SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve portions of a revision to the Alabama State Implementation Plan (SIP) submitted by the Alabama Department of Environmental Management (ADEM) to EPA on May 2, 2011. The SIP revision modifies Alabama’s nonattainment new source review (NNSR) regulations in their entirety to be consistent with the federal new source review (NSR) regulations for the implementation of the criteria pollutant national ambient air quality standards (NAAQS). EPA is approving portions of the NNSR rule changes in Alabama’s May 2, 2011, SIP revision because the Agency has determined that the changes are consistent with the Clean Air Act (CAA or Act) and federal regulations regarding NSR permitting.

DATES: This rule will be effective February 10, 2016.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2012–0079; FRL–9940–89–Region 4. All documents in the docket are listed on the 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 or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation 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: For information regarding the Alabama SIP, contact Mr. D. Brad Akers, Air Regulatory Management Section, Air Planning and Implementation Branch, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Mr. Akers can be reached by telephone at (404) 562–9089 or via electronic mail at akers.brad@epa.gov. For information regarding NSR, contact Ms. Yolanda Adams, Air Permits Section, at the same address above. Telephone number: (404) 562–9214; email address: adams.yolanda@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

EPA is taking final action to approve the portion of Alabama’s May 2, 2011, SIP revision that makes changes to Alabama’s NSR program, set forth at ADEM Administrative Code, Division 3, Chapter 14, Subchapter 05 (ADEM Rule 335–3–14–05), which applies to the construction and modification of any major stationary source in or near a nonattainment area (NAA) as required by part D of title I of the CAA. Alabama’s NSR regulations at ADEM Rule 335–3–14–05 were originally approved into the SIP on November 26, 1979 (see 44 FR 67375), with periodic revisions approved through December 8, 2000 (see 65 FR 76198). Alabama’s May 2, 2011, SIP revision modifies the State’s NSR regulations in their entirety1 with a new version that reflects changes to the federal NSR regulations at 40 Code of Federal Regulations (CFR) 51.165,2 including provisions promulgated in the following federal rules: (1) “Requirements for Preparation, Adoption and Submittal of Implementation Plans; Approval and Promulgation of Implementation Plans; Standards of Performance for New Stationary Sources,” Final Rule, 57 FR 32314 (July 21, 1992) (hereafter referred to as the Wisconsin Electric Power Company (WEPCO) Rule); (2) “Prevention of Significant Deterioration (PSD) and Non-Attainment New Source Review (NSR): Baseline Emissions Determination, Actual-to-Future-Actual Methodology, Plantwide Applicability Limitations, Clean Units, Pollution Control Projects,” Final Rule, 67 FR 80186 (December 31, 2002) (hereafter referred to as the NSR Reform Rule); (3) “Prevention of Significant Deterioration (PSD) and Non-Attainment New Source Review (NSR): Reconsideration,” Final Rule, 68 FR 63021 (November 7, 2003) (hereafter referred to as the Reconsideration Rule); (4) “Prevention of Significant Deterioration (PSD) and Non-Attainment New Source Review (NSR): Removal of Vacated Elements,” Final Rule, 72 FR 32526 (June 13, 2007) (hereafter referred to as the Vacated Elements Rule); (4) “Prevention of Significant Deterioration and Nonattainment New Source Review: Reasonable Possibility in Recordkeeping,” Final Rule, 72 FR 72607 (December 21, 2007), (hereafter referred to as the Reasonable Possibility Rule); (5) “Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2; Final Rule To Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter and Ozone NAAQS; Final Rule For Reformulated Gasoline,” Final Rule, 70 FR 71612 (November 29, 2005) (hereafter referred to as the Phase 2 Rule); (6) “Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM2.5),” Final Rule, 73 FR 28321 (May 16, 2008) (hereafter referred to as the NSR PM2.5 Rule); (7) “Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM2.5)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC),” Final Rule, 75 FR 64864 (October 20, 2010) (hereafter referred to as the PM2.5 PSD Increments-SILs-SMC Rule3); and (8) “Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Reconsideration of Inclusion of Fugitive Emissions; Interim Rule; Stay and Revisions4, Interim Rule, 76 FR 17548 (March 30, 2011) (hereafter referred to as the Fugitive Emissions Interim Rule).

1Some portions of the 2011 version of the regulations now being approved were previously approved by EPA. These portions remain the same in substance but may have undergone administrative updates and renumbering in the 2011 version.

2EPA’s regulations governing the implementation of NSR permitting programs are contained in 40 CFR 51.160–51.165, including provisions promulgated in the following federal rules: (1) “Requirements for Preparation, Adoption and Submittal of Implementation Plans; Approval and Promulgation of Implementation Plans; Standards of Performance for New Stationary Sources,” Final Rule, 57 FR 32314 (July 21, 1992) (hereafter referred to as the Wisconsin Electric Power Company (WEPCO) Rule); (2) “Prevention of Significant Deterioration (PSD) and Non-Attainment New Source Review (NSR): Baseline Emissions Determination, Actual-to-Future-Actual Methodology, Plantwide Applicability Limitations, Clean Units, Pollution Control Projects,” Final Rule, 67 FR 80186 (December 31, 2002) (hereafter referred to as the NSR Reform Rule); (3) “Prevention of Significant Deterioration (PSD) and Non-Attainment New Source Review (NSR): Reconsideration,” Final Rule, 68 FR 63021 (November 7, 2003) (hereafter referred to as the Reconsideration Rule); (4) “Prevention of Significant Deterioration (PSD) and Non-Attainment New Source Review (NSR): Removal of Vacated Elements,” Final Rule, 72 FR 32526 (June 13, 2007) (hereafter referred to as the Vacated Elements Rule); (4) “Prevention of Significant Deterioration and Nonattainment New Source Review: Reasonable Possibility in Recordkeeping,” Final Rule, 72 FR 72607 (December 21, 2007), (hereafter referred to as the Reasonable Possibility Rule); (5) “Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2; Final Rule To Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter and Ozone NAAQS; Final Rule For Reformulated Gasoline,” Final Rule, 70 FR 71612 (November 29, 2005) (hereafter referred to as the Phase 2 Rule); (6) “Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM2.5),” Final Rule, 73 FR 28321 (May 16, 2008) (hereafter referred to as the NSR PM2.5 Rule); (7) “Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM2.5)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC),” Final Rule, 75 FR 64864 (October 20, 2010) (hereafter referred to as the PM2.5 PSD Increments-SILs-SMC Rule3); and (8) “Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Reconsideration of Inclusion of Fugitive Emissions; Interim Rule; Stay and Revisions4, Interim Rule, 76 FR 17548 (March 30, 2011) (hereafter referred to as the Fugitive Emissions Interim Rule).

3The D.C. Circuit vacated the portions of the PM2.5 PSD Increment-SILs-SMC Rule addressing the SILs portion (and remanded the SILs portion to EPA for further consideration) for PSD, but left the PM2.5 SILs in place for the NSR program in the table in §51.165(b)(2). See Sierra Club v. EPA, 705 F.3d 458 (D.C. Cir. 2013).
EPA is not, however, approving into the Alabama SIP the portion of ADEM Rule 335–3–14–.05(1)(k) stating “excluding ethanol production facilities that produce ethanol by natural fermentation,” which Alabama promulgated pursuant to the federal rule entitled “Prevention of Significant Deterioration, Nonattainment New Source Review, and Title V: Treatment of Certain Ethanol Production Facilities Under the ‘Major Emitting Facility’ Definition,” Final Rule, 72 FR 24060 (May 1, 2007) (or the Ethanol Rule). 4 EPA is also not acting on the provision at Rule 335–3–14–.05(2)(c)(3) that excludes fugitive emissions from the determination of creditable emission increases and decreases. 5 Finally, EPA is not acting on changes to ADEM’s rules regarding the PM2.5 significant impact levels (SILs) for PSD at Rule 335–3–14–.04(8)(h)(1), the NNSR interpolant offset ratios at ADEM Rule 335–3–14–.05(3)(g)(1)–4 and the sentence including those ratios which states “Interpollutant offsets shall be determined based upon the following ratios,” or the “actual-to-potential” NNSR applicability test at ADEM Rule 335–3–14–.05(1)(h), all of which ADEM withdrew from EPA’s consideration subsequent to the May 2, 2011 submittal. 6

On September 1, 2015, EPA published a proposed rulemaking to approve the aforementioned changes to the Alabama NNSR program at ADEM Rule 335–3–14–.05. See 80 FR 52701. Comments on the proposed rulemaking were due on or before October 1, 2015. No comments, adverse or otherwise, were received on EPA’s September 1, 2015, proposed rulemaking. Pursuant to section 110 of the CAA, EPA is now taking final action to approve the changes to Alabama’s NNSR program as provided in the September 1, 2015, proposed rulemaking. The proposed rulemaking contains more detailed information regarding Alabama’s SIP revision being approved today, and the rationale for this final action. More detailed information on the NNSR program can be found in the September 1, 2015, proposed rulemaking as well as the aforementioned final rulemakings.

II. This Action

Alabama currently has a SIP-approved NSR program for new and modified stationary sources found in ADEM regulations at Chapter 335–3–14. ADEM’s NNSR preconstruction regulations are found at Chapter 335–3–14–05 and apply to major stationary sources or modifications constructed in or impacting upon a nonattainment area as required under part D of title I of the CAA with respect to the NAAQS. The changes to Chapter 335–3–14–05 that EPA is now approving into the SIP were provided to update the existing provisions to be consistent with the current federal NNSR rules, including the WEPCO Rule, 2002 NSR Reform Rule (and associated Reconsideration Rule and Vacated Elements Rule), Phase 2 Rule, NSR PM2.5 Rule, PM2.5 PSD Increment-SILs-SMC Rule, and the Fugitive Emissions Interim Rule. These changes to ADEM’s regulations became state effective on May 23, 2011.

III. Incorporation by Reference

In this rule, 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 portions of ADEM Regulation Chapter 335–3–14–05 entitled “Air Permits Authorizing Construction in or Near Non-Attainment Areas,” effective May 23, 2011, with revisions and additions to applicability, definitions, permitting requirements, offset rules, area classifications, air quality models, control technology review, air quality monitoring, source information, source obligation, innovative control technology, and actuals plantwide applicability limits, and with administrative changes throughout. EPA has made, and will continue to make, these documents generally available electronically through www.regulations.gov and/or in hard copy at the EPA Region 4 office (see the ADDRESSES section of this preamble for more information).

IV. Final Action

EPA is taking final action to approve the portions of Alabama’s May 2, 2011, submission that make changes to Alabama’s SIP-approved NNSR regulations set forth at ADEM Rule 335–3–14–05, with the exceptions noted above. ADEM submitted the proposed changes to its NNSR SIP to be consistent with amendments to the federal regulations made by the WEPCO Rule, the 2002 NSR Reform Rule (and associated Reconsideration Rule and Vacated Elements Rule), Phase 2 Rule, NSR PM2.5 Rule, PM2.5 PSD Increment-SILs-SMC Rule, and the Fugitive Emissions Interim Rule. The Agency is approving these changes to the Alabama SIP because they are consistent with section 110 of the CAA and EPA regulations.

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. Accordingly, 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:

• Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
• is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
• does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).
• does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register.

This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 11, 2016. 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


Dated: December 18, 2015.

Heather McTeer Toney,
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. Section 52.50(c) is amended under Chapter 335–3–14 by revising the entry for “Section 335–3–14–.05” to read as follows:

§ 52.50 Identification of plan.

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

EPA-APPROVED ALABAMA REGULATIONS

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Chapter No. 335–3–14 Air Permits

With the exception of: The portion of 335–3–14–.05(1)(k) stating “excluding ethanol production facilities that produce ethanol by natural fermentation”; and 335–3–14–.05(2)(c)3 (addressing fugitive emission increases and decreases). Also with the exception of the state-withdrawn elements: 335–3–14–.05(1)(h) (the actual-to-potential test for projects that only involve existing emissions units); the last sentence at 335–3–14–.05(3)(g), stating “Interpollutant offsets shall be determined based upon the following ratios”; and the NNSR interpollutant ratios at 335–3–14–.05(3)(g)1–4.
ENVIRONMENTAL PROTECTION AGENCY
40 CFR Part 52

Approval and Promulgation of Implementation Plans; Infrastructure and Interstate Transport State Implementation Plan for the 2010 Sulfur Dioxide National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving elements of a State Implementation Plan (SIP) submission from the State of Texas for the Sulfur Dioxide (SO₂) National Ambient Air Quality Standards (NAAQS). The submittal addresses how the existing SIP provides for implementation, maintenance, and enforcement of the 2010 SO₂ NAAQS. Specifically, EPA is approving the following infrastructure elements, or portions thereof: 110(a)(2)(A), (B), (C), (D)(ii)(I)(PSD portion), (D)(ii), (E), (F), (C), (H), (J), (K), (L), and (M). EPA is not taking action on: The portion pertaining to section 110(a)(2)(D)(i)(I), which concerns interstate pollution transport affecting attainment and maintenance of the NAAQS and the portion pertaining to section 110(a)(2)(D)(i)(II) pertaining to visibility protection.

II. Final Action

EPA is approving portions of the May 6, 2013, infrastructure SIP submission from Texas, which addresses the requirements of CAA sections 110(a)(1) and (2) as applicable to the 2010 SO₂ NAAQS. Specifically, EPA is approving the following infrastructure elements, or portions thereof: 110(a)(2)(A), (B), (C), (D)(ii)(I)(PSD portion), (D)(ii), (E), (F), (C), (H), (J), (K), (L), and (M). EPA is not taking action on: The portion pertaining to section 110(a)(2)(D)(i)(I), which concerns interstate pollution transport affecting attainment and maintenance of the NAAQS and the portion pertaining to section 110(a)(2)(D)(i)(II) pertaining to visibility protection.

III. 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. 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. Accordingly, 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 Clean Air Act; 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 12298 (59 FR 7629, February 16, 1994).

In addition, 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 and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 11, 2016. 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).)