



**6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R04-OAR-2015-0313; FRL- 9931-24-Region 4]**

**Approval and Promulgation of Implementation Plans for the State of Alabama:**

**Cross-State Air Pollution Rule**

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

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking direct final action to approve the State of Alabama's March 27, 2015, State Implementation Plan (SIP) revision, submitted by the Alabama Department of Environmental Management (ADEM). This SIP revision provides Alabama's state-determined allowance allocations for existing electric generating units (EGUs) in the State for the 2016 control periods and replaces the allowance allocations for the 2016 control periods established by EPA under the Cross-State Air Pollution Rule (CSAPR). The CSAPR addresses the "good neighbor" provision of the Clean Air Act (CAA or Act) that requires states to reduce the transport of pollution that significantly affects downwind nonattainment and maintenance areas. In this direct final action, EPA is approving Alabama's SIP revision, incorporating the state-determined allocations for the 2016 control periods into the SIP, and amending the regulatory text of the CSAPR Federal Implementation Plan (FIP) to reflect this approval and inclusion of the state-determined allocations. The CSAPR

FIPs for Alabama remain in place until such time as the State decides to replace the FIPs with a SIP revision to allocate trading program allowances for control periods 2017 and beyond. EPA is taking direct final action to approve Alabama's SIP revision because it meets the requirements of the CAA and the CSAPR requirements to replace EPA's allowance allocations for the 2016 control periods. This action is being taken pursuant to the CAA and its implementing regulations.

**DATES:** This direct final rule is effective **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** without further notice, unless EPA receives adverse comment by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the Federal Register and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2015-0313, by one of the following methods:

1. [www.regulations.gov](http://www.regulations.gov): Follow the on-line instructions for submitting comments.
2. E-mail: [R4-ARMS@epa.gov](mailto:R4-ARMS@epa.gov).
3. Fax: (404) 562-9019.
4. Mail: "EPA-R04-OAR-2015-0313," Air Regulatory Management Section (formerly Regulatory Development 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.

5. Hand Delivery or Courier: Ms. Lynorae Benjamin, Chief, Air Regulatory Management Section, Air Planning and Implementation Branch (formerly Air Planning Branch), Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA-R04-OAR-2015-0313. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through [www.regulations.gov](http://www.regulations.gov) or e-mail, information that you consider to be CBI or otherwise protected. The [www.regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification,

EPA may not be able to consider your comment. Electronic files should not have special characters or any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*Docket:* All documents in the electronic docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the 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:** Twunjala Bradley, 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. Ms. Twunjala Bradley can be reached by phone at (404) 562-9352 or via electronic mail at [bradley.twunjala@epa.gov](mailto:bradley.twunjala@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

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

EPA is taking direct final action to approve Alabama's March 27, 2015, SIP revision submitted by ADEM that narrowly modifies the allocations of allowances established by EPA under the CSAPR FIPs for existing EGUs for the 2016 control periods.<sup>1</sup> The CSAPR allows a subject state, instead of EPA, to allocate allowances under the SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season trading programs to existing EGUs in the State for the 2016 control periods provided that the state meets certain regulatory requirements.<sup>2</sup> EPA issued the CSAPR on August 8, 2011, to address CAA section 110(a)(2)(D)(i)(I) requirements concerning the interstate transport of air pollution and to replace the Clean Air Interstate Rule<sup>3</sup> (CAIR), which the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) remanded to EPA for replacement.<sup>4</sup> EPA found that emissions of SO<sub>2</sub> and NO<sub>x</sub> in 28 eastern, midwestern, and southern states contribute significantly to nonattainment or interfere with maintenance in one or more downwind states with respect to one or more of three air quality standards—the annual PM<sub>2.5</sub> NAAQS

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<sup>1</sup> Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals; August 8, 2011 (76 FR 48208).

<sup>2</sup> The CSAPR is implemented in two Phases (I and II) with Phase I referring to 2015 and 2016 control periods, and Phase II consisting of 2017 and beyond control periods.

<sup>3</sup> Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone Clean Air Interstate Rule; Revisions to Acid Rain Program; Revisions to the NO<sub>x</sub> SIP Call; May 12, 2005 (70 FR 25162).

<sup>4</sup> *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008), *modified on reh'g* by 550 F.3d 1176.

promulgated in 1997<sup>5</sup> (15 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ), the 24-hour  $\text{PM}_{2.5}$  NAAQS promulgated in 2006<sup>6</sup> ( $35 \mu\text{g}/\text{m}^3$ ), and the 8-hour ozone NAAQS promulgated in 1997<sup>7</sup> (0.08 parts per million). The CSAPR identified emission reduction responsibilities of upwind states, and also promulgated enforceable FIPs to achieve the required emission reductions in each of these states through cost effective and flexible requirements for power plants.

Alabama is subject to the FIPs that implement the CSAPR and require certain EGUs to participate in the EPA-administered federal  $\text{SO}_2$ ,  $\text{NO}_x$  annual, and  $\text{NO}_x$  ozone season cap-and-trade programs. Alabama's March 27, 2015, SIP revision allocates state-determined allowances under the CSAPR to existing EGUs in the State for the 2016 control periods only, utilizing the same methodology EPA established to allocate unit-specific allowances under the CSAPR FIPs, but allowing for modifications to specific aspects of the allocation methodology to address the State's and source owners/operators unique implementation situations. Alabama's SIP revision includes state-determined allocations for the CSAPR  $\text{NO}_x$  (annual and ozone season) and  $\text{SO}_2$  trading programs, and complies with the 2016 allocation SIP requirements set forth at 40 CFR 52.38 and 52.39. Under these regulations, a state may replace EPA's CSAPR allowance allocations for existing EGUs for the 2016 control periods provided that the state submits a SIP revision containing those allocations to EPA no later than April 1, 2015 that meets the

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<sup>5</sup> National Ambient Air Quality Standards for Particulate Matter; July 18, 1997 (62 FR 36852).

<sup>6</sup> National Ambient Air Quality Standards for Particulate Matter; October 17, 2006 (71 FR 61144).

<sup>7</sup> National Ambient Air Quality Standards for Ozone; July 18, 1997 (62 FR 38856).

requirements in 40 CFR 52.38 and 52.39.

Through this action, EPA is approving Alabama's March 27, 2015, SIP revision, incorporating the allocations into the SIP, and amending the CSAPR FIP's regulatory text for Alabama at 40 CFR 52.54 and 52.55 to reflect this approval and inclusion of the state-determined allowance allocation for the 2016 control periods. EPA is not making any other changes to the CSAPR FIPs for Alabama in this action. The CSAPR FIPs for Alabama remain in place until such time the State decides to replace the FIPs with a SIP revision to allocate trading program allowances for control periods 2017 and beyond. EPA is taking direct final action to approve Alabama's March 27, 2015, SIP submission because it complies with the CAA and the CSAPR. Below is a summary of the provisions allowing a state to submit SIP revisions to EPA to modify the 2016 allowance allocations. For more detailed information on the CSAPR, refer to the August 8, 2011, preamble and other subsequent related rulemakings referenced throughout this rulemaking.

## **II. 2016 CSAPR SIPs**

The CSAPR allows states to make 2016 allowance allocations through submittal of a complete SIP revision that is narrower in scope than an abbreviated or full SIP submission states use to replace the FIPs and/or to make allocation decisions for 2017 and beyond. Pursuant to the CSAPR, a state may adopt and include in a SIP revision for the 2016 control period a list of units and the amount of allowances allocated to each unit on the list, provided the list of units and allocations meets specific requirements set forth in 40 CFR 52.38(a)(3) and (b)(3) and 52.39(d)

and (g) for NO<sub>x</sub> and SO<sub>2</sub>, respectively. *See* 40 CFR 52.38 and 52.39. If these requirements are met, the Administrator will approve the allowance allocation provisions replacing the provisions in 40 CFR part 97 for the State. SIP revisions under this expedited process may only allocate each state budget minus the new unit set-aside and the Indian country new unit set-aside. For states subject to multiple trading programs, options are available to submit 2016 state-determined allocations for one or more of the applicable trading programs while leaving unchanged the EPA-determined allocations for 2016 in the remaining applicable trading programs.<sup>8</sup>

In developing this procedure, EPA set deadlines for submitting the SIP revisions for 2016 allocations and for recordation of the allocations that balanced the need to record allowances sufficiently ahead of the control periods with the desire to allow state flexibility for 2016 control periods. These deadlines allow sufficient time for EPA to review and approve these SIP revisions, taking into account that EPA approval must be final and effective before the 2016 allocations can be recorded and the allowances are available for trading. The CSAPR set an October 17, 2011 deadline for states to notify EPA of their intent to submit these SIP revisions modifying allowance allocations for the second control periods (except with respect to the changes established in the Supplemental Rule) and replace the provisions of the CSAPR FIPs (40

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<sup>8</sup> States can also submit SIP revisions to replace EPA-determined, existing unit allocations with state-determined allocations for control periods after 2016 via a separate process described at 40 CFR 52.38(a)(4), (a)(5),(b)(4), and (b)(5) and 52.39(e),(f), (h) and (i). *See also* Preamble of the CSAPR and Interim Final Rule (76 FR 48208 and 79 FR 71663).

CFR part 97) with regard to the State and the control periods in 2016 with a list of EGUs and the amount of allowances allocated to each. *See* 40 CFR 52.38 and 52.39.<sup>9</sup>

Twelve states, including Alabama, notified EPA by the deadline of their intentions to submit their 2013 allocation SIPs to EPA by April 1, 2012, for the second control periods.<sup>10</sup> However, pursuant to EPA's December 3, 2014, Interim Final Rule, the deadline to submit these SIPs was tolled for three years, in effect requiring states, including Alabama, to submit a 2016 state-determined allocation SIP by April 1, 2015, for the CSAPR 2016 control periods.<sup>11</sup> Each state may submit a SIP to allocate state-determined allowances for the 2016 control periods provided it meets the following requirements pursuant to 40 CFR 52.38 and 52.39:

- Notify the EPA Administrator by October 17, 2011, of intent to submit state allocations for the 2016 control periods (formerly 2013) in a format specified by the Administrator. *See* 40 CFR 52.38(a)(3)(v)(A), 52.38(b)(3)(v)(A), 52.39(d)(5)(i), and 52.39(g)(5)(i).
- Submit to EPA the state-determined allocation list SIP revision modifying allowance allocations for the 2016 control periods no later than April 1, 2015. *See* 40 CFR 52.38(a)(3)(v)(B), 52.38(b)(3)(v)(B), 52.39(d)(5)(ii), and 52.39(g)(5)(ii).

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<sup>9</sup> Alabama informed EPA of their intention in a letter dated September 16, 2011. For the five states (Iowa, Michigan, Missouri, Oklahoma, and Wisconsin) covered in the Supplemental Rule in the case of ozone season NO<sub>x</sub>, March 6, 2012, was the date by which notifications of intentions to submit state allocations were due to the Administrator. *See* 76 FR 80760, 79 FR 71663 and 40 CFR 52.38(b)(3)(v). Note that the March 6, 2012 deadline for such notifications was modified by the December 3, 2014 Interim Final Rule to March 6, 2015. *See* 79 FR 71671.

<sup>10</sup> The docket for this action contains Alabama's September 16, 2011 letter notifying EPA of its intention to submit a SIP revision.

<sup>11</sup> In the case of ozone season NO<sub>x</sub>, SIP revisions to address 2016 allocations for the five states covered by the Supplemental Rule are due by October 1, 2015. *See* 40 CFR 52.38(b)(3)(v)(B).

- Provide a 2016 state-determined allocation list only for units within the State that commenced commercial operation before January 1, 2010. *See* 40 CFR 52.38(a)(3)(i), 52.38(b)(3)(i), 52.39(d)(1), and 52.39(g)(1).
- Ensure the sum of the state-determined allocations are equal to or are less than the total state budget for 2016 minus the sum of the new unit set-aside and the Indian country new unit set-aside. *See* 40 CFR 52.38(a)(3)(ii), 52.38(b)(3)(ii), 52.39(d)(2), and 52.39(g)(2).
- Submit the 2016 state-determined allowance allocation list as a SIP revision electronically to EPA in the format specified by the Administrator. *See* 40 CFR 52.38(a)(3)(iii), 52.38(b)(3)(iii), 52.39(d)(3), and 52.39(g)(3).
- Confirm that the SIP revision does not provide for any changes to the listed units or allocations after approval of the SIP revision by EPA and does not provide for any change to any allocation determined and recorded by the Administrator under subpart AAAAA, BBBBB, CCCCC, or DDDDD of 40 CFR part 97. *See* 40 CFR 52.38(a)(3)(iv), 52.38(b)(3)(iv), 52.39(d)(4), and 52.39(g)(4).

Additionally, these narrow SIP revisions for the 2016 state-determined allocations are required to comply with SIP completeness elements set forth in 40 CFR part 51, appendix V (i.e., conduct adequate public notice of the submission, provide evidence of legal authority to adopt SIP revisions, and ensure the SIP is submitted to EPA by the State's Governor or his/her designee). If a qualified state (i.e., one of the twelve states that met the October 17, 2011, notification deadline) submits to EPA a 2016 CSAPR SIP by April 1, 2015, meeting all the

above-described requirements and EPA approves the SIP submission by October 1, 2015, EPA will record state-determined allocations for 2016 by October 1, 2015, into the Allowance Management System (AMS). Alabama's March 27, 2015, SIP submission addresses the aforementioned requirements allowing a state to allocate 2016 CSAPR allowances for the annual and ozone season NO<sub>x</sub> and Group 2 SO<sub>2</sub> trading programs. EPA's analysis of Alabama's SIP submission is explained below in section III.

### **III. What is EPA's Analysis of Alabama's SIP Submission?**

On March 27, 2015, Alabama submitted a SIP revision intended to replace the CSAPR FIP allocations of Transport Rule (TR) NO<sub>x</sub> annual, TR NO<sub>x</sub> Ozone season, and TR SO<sub>2</sub> Group 2 allowances for the 2016 control periods. For approval, this SIP revision must meet the specific requirements found in 40 CFR 52.38(a)(1) through (3), (b)(1) through (3), and 52.39(a), (c), and (g) described above. The following is a list of criteria under 40 CFR 52.38 and .39, described in Part II of this document, and the results of EPA's analysis of Alabama's SIP revision:

- A. A complete SIP revision must be submitted to EPA no later than April 1, 2015 (40 CFR 52.38(a)(3)(v)(B), 52.38(b)(3)(v)(B), and 52.39(g)(5)(ii)).

EPA has reviewed the March 27, 2015 submittal from Alabama and found it to be complete. This submittal satisfies the applicable elements of SIP completeness set forth in appendix V to 40 CFR part 51.

B. Notification from a State to EPA must be received by October 17, 2011, or March 6, 2015, in the case of ozone season NO<sub>x</sub> SIP revisions for states covered by the December 27, 2011 Supplemental Rule (76 FR 80760), of its intent to submit a complete SIP revision for 2016 existing unit allocations (40 CFR 52.38(a)(3)(v)(A), 52.38(b)(3)(v)(A), 52.39(d)(5)(i), and 52.39(g)(5)(i)).

On September 16, 2011, Alabama notified EPA via a letter of the State's intent to submit complete SIP revisions for allocating TR NO<sub>x</sub> Annual, TR NO<sub>x</sub> Ozone season, and TR SO<sub>2</sub> Group 2 allowances to existing units (i.e., units that commenced commercial operation before January 1, 2010). Although the letter indicates that that the State intended to submit the SIP revisions by the April 2, 2012<sup>12</sup> deadline addressing the allocation of TR allowances for the 2013 control periods, these dates have been tolled by three years in the Interim Final Rule (79 FR 71663, December 3, 2014. See footnote 5.). The September 16, 2011 letter submitted by Alabama notifying EPA of the State's intent to submit revised CSAPR SIPs submittal satisfies the requirements of 40 CFR 52.38(a)(3)(A), 52.38(b)(3)(A), and 52.39(g)(5)(i).

C. The SIP revision should include a list of TR NO<sub>x</sub> Annual, TR NO<sub>x</sub> Ozone Season, TR SO<sub>2</sub> Group 1 or Group 2 units, whichever is applicable, that are in the State and

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<sup>12</sup> The original requirement to submit a complete SIP to EPA was by April 1, 2012 (as per 40 CFR 52.38(a)(3)(v)(B)). However, April 1, 2012 was a Sunday, thus, the notification from the State indicates that the State intended to submit the SIP revisions by April 2, 2012, rather than April 1, 2012.

commenced commercial operation before January 1, 2010 (40 CFR 52.38(a)(3)(i), 52.38(b)(3)(i), 52.39(d)(1), and 52.39(g)(1)).

As part of Alabama's SIP revision, the State submitted a list of units to be allocated TR NO<sub>x</sub> Annual, TR NO<sub>x</sub> Ozone Season, and TR SO<sub>2</sub> Group 2 allowances for the 2016 control periods. The list identifies the same units as were identified in the notice of data availability (NODA) published by EPA on December 3, 2014 (79 FR 71674). Hence, EPA has determined that each unit on the list submitted by Alabama as part of the SIP revision is located in the State of Alabama and had commenced commercial operation before January 1, 2010.

D. The total amount of TR NO<sub>x</sub> annual, TR NO<sub>x</sub> Ozone Season, or TR SO<sub>2</sub> Group 1 or Group 2 allowance allocations, whichever is applicable, must not exceed the amount, under 40 CFR 97.410(a), 97.510(a), 97.610(a), 97.710(a), whichever is applicable for the State and the control periods in 2016, of TR NO<sub>x</sub> Annual, TR NO<sub>x</sub> Ozone Season, TR SO<sub>2</sub> Group 1 or Group 2 trading budget minus the sum of the new unit set-aside and Indian country new unit set-aside (40 CFR 52.38(a)(3)(ii), 52.38(b)(3)(ii), 52.39(d)(2), and 52.39(g)(2)).

The CSAPR established the budgets and new unit set-asides for Alabama for the 2016 control periods as 72,691 tons for TR NO<sub>x</sub> annual emissions and 1,454 tons for TR NO<sub>x</sub> Annual new unit set-aside; 31,746 tons for TR NO<sub>x</sub> ozone season emissions and 635 tons for the TR NO<sub>x</sub> ozone season new unit set-aside; 216,033 tons for TR SO<sub>2</sub> Group 2 emissions and 4,321 for

the TR SO<sub>2</sub> Group 2 new unit set-aside. Alabama's SIP revision, for approval in this action, does not affect these budgets, which are total amount of allowances available for allocation for the 2016 control periods under the EPA-administered cap-and-trade program under the CSAPR FIPs. In short, the abbreviated SIP revision only affects allocations of allowances under the established budgets.

The Alabama SIP revision allocating TR NO<sub>x</sub> annual allowances for the 2016 control period does not exceed the budget under 40 CFR 97.410(a) minus the new unit set-aside (72,691 tons – 1,454 = 71,237).<sup>13</sup> The Alabama SIP revision allocates 71,234 TR NO<sub>x</sub> annual allowances to existing units in the State. EPA will place the 1,457 unallocated allowances from the Alabama CSAPR 2016 budget into the TR NO<sub>x</sub> annual new unit set-aside for the 2016 control period.

The Alabama SIP revision allocating TR NO<sub>x</sub> ozone season allowances for the 2016 control period does not exceed the budget under §97.510(a) minus the new unit set-aside (31,746 tons - 635 tons = 31,111).<sup>14</sup> The Alabama SIP revision allocates 31,107 TR NO<sub>x</sub> ozone season allowances to existing units in the State. EPA will place the 639 unallocated allowances from the Alabama CSAPR 2016 budget into the TR NO<sub>x</sub> ozone season new unit set-aside for the 2016 control period.

The Alabama SIP revision allocating TR SO<sub>2</sub> Group 2 allowances for the 2016 control

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<sup>13</sup> The State of Alabama does not have a budget under 40 CFR 97.410(a) for a NO<sub>x</sub> Annual Indian Country new unit set-aside for the 2016 control period.

<sup>14</sup> The State of Alabama does not have a budget under 40 CFR 97.510(a) for a NO<sub>x</sub> Ozone Season Indian Country new unit set-aside for the 2016 control period.

period exceeds, by a very small number of allowances (three) due to rounding, the budget under §97.710(a) minus the new unit set-aside (216,033 tons - 4,321 tons = 211,712).<sup>15</sup> The Alabama SIP revision allocates 211,715 TR SO<sub>2</sub> Group 2 allowances to existing units in the State. However, EPA notes that proportionately, three allowances is a tiny fraction of the overall new unit set-aside budget for new Group 2 SO<sub>2</sub> units in Alabama (approximately 0.07%). In addition, for 2015, none of the 4,318 Group 2 SO<sub>2</sub> allowances available to allocate to new units have been allocated due to a dearth of qualifying new units in Alabama, and it appears highly likely this will be the case again in 2016 (i.e., it is very likely these allowances will not be needed by new units in Alabama in 2016). EPA therefore does not believe the extra three allowances allocated to Alabama's existing CSAPR units in 2016 should weigh negatively in EPA's evaluation of the State's 2016 CSAPR SIP submittal, and will enter 4,318 allowances from the Alabama CSAPR 2016 budget into the TR SO<sub>2</sub> Group 2 new unit set-aside for the 2016 control period.<sup>16</sup>

- E. The list should be submitted electronically in the format specified by the EPA (40 CFR 52.38(a)(3)(iii), 52.38(b)(3)(iii), 52.39(d)(3), and 52.39(g)(3)).

On March 27, 2015, EPA received an e-mail submittal from Alabama in the format requested.

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<sup>15</sup> The State of Alabama does not have a budget under 40 CFR 97.710(a) for a Group 2 SO<sub>2</sub> Indian Country new unit set-aside for the 2016 control period.

<sup>16</sup> The quantities of allowances to be allocated through this process may differ slightly from the amounts set forth in 40 CFR 97.410(a), 97.510(a), 97.610(a), and 97.710(a) because of rounding in the spreadsheet of CSAPR FIP allowance allocations to existing units.

F. The SIP revision should provide a permanent allocation for the units on the list for 2016 (40 CFR 52.38(a)(3)(iv), 52.38(b)(3)(iv), and 52.39(g)(4)).

The Alabama SIP revision does not provide for any changes to the listed units or allocations after approval of the SIP revision and do not provide for any change to any allocation determined and recorded by the Administrator under subpart AAAAAA,BBBBB, or DDDDD of 40 CFR part 97.

For the reasons discussed above, Alabama's SIP submission complies with the 2016 SIP allocation requirements as codified at 40 CFR 52.38 and 52.39 and established in the CSAPR FIPs. Through this action, EPA is approving Alabama's March 27, 2015, SIP revision, incorporating the allocations into the SIP, and amending the CSAPR FIPs' regulatory text for Alabama at 40 CFR 52.54 and 52.55 to reflect this approval and inclusion of the state-determined allowance allocation for the 2016 control periods. EPA is not making any other changes to the CSAPR FIPs for Alabama in this action. EPA is taking final action to approve Alabama's March 27, 2015, SIP revision because it is in accordance with the CAA and its implementing regulations.

#### **IV. Final Action**

EPA is taking final action to approve Alabama's March 27, 2015, CSAPR SIP revision that provides Alabama's state-determined allowance allocations for existing EGUs in the State for the 2016 control periods to replace the allowance allocations for the 2016 control periods

established by EPA under CSAPR. Consistent with the flexibility given to states in the CSAPR FIPs at 40 CFR 52.38 and 52.39, Alabama's SIP revision allocates state-determined allowances to existing EGUs in the State under the CSAPR's NO<sub>x</sub> annual and ozone season and SO<sub>2</sub> Group 2 trading programs. Alabama's SIP revision meets the applicable requirements in 40 CFR 52.38 for NO<sub>x</sub> annual and NO<sub>x</sub> ozone season emissions, and 40 CFR 52.39 for Group 2 SO<sub>2</sub> emissions. EPA is approving Alabama's SIP revision because it is in accordance with the CAA and its implementing regulations.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this Federal Register publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] without further notice unless the Agency receives adverse comments by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] and no further

action will be taken on the proposed rule.

## **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:

- 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 (Public Law 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 [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of this Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. 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: July 15, 2015.

Heather McTeer Toney,

Regional Administrator,

Region 4.

40 CFR parts 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(e) is amended by adding an entry for “Cross State Air Pollution Rule - State-Determined Allowance Allocations for the 2016 control periods” at the end of the table to read as follows:

**§ 52.50 Identification of plan.**

\* \* \* \* \*

(e) \* \* \*

EPA Approved Alabama Non-Regulatory Provisions

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
**	**	**	*	
Cross State Air Pollution Rule - State-Determined Allowance Allocations for	Alabama	3/27/2014	[Insert date of publication in Federal Register] [Insert	

the 2016 control periods			Federal Register citation]	
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3. Section 52.54 is amended by adding paragraphs (a)(3) and (b)(3) to read as follows:

**§ 52.54 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?**

(a) \* \* \*

(3) Pursuant to § 52.38(a), Alabama’s state-determined NO<sub>x</sub> annual allowance allocations established in the March 27, 2015, SIP revision replace the unit level NO<sub>x</sub> annual allowance provisions of the CSAPR FIP at 40 CFR 97.411(a) for the State for the 2016 control period with a list of NO<sub>x</sub> annual units that commenced operation prior to January 1, 2010, in the State and the amount of state-determined NO<sub>x</sub> annual allowances allocated to each unit on such list, for the 2016 control period as approved by EPA on [Insert date of publication in Federal Register] [Insert citation of publication].

(b) \* \* \*

(3) Pursuant to § 52.38(b), Alabama’s state-determined NO<sub>x</sub> ozone season allocations established in the March 27, 2015, SIP revision replace the unit level NO<sub>x</sub> ozone season allowance provisions of the CSAPR FIP at 40 CFR 97.511(a) for the State for the 2016 control period with a list of NO<sub>x</sub> ozone season units that commenced operation prior to January 1, 2010, in the State and the amount of state-determined NO<sub>x</sub> ozone season allowances allocated to each unit on such list, for the 2016 control period as approved by EPA on [Insert date of publication in

Federal Register] [Insert citation of publication].

4. Section 52.55 is amended by adding paragraph (c) to read as follows:

**§ 52.55 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?**

\* \* \* \* \*

(c) Pursuant to § 52.39(g), Alabama's state-determined Group 2 SO<sub>2</sub> allowance allocations established in the March 27, 2015, SIP revision replace the unit level Group 2 SO<sub>2</sub> allowance provisions of the CSAPR FIP at 40 CFR 97.711(a) for the State for the 2016 control period with a list of Group 2 SO<sub>2</sub> units that commenced operation prior to January 1, 2010, in the State and the amount of state-determined SO<sub>2</sub> allowances allocated to each unit on such list, for the 2016 control period as approved by EPA on [Insert date of publication in Federal Register] [Insert citation of publication].

**[FR Doc. 2015-18217 Filed: 7/24/2015 08:45 am; Publication Date: 7/27/2015]**