

this action is not economically significant.

The corrections are not subject to Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001) because this action is not a significant regulatory action under Executive Order 12866.

The corrections do not involve changes to technical standards related to test methods or monitoring methods; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply.

The corrections also do not involve special consideration of environmental justice-related issues as required by Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 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. The EPA will submit a report containing this final action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the U.S. prior to publication of this action in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). The final rule will be effective on October 1, 2007.

The EPA's compliance with the above statutes and Executive Orders for the underlying rules is discussed in Section X of the CAIR at 70 FR 25305 and in Section IX of the CAIR FIPs at 71 FR 25365.

#### List of Subjects

##### 40 CFR Part 51

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

##### 40 CFR Part 97

Environmental protection, Administrative practice and procedure, Air pollution control, Electric utilities, Intergovernmental relations, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: September 25, 2007.

Stephen L. Johnson,  
Administrator.

■ For the reasons set forth in the preamble, parts 51 and 97 of title 40, chapter I of the Code of Federal Regulations are amended as follows:

#### PART 51—[AMENDED]

■ 1. The authority citation for part 51 continues to read as follows:

**Authority:** 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

##### § 51.125 [Amended]

■ 2. Section 51.125 is amended as follows:

■ a. In paragraph (a)(1), by removing the word "Columbia" and adding in its place the words "Columbia must report annual (12 months) emissions of SO<sub>2</sub> and NO<sub>x</sub>".

■ b. In paragraph (a)(2), by removing the word "Deleware" and adding in its place the word "Delaware", by removing the word "Indinia" and adding in its place "Indiana", and by removing the word "Lousianna" and adding in its place "Louisiana".

#### PART 97—[AMENDED]

■ 3. The authority citation for part 97 continues to read as follows:

**Authority:** 42 U.S.C. 7401, 7403, 7410, 7426, 7601, and 7651, *et seq.*

##### Appendix A to Subpart EEEE of Part 97 [Amended]

■ 4. Appendix A to Subpart EEEE is amended by revising the citation "97.344(a)" to read "97.343(a)".

[FR Doc. E7–19323 Filed 9–28–07; 8:45 am]

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#### ENVIRONMENTAL PROTECTION AGENCY

##### 40 CFR Part 52

[EPA–R04–OAR–2007–0359–200736; FRL–8475–9]

#### Approval and Promulgation of Implementation Plans; Alabama; Clean Air Interstate Rule

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

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to approve a revision to the Alabama State Implementation Plan (SIP) submitted on March 7, 2007. 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. 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. EPA has determined that the SIP revision fully implements the CAIR requirements for Alabama. As a result of this action, EPA will also withdraw, through a separate rulemaking, the CAIR Federal Implementation Plans (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, and interfere with maintenance of, the National Ambient Air Quality Standards (NAAQS) for fine particulates (PM<sub>2.5</sub>) 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 approving, Alabama has met the CAIR requirements by electing to participate 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:** This rule is effective on October 31, 2007.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–R04–OAR–2007–0359. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) web site. Although listed in the index, some information is not 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 Regulatory Development Section,

Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Stacy Harder, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 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:** Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

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#### I. What Action Is EPA Taking?

EPA is taking final action to approve a revision to Alabama's SIP submitted on March 7, 2007. In its SIP revision, Alabama has met the 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. Alabama's regulations adopt by reference most of the provisions of EPA's SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season model trading rules, with certain changes discussed below. EPA has determined that the SIP as revised will meet the applicable requirements of CAIR. As a result of this action, 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. The Administrator's action will delete and reserve 40 CFR 52.54 and 40 CFR 52.55, relating to the CAIR FIP obligations for Alabama. 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 a SIP is fully approved, EPA no longer has authority for the FIPs. Thus, EPA does not have the option of maintaining the FIPs following 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 proposed to approve Alabama's request to amend the SIP on July 12, 2007 (72 FR 38045). In that proposal, EPA also stated its intent to withdraw the FIP, as described above. The comment period closed on August 13, 2007. No comments were received. EPA is finalizing the approval as proposed based on the rationale stated in the proposal and in this final action.

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

The CAIR 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 NAAQS for 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 1 to September 30). 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.

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

##### A. State Budgets for Allowance Allocations

In this action, EPA is taking final action to approve Alabama's SIP revision that adopts the following budgets for the State, 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. The NO<sub>x</sub> ozone season budget properly reflects the inclusion of NO<sub>x</sub> SIP Call trading program units in the CAIR NO<sub>x</sub> ozone season trading program, as discussed below. 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 one 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 has chosen 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 (with the revisions discussed above) 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 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. States exercising this option need 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 and CAIR NO<sub>x</sub> ozone season model trading rules concerning the allocation of 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. As explained in the proposed approval, EPA understands that the language is intended to mean that allocations will be determined by the dates and only for the years identified or described in 40 CFR 96.141 and 40 CFR 96.341. EPA did not receive any comments on this issue, and concludes that this understanding is a correct interpretation of Alabama's rules. Additionally, Alabama's CAIR NO<sub>x</sub> Annual and CAIR NO<sub>x</sub> ozone season rules establish permanent allocations for specified units designated as "existing units" or "new units" and do not include provisions of the EPA's model rules that call for adjusting the allocations for existing units to provide allocations for future, new units.

Finally, Alabama's CAIR NO<sub>x</sub> ozone season rule includes special provisions concerning the allocation of allowances for the 2009 control period. As discussed above, Alabama's rule expanded the applicability provisions of the model rule to include—as CAIR NO<sub>x</sub> ozone season units—those units in Alabama's NO<sub>x</sub> SIP Call program (i.e., Alabama's NO<sub>x</sub> Budget Trading Program) that are not covered by model rule applicability provisions. Alabama already issued NO<sub>x</sub> allowances to some of those units for 2009 under the NO<sub>x</sub> Budget Trading Program. Alabama's rule

(in Rule 335–3.8–.29(3)(d)1.(i)) states that, if a unit was allocated more allowances under the NO<sub>x</sub> Budget Trading Program for 2009 than it would otherwise be allocated under Alabama's allocation provisions generally applicable to CAIR NO<sub>x</sub> ozone season units, then the Department “will allocate the same number of CAIR Ozone Season allowances” to that unit. The allocations to other units under the generally applicable allocation provisions will be reduced for 2009 in order to take account of this adjustment of the NO<sub>x</sub> Budget Trading Program unit's 2009 allocation. Further, Alabama's rule (in Rule 335–3.8–.29(2)(a)1.) states that, for the 2009 control period, the Department will submit to the Administrator, for the purpose of recording allocations, “only the difference between the CAIR NO<sub>x</sub> Ozone Season allowance allocations and the 2009 NO<sub>x</sub> Budget Trading Program allowance allocations.” In short, Alabama's rule treats each unit's 2009 NO<sub>x</sub> Budget Trading Program allocation as a 2009 CAIR NO<sub>x</sub> ozone season allocation for that unit that has been previously recorded by the Administrator. EPA therefore interprets Alabama's rule to provide that each 2009 NO<sub>x</sub> Budget Trading Program allowance is a 2009 CAIR NO<sub>x</sub> ozone season allowance, whether the NO<sub>x</sub> Budget Trading Program allowance is still held by the owners and operators of the unit or has been transferred to other parties. Consistent with this interpretation of Alabama's rule, the Administrator—in operating the CAIR NO<sub>x</sub> Ozone Season Tracking System—will treat each such allowance as usable for compliance with the allowance-holding requirements of the CAIR NO<sub>x</sub> Ozone Season Trading Program by any CAIR NO<sub>x</sub> ozone season source that holds the allowances in the source's compliance account as of the allowance transfer deadline, regardless of the State in which the source is located.

EPA is taking final action to approve the above-described variations in Alabama's rule from the model rule provisions because the changes are consistent with the flexibility that CAIR provides States with regard to allocation methodologies.

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

The CAIR establishes a compliance supplement pool 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 from 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 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 trading programs by adopting by reference the entirety of EPA's model rule provisions for opt-in units in the CAIR SO<sub>2</sub>, CAIR NO<sub>x</sub> annual, and CAIR NO<sub>x</sub> ozone season trading programs.

#### **V. Final Action**

EPA is taking final action 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. EPA has determined that 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 has determined that the SIP as revised will meet the requirements of CAIR. 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. The Administrator's action will delete and reserve 40 CFR 52.54 and 40 CFR 52.55. EPA will take final action to withdraw the CAIR FIPs for Alabama in a separate rulemaking.

#### **VI. 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 approves State law as meeting Federal requirements and would impose no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will 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 approves pre-existing requirements under State law and does 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 rule also does not have tribal implications because it will 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 action also does not have Federalism implications because it does 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 approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This 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 approves 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 CAA. 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 CAA. 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 rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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 rule 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 November 30, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not

affect the finality of this rule 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, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 21, 2007.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

■ 40 CFR part 52 is amended as follows:

#### PART 52—[AMENDED]

■ 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 52.50(c) is amended by:

■ a. Under Chapter 335-3-5 add in numerical order new entries for "335-3-5-.06," "335-3-5-.07," "335-3-5-.08," "335-3-5-.11," "335-3-5-.12," "335-3-5-.13," and "335-3-5-.14,"

■ b. Under Chapter 335-3-8 revise entries for "335-3-8-.05," and "335-3-8-.10,"

■ c. Under Chapter 335-3-8 add in numerical order new entries for "335-3-8-.16," "335-3-8-.17," "335-3-8-.18," "335-3-8-.20," "335-3-8-.21," "335-3-8-.23," "335-3-8-.24," "335-3-8-.25," "335-3-8-.26," "335-3-8-.27," "335-3-8-.29," "335-3-8-.30," "335-3-8-.32," and "335-3-8-.33."

#### § 52.50 Identification of plan.

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(c) \* \* \*

#### EPA-APPROVED ALABAMA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
<b>Chapter 335-3-5—Control of Sulfur Compound Emissions</b>				
335-3-5-.06	State Clean Air Interstate Rule (CAIR) SO <sub>2</sub> Trading Program Provisions.	04/03/07	10/01/07 [Insert citation of publication].	
335-3-5-.07	CAIR Designated Representative for CAIR SO <sub>2</sub> Sources.	04/03/07	10/01/07 [Insert citation of publication].	
335-3-5-.08	Permits	04/03/07	10/01/07 [Insert citation of publication].	
335-3-5-.11	CAIR SO <sub>2</sub> Allowance Tracking System.	04/03/07	10/01/07 [Insert citation of publication].	

## EPA-APPROVED ALABAMA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
335–3–5–.12 .....	CAIR SO <sub>2</sub> Allowance Transfers ..	04/03/07	10/01/07 [Insert citation of publication].	
335–3–5–.13 .....	Monitoring and Reporting .....	04/03/07	10/01/07 [Insert citation of publication].	
335–3–5–.14 .....	CAIR SO <sub>2</sub> Opt-In Units .....	04/03/07	10/01/07 [Insert citation of publication].	
*	*	*	*	*
<b>Chapter 335–3–8—Control of Nitrogen Oxide Emissions</b>				
335–3–8–.05 .....	NO <sub>x</sub> Budget Trading Program ....	04/03/07	10/01/07 [Insert citation of publication].	
335–3–8–.10 .....	NO <sub>x</sub> Allowance Tracking System	04/03/07	10/01/07 [Insert citation of publication].	
335–3–8–.16 .....	CAIR NO <sub>x</sub> Annual Budget Trading Program.	04/03/07	10/01/07 [Insert citation of publication].	
335–3–8–.17 .....	CAIR Designated Representative for CAIR NO <sub>x</sub> Sources.	04/03/07	10/01/07 [Insert citation of publication].	
335–3–8–.18 .....	CAIR Permits .....	04/03/07	10/01/07 [Insert citation of publication].	
335–3–8–.20 .....	CAIR NO <sub>x</sub> Allowance Allocations	04/03/07	10/01/07 [Insert citation of publication].	
335–3–8–.21 .....	CAIR NO <sub>x</sub> Allowance Tracking System.	04/03/07	10/01/07 [Insert citation of publication].	
335–3–8–.23 .....	CAIR Monitoring and Reporting ..	04/03/07	10/01/07 [Insert citation of publication].	
335–3–8–.24 .....	CAIR NO <sub>x</sub> Opt-In Units .....	04/03/07	10/01/07 [Insert citation of publication].	
335–3–8–.25 .....	CAIR NO <sub>x</sub> Ozone Season Trading Program.	04/03/07	10/01/07 [Insert citation of publication].	
335–3–8–.26 .....	CAIR Designated Representative for CAIR NO <sub>x</sub> Ozone Season Sources.	04/03/07	10/01/07 [Insert citation of publication].	
335–3–8–.27 .....	CAIR NO <sub>x</sub> Ozone Season Permits.	04/03/07	10/01/07 [Insert citation of publication].	
335–3–8–.29 .....	CAIR NO <sub>x</sub> Ozone Season Allowance Allocations.	04/03/07	10/01/07 [Insert citation of publication].	
335–3–8–.30 .....	CAIR NO <sub>x</sub> Ozone Season Allowance Tracking System.	04/03/07	10/01/07 [Insert citation of publication].	
335–3–8–.32 .....	CAIR NO <sub>x</sub> Ozone Season Monitoring and Reporting.	04/03/07	10/01/07 [Insert citation of publication].	
335–3–8–.33 .....	CAIR NO <sub>x</sub> Ozone Season Opt-In Units.	04/03/07	10/01/07 [Insert citation of publication].	
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[FR Doc. E7–19352 Filed 9–28–07; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52****[EPA–R05–OAR–2006–0540; FRL–8472–4]****Approval and Promulgation of Air Quality Implementation Plans; Indiana; Oxides of Nitrogen Regulations, Phase II****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** The EPA is approving Indiana's oxides of nitrogen (NO<sub>x</sub>) rules which satisfy the requirements of EPA's NO<sub>x</sub> SIP Call Phase II Rule (the Phase II Rule). EPA is approving these regulations based on Indiana's demonstration that they will result in the achievement of the Phase II budget through source compliance with rules affecting stationary internal combustion (IC) engines which are identified in the NO<sub>x</sub> plan submittal. Limiting NO<sub>x</sub> emissions from IC engines will enable the State to meet the Phase II incremental difference of 4,244 tons