_2\) and annual NO\(_x\) trading program rules into the SIP.\(^6\) 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, 335–3–2, 335–3–3, and 335–3–4 on December 9, 2011.\(^7\) Even though the CAIR programs were not being implemented in Alabama, ozone season NO\(_x\) emissions have remained well below the NO\(_x\) SIP Call budget levels.

After litigation that reached the Supreme Court, the D.C. Circuit generally upheld CSAPR but mandated several state budgets to EPA for reconsideration. \(\text{E.M. Homer City Generation, L.P. v. EPA, 795 F.3d 118, 129–30 (D.C. Cir. 2015).}\)

EPA addressed the remanded ozone season NO\(_x\) 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. \(\text{See 81 FR 74504 (October 26, 2016).}\)

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\(_x\) 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\(_x\) for most covered states. On October 6, 2017, EPA approved Alabama’s CSAPR Update ozone season NO\(_x\) trading program rules for EGUs into the State’s SIP.\(^8\) See 82 FR 46674. Alabama’s EGUs participate in the CSAPR Update trading program, generally also addressing the state’s obligations under the NO\(_x\) 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\(_x\) emissions, the NO\(_x\) SIP Call regulations at 40 CFR 51.121(f)(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\(_x\) SIP Call requirements in some other way.

Under 40 CFR 51.121(f)(2) of the NO\(_x\) SIP Call regulations, where a State’s SIP contains control measures for EGUs and large non-EGU boilers and combustion turbines, the SIP must contain enforceable limits on the ozone season NO\(_x\) mass emissions from these sources. In addition, under 40 CFR 51.121(f)(4) of the NO\(_x\) 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\(_x\) 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\(_x\) SIP Call.\(^9\) The revision gave states covered by the NO\(_x\) SIP Call greater flexibility concerning the form of the NO\(_x\) emissions monitoring requirements that the states must include in their SIPs for certain emissions sources. The revision amended 40 CFR 51.121(f)(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 (f)(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\(_x\) SIP Call’s general enforceability and monitoring requirements at §§ 51.121(f)(1) and (f)(1), respectively, but states are no longer be required to satisfy these general NO\(_x\) 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\(_x\) SIP Call requirements, ADEM revised its regulations to address NO\(_x\) 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\(_x\) SIP Call’s requirements for enforceable limits on ozone season NO\(_x\) 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\(_x\) 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. \(\text{See 86 FR 12305 (March 3, 2021).}\)

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\(_x\) Budget Program,” which reestablishes enforceable limits on ozone season NO\(_x\) mass emissions for certain units as required by EPA’s NO\(_x\) SIP Call regulations, and conditionally approving Rule 335–3–8–72, “NO\(_x\) 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

\(^5\) See 79 FR 71663 (December 3, 2014) and 81 FR 13275 (March 14, 2016).

\(^6\) 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\(_x\) emissions.

\(^7\) 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.

\(^8\) This action approved CSAPR and CAIR Update-related provisions of Alabama SIP submissions dated October 26, 2015, and May 19, 2017.

Implementation Plan regarding the State’s NOx Budget Trading Program and CAIR trading program regulations at Rules 335–3–5–06 through 335–3–5–11. EPA has determined that these portions of Alabama’s SIP meet the applicable requirements of 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.11

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 NOx Budget Program. EPA has determined that these revisions to Alabama’s SIP meet the applicable requirements of sections 110 and 112 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 NOx 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).

10 Rule 335–3–5–1–16 was originally approved into the Alabama SIP on March 26, 2009 (74 FR 13118). However, inadvertently, Rule 335–3–5–1–16 was never added to the table of EPA-Approved Alabama Regulations found at 40 CFR 52.30(c). In effect, there is no need to remove an entry from 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.


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 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. 501 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 335–3–5–06 through 335–3–5–16, NOx 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\textsubscript{X} Emissions”;
      ii. 335–3–5–.06, titled “State Clean Air Interstate Rule (CAIR) SO\textsubscript{2} Trading Program General Provisions”;
      iii. 335–3–5–.07, titled “CAIR Designated Representative for CAIR SO\textsubscript{2} Source”; and
   b. Adding entries for Sections—
      i. 335–3–5–.08, titled “Permits”;
      ii. 335–3–5–.10, titled “CAIR SO\textsubscript{2} Allowance Tracking System”; and
   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;

The revisions and additions read as follows:

§ 52.50 Identification of plan.

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| xxxii. 335–3–8–.33 | titled “CAIR NO\textsubscript{X} Ozone Season Opt-in Units”;

EPA-APPROVED ALABAMA REGULATIONS

Chapter No. 335–3–5 Control of Sulfur Compound Emissions

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<td>TR SO\textsubscript{2} Allowance Allocations</td>
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Chapter No. 335–3–8 Control of Nitrogen Oxides Emissions

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## EPA-APPROVED ALABAMA REGULATIONS—Continued

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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.