

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[EPA-R04-OAR-2017-0452; FRL-9969-30—Region 4]

**Air Plan Approval; Georgia; Cross-State Air Pollution Rule****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving portions of a revision to the Georgia State Implementation Plan (SIP) concerning the Cross-State Air Pollution Rule (CSAPR) and the Clean Air Interstate Rule (CAIR) that was submitted by Georgia on July 26, 2017. Under CSAPR, large electricity generating units (EGUs) in Georgia are subject to Federal Implementation Plans (FIPs) requiring the units to participate in CSAPR's federal trading program for annual emissions of nitrogen oxides (NO<sub>x</sub>), one of CSAPR's two federal trading programs for annual emissions of sulfur dioxide (SO<sub>2</sub>), and one of CSAPR's two federal trading programs for ozone season emissions of NO<sub>x</sub>. This action approves the State's regulations requiring large Georgia EGUs to participate in new CSAPR state trading programs for annual NO<sub>x</sub>, annual SO<sub>2</sub>, and ozone season NO<sub>x</sub> emissions integrated with the CSAPR federal trading programs, replacing the corresponding FIP requirements. Under the CSAPR regulations, approval of these portions of the SIP revision automatically eliminates Georgia's units' obligations under the corresponding CSAPR FIPs addressing interstate transport requirements for the 1997 Annual Fine Particulate Matter (PM<sub>2.5</sub>) National Ambient Air Quality Standards (NAAQS), the 2006 24-hour PM<sub>2.5</sub> NAAQS, and the 1997 8-hour Ozone NAAQS. Approval of these portions of the SIP revision satisfies Georgia's good neighbor obligation for the 1997 Annual PM<sub>2.5</sub> NAAQS, the 2006 24-hour PM<sub>2.5</sub> NAAQS, and the 1997 8-hour Ozone NAAQS. In addition, approval of this revision removes from Georgia's SIP those state trading program rules adopted to comply with CAIR.

**DATES:** This rule is effective November 13, 2017.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2017-0452. 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 may not be publicly available, *i.e.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, 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:** Ashten Bailey, Air Regulatory Management Section, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303-8960. Ms. Bailey can be reached by telephone at (404) 562-9164 or via electronic mail at [bailey.ashten@epa.gov](mailto:bailey.ashten@epa.gov).

**SUPPLEMENTARY INFORMATION:****I. Background on CAIR**

To help reduce interstate transport of ozone and PM<sub>2.5</sub> pollution in the eastern half of the United States, EPA finalized CAIR in May 2005.<sup>1</sup> CAIR addressed both the 1997 Ozone and PM<sub>2.5</sub> NAAQS and required 28 states, including Georgia, and the District of Columbia to limit emissions of NO<sub>x</sub> and SO<sub>2</sub>. For CAIR, EPA developed three separate cap and trade programs that could be used to achieve the required reductions: The CAIR NO<sub>x</sub> ozone season trading program, the CAIR NO<sub>x</sub> annual trading program, and the CAIR SO<sub>2</sub> trading program. Georgia was subject to CAIR requirements only with respect to annual NO<sub>x</sub> and SO<sub>2</sub> emissions.

On December 23, 2008, CAIR was remanded to EPA by the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008), modified on rehearing, 550 F.3d 1176. This ruling allowed CAIR to remain in effect until a new interstate transport rule consistent with the Court's opinion was developed. While EPA worked on developing a new rule

to address the interstate transport of air pollution, the CAIR program continued as planned with the NO<sub>x</sub> annual and ozone season programs beginning in 2009 and the SO<sub>2</sub> annual program beginning in 2010.

In response to the remand of CAIR, EPA promulgated CSAPR on July 6, 2011.<sup>2</sup> Along with provisions discussed more fully in the following section, the rule contained provisions that would sunset CAIR-related obligations on a schedule coordinated with the implementation of CSAPR compliance requirements. CSAPR was to become effective January 1, 2012; however, the timing of CSAPR's implementation was impacted by a number of court actions. On December 30, 2011, the D.C. Circuit stayed CSAPR prior to its implementation, and EPA was ordered to continue administering CAIR on an interim basis.<sup>3</sup> In a subsequent decision on the merits, the Court vacated CSAPR based on a subset of petitioners' claims.<sup>4</sup> However, on April 29, 2014, the U.S. Supreme Court reversed that decision and remanded the case to the D.C. Circuit for further proceedings.<sup>5</sup> Throughout the initial round of D.C. Circuit proceedings and the ensuing Supreme Court proceedings, the stay on CSAPR remained in place, and EPA continued to implement CAIR.

Following the April 2014 Supreme Court decision, EPA filed a motion asking the D.C. Circuit to lift the stay in order to allow CSAPR to replace CAIR in an equitable and orderly manner while further D.C. Circuit proceedings were held to resolve remaining claims from petitioners. Additionally, EPA's motion requested to toll, by three years, all CSAPR compliance deadlines that had not passed as of the approval date of the stay. On October 23, 2014, the D.C. Circuit granted EPA's request, and on December 3, 2014 (79 FR 71663), in an interim final rule, EPA set the updated effective date of CSAPR as January 1, 2015, and tolled the implementation of CSAPR Phase 1 to 2015 and CSAPR Phase 2 to 2017. In accordance with the interim final rule, the sunset date for CAIR was December 31, 2014, and EPA began implementing CSAPR on January 1, 2015.<sup>6</sup>

<sup>2</sup> See 76 FR 48208 (August 8, 2011).

<sup>3</sup> Order of December 30, 2011, in *EME Homer City Generation, L.P. v. EPA*, D.C. Cir. No. 11-1302.

<sup>4</sup> *EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7 (D.C. Cir. 2012), cert. granted 133 U.S. 2857 (2013).

<sup>5</sup> *EPA v. EME Homer City Generation, L.P.*, 134 S. Ct. 1584, 1600-01 (2014).

<sup>6</sup> See 40 CFR 51.123(ff) (sunsetting CAIR requirements related to NO<sub>x</sub>); 40 CFR 51.124(s) (sunsetting CAIR requirements related to SO<sub>2</sub>).

<sup>1</sup> 70 FR 25172 (May 12, 2005).

## II. Background on CSAPR and CSAPR-Related SIP Revisions

As discussed previously, EPA issued CSAPR in July 2011 to address the requirements of Clean Air Act (CAA or Act) section 110(a)(2)(D)(i)(I) concerning interstate transport of air pollution. As amended (including by the 2016 CSAPR Update<sup>7</sup>), CSAPR requires 27 Eastern states to limit their statewide emissions of SO<sub>2</sub> and/or NO<sub>x</sub> in order to mitigate transported air pollution unlawfully impacting other states' ability to attain or maintain four NAAQS: The 1997 Annual PM<sub>2.5</sub> NAAQS, the 2006 24-hour PM<sub>2.5</sub> NAAQS, the 1997 8-hour Ozone NAAQS, and the 2008 8-hour Ozone NAAQS. The CSAPR emissions limitations are defined in terms of maximum statewide "budgets" for emissions of annual SO<sub>2</sub>, annual NO<sub>x</sub>, and/or ozone season NO<sub>x</sub> by each covered state's large EGUs. The CSAPR state budgets are implemented in two phases of generally increasing stringency, with the Phase 1 budgets applying to emissions in 2015 and 2016 and the Phase 2 (and CSAPR Update) budgets applying to emissions in 2017 and later years. As a mechanism for achieving compliance with the emissions limitations, CSAPR establishes five federal emissions trading programs: a program for annual NO<sub>x</sub> emissions, two geographically separate programs for annual SO<sub>2</sub> emissions, and two geographically separate programs for ozone-season NO<sub>x</sub> emissions. CSAPR also establishes FIP requirements applicable to the large EGUs in each covered state.<sup>8</sup> Currently,

the CSAPR FIP provisions require each state's units to participate in up to three of the five CSAPR trading programs.

CSAPR includes provisions under which states may submit and EPA will approve SIP revisions to modify or replace the CSAPR FIP requirements while allowing states to continue to meet their transport-related obligations using either CSAPR's federal emissions trading programs or state emissions trading programs integrated with the federal programs, provided that the SIP revisions meet all relevant criteria.<sup>9</sup> Through such a SIP revision, a state may replace EPA's default provisions for allocating emission allowances among the state's units, employing any state-selected methodology to allocate or auction the allowances, subject to timing conditions and limits on overall allowance quantities. In the case of CSAPR's federal trading programs for ozone season NO<sub>x</sub> emissions (or an integrated state trading program), a state may also expand trading program applicability to include certain smaller EGUs.<sup>10</sup> If a state wants to replace CSAPR FIP requirements with SIP requirements under which the state's units participate in a state trading program that is integrated with and identical to the federal trading program even as to the allocation and applicability provisions, the state may submit a SIP revision for that purpose as well. However, no emissions budget increases or other substantive changes to the trading program provisions are allowed. A state whose units are subject to multiple CSAPR FIPs and federal trading programs may submit SIP revisions to modify or replace either some or all of those FIP requirements.

States can submit two basic forms of CSAPR-related SIP revisions effective for emissions control periods in 2017 or later years.<sup>11</sup> Specific conditions for

approval of each form of SIP revision are set forth in the CSAPR regulations. Under the first alternative—an "abbreviated" SIP revision—a state may submit a SIP revision that upon approval replaces the default allowance allocation and/or applicability provisions of a CSAPR federal trading program for the state.<sup>12</sup> Approval of an abbreviated SIP revision leaves the corresponding CSAPR FIP and all other provisions of the relevant federal trading program in place for the state's units.

Under the second alternative—a "full" SIP revision—a state may submit a SIP revision that upon approval replaces a CSAPR federal trading program for the state with a state trading program integrated with the federal trading program, so long as the state trading program is substantively identical to the federal trading program or does not substantively differ from the federal trading program except as discussed above with regard to the allowance allocation and/or applicability provisions.<sup>13</sup> For purposes of a full SIP revision, a state may either adopt state rules with complete trading program language, incorporate the federal trading program language into its state rules by reference (with appropriate conforming changes), or employ a combination of these approaches.

The CSAPR regulations identify several important consequences and limitations associated with approval of a full SIP revision. First, upon EPA's approval of a full SIP revision as correcting the deficiency in the state's implementation plan that was the basis for a particular set of CSAPR FIP requirements, the obligation to participate in the corresponding CSAPR federal trading program is automatically eliminated for units subject to the state's jurisdiction without the need for a separate EPA withdrawal action, so long as EPA's approval of the SIP is full and unconditional.<sup>14</sup> Second, approval of a full SIP revision does not terminate the obligation to participate in the corresponding CSAPR federal trading program for any units located in any Indian country within the borders of the state, and if and when a unit is located in Indian country within a state's borders, EPA may modify the SIP approval to exclude from the SIP, and include in the surviving CSAPR FIP instead, certain trading program provisions that apply jointly to units in the state and to units in Indian country

<sup>7</sup> See 81 FR 74504 (October 26, 2016). The CSAPR Update was promulgated to address interstate pollution with respect to the 2008 8-hour Ozone NAAQS and to address a judicial remand of certain original CSAPR ozone season NO<sub>x</sub> budgets promulgated with respect to the 1997 8-hour Ozone NAAQS. See 81 FR at 74505. The CSAPR Update established new emission reduction requirements addressing the more recent NAAQS and coordinated them with the remaining emission reduction requirements addressing the older ozone NAAQS, so that starting in 2017, CSAPR includes two geographically separate trading programs for ozone season NO<sub>x</sub> emissions covering EGUs in a total of 23 states. See 40 CFR 52.38(b)(1)–(2).

<sup>8</sup> States are required to submit good neighbor SIPs within three years (or less, if the Administrator so prescribes) after a NAAQS is promulgated. CAA section 110(a)(1) and (2). Where EPA finds that a state fails to submit a required SIP or disapproves a SIP, EPA is obligated to promulgate a FIP addressing the deficiency. CAA section 110(c). EPA found that Georgia failed to make timely submissions required to address the good neighbor provision with respect to the 1997 Annual PM<sub>2.5</sub> and 8-hour Ozone NAAQS (70 FR 21147, April 25, 2005), and the 2008 8-hour Ozone NAAQS (80 FR 39961, June 13, 2015). In addition, EPA disapproved Georgia's SIP revision submitted to address the good neighbor provision with respect to the 2006 24-hour PM<sub>2.5</sub> NAAQS. 76 FR 43159 (July 20, 2011). Accordingly, as a part of CSAPR and the

CSAPR Update, EPA promulgated FIPs applicable to sources in Georgia addressing the good neighbor provision with respect to the 1997 annual PM<sub>2.5</sub>, 1997 8-hour Ozone NAAQS, and the 2006 24-hour PM<sub>2.5</sub> NAAQS. As discussed below, when EPA finalized the CSAPR Update, EPA determined that Georgia did not interfere with nonattainment or maintenance for the 2008 8-hour Ozone NAAQS.

<sup>9</sup> See 40 CFR 52.38, 52.39. States also retain the ability to submit SIP revisions to meet their transport-related obligations using mechanisms other than the CSAPR federal trading programs or integrated state trading programs.

<sup>10</sup> States covered by both the CSAPR Update and the NO<sub>x</sub> SIP Call have the additional option to expand applicability under the CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program to include non-EGUs that would have participated in the former NO<sub>x</sub> Budget Trading Program.

<sup>11</sup> CSAPR also provides for a third, more streamlined form of SIP revision that is effective only for control periods in 2016 and is not relevant here. See 40 CFR 52.38(a)(3), (b)(3), (b)(7); 52.39(d), (g).

<sup>12</sup> 40 CFR 52.38(a)(4), (b)(4), (b)(8); 52.39(e), (h).

<sup>13</sup> 40 CFR 52.38(a)(5), (b)(5), (b)(9); 52.39(f), (i).

<sup>14</sup> 40 CFR 52.38(a)(6), (b)(10)(i); 52.39(j).

within the state's borders.<sup>15</sup> Finally, if at the time a full SIP revision is approved EPA has already started recording allocations of allowances for a given control period to a state's units, the federal trading program provisions authorizing EPA to complete the process of allocating and recording allowances for that control period to those units will continue to apply, unless EPA's approval of the SIP revision provides otherwise.<sup>16</sup>

On July 28, 2015, the D.C. Circuit issued a decision on a number of petitions related to CSAPR, which found that EPA required more emissions reductions than may have been necessary to address the downwind air quality problems to which some states contribute. The Court remanded several CSAPR emission budgets to EPA for reconsideration, including the Phase 2 SO<sub>2</sub> trading budget for Georgia.<sup>17</sup> However, Georgia has voluntarily adopted into their SIP a CSAPR state trading program that is integrated with the federal trading program and includes a state-established SO<sub>2</sub> budget equal to the state's remanded Phase 2 SO<sub>2</sub> emission budget.<sup>18</sup> EPA notes that nothing in the Court's decision affects Georgia's authority to seek incorporation into its SIP of a state-established budget as stringent as the remanded federally-established budget or limits EPA's authority to approve such a SIP revision. The CSAPR regulations provide each covered state with the option to meet its transport obligations through SIP revisions replacing the federal trading programs and requiring the state's EGUs to participate in integrated CSAPR state trading programs that apply emissions budgets of the same or greater stringency. Under the CSAPR regulations, when such a SIP revision is

approved, the corresponding FIP provisions are automatically withdrawn.

In the CSAPR rulemaking, EPA determined that air pollution transported from EGUs in Georgia would unlawfully affect other states' ability to attain or maintain the 1997 8-hour Ozone NAAQS, the 1997 Annual PM<sub>2.5</sub> NAAQS, and the 2006 24-hour PM<sub>2.5</sub> NAAQS, and included Georgia in the CSAPR ozone season NO<sub>x</sub> trading program and the annual SO<sub>2</sub> and NO<sub>x</sub> trading programs.<sup>19</sup> In the CSAPR Update rulemaking, EPA determined that Georgia was not linked to any identified downwind nonattainment or maintenance receptors for the 2008 8-hour Ozone NAAQS.<sup>20</sup> Georgia's units meeting the CSAPR applicability criteria are consequently currently subject to CSAPR FIPs that require participation in the CSAPR NO<sub>x</sub> Annual Trading Program, the CSAPR NO<sub>x</sub> Ozone Season Group 1 Trading Program, and the CSAPR SO<sub>2</sub> Group 2 Trading Program.<sup>21</sup>

On July 26, 2017, Georgia submitted to EPA a SIP revision including provisions that, upon approval, incorporates into Georgia's SIP CSAPR state trading program regulations to replace the CSAPR regulations for all three of these federal trading programs with regard to Georgia units, and removes SIP provisions related to CAIR. In a notice of proposed rulemaking (NPRM) published on August 16, 2017 (82 FR 38866), EPA proposed to approve the portions of Georgia's July 26, 2017, SIP submittal designed to replace the CSAPR federal trading programs and remove CAIR from Georgia's SIP. The NPRM provides additional detail regarding the background and rationale for EPA's actions. Comments on the NPRM were due on or before September 15, 2017. EPA received no adverse comments on the proposed action.

### 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 Georgia Rules for Air Quality Control, Rule 391-3-1-.02(12), Rule 391-3-1-.02(13), and Rule 391-3-1-.02(14), state effective on July 20, 2017, comprising Georgia's Cross State

Air Pollution Rule NO<sub>x</sub> Annual Trading Program, Georgia's Cross State Air Pollution Rule SO<sub>2</sub> Annual Trading Program, and Georgia's Cross State Air Pollution Rule NO<sub>x</sub> Ozone Season Trading Program, respectively. EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and/or at the EPA Region 4 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.<sup>22</sup>

### IV. Final Actions

EPA is approving the portions of Georgia's July 26, 2017, SIP submittal concerning the establishment for Georgia units of CSAPR state trading programs for annual NO<sub>x</sub>, annual SO<sub>2</sub> emissions, and ozone season NO<sub>x</sub> emissions. This approval revises the Georgia Rules for Air Quality Control in the SIP to include CSAPR as follows: 391-3-1-.02(12) will be revised to include Georgia's "Cross State Air Pollution Rule NO<sub>x</sub> Annual Trading Program;" 391-3-1-.02(13) will be revised to include Georgia's "Cross State Air Pollution Rule SO<sub>2</sub> Annual Trading Program;" and 391-3-1-.02(14) will be added to include "Georgia's Cross State Air Pollution Rule NO<sub>x</sub> Ozone Season Trading Program." These Georgia CSAPR state trading programs will be integrated with the federal CSAPR NO<sub>x</sub> Annual Trading Program, the federal CSAPR SO<sub>2</sub> Group 2 Trading Program, and the federal CSAPR NO<sub>x</sub> Ozone Season Group 1 Trading Program, respectively, and are substantively identical to the federal trading programs. Georgia units will generally be required to meet requirements under Georgia's CSAPR state trading programs equivalent to the requirements the units otherwise would have been required to meet under the corresponding CSAPR federal trading programs. EPA is approving these portions of the SIP revision because they meet the requirements of the CAA and EPA's regulations for approval of a CSAPR full SIP revision replacing a federal trading program with a state trading program.

<sup>15</sup> 40 CFR 52.38(a)(5)(iv)-(v), (a)(6), (b)(5)(v)-(vi), (b)(9)(vi)-(vii), (b)(10)(i); 52.39(f)(4)-(5), (i)(4)-(5), (j).

<sup>16</sup> 40 CFR 52.38(a)(7), (b)(11)(i); 52.39(k).

<sup>17</sup> *EME Homer City Generation, L.P. v. EPA (EME Homer City II)*, 795 F.3d 118 (D.C. Cir. 2015). The D.C. Circuit also remanded SO<sub>2</sub> budgets for Alabama, South Carolina, and Texas. The court also remanded Phase 2 ozone-season NO<sub>x</sub> budgets for eleven states, which did not include Georgia.

<sup>18</sup> See memo entitled "The U.S. Environmental Protection Agency's Plan for Responding to the Remand of the Cross-State Air Pollution Rule Phase 2 SO<sub>2</sub> Budgets for Alabama, Georgia, South Carolina and Texas" from Janet G. McCabe, EPA Acting Assistant Administrator for Air and Radiation, to EPA Regional Air Division Directors (June 27, 2016), available at <https://www.regulations.gov/document?D=EPA-HQ-OAR-2016-0598-0003>. The memo directs the Regional Air Division Directors to share the memo with state officials. EPA also communicated orally with officials in Alabama, Georgia, South Carolina, and Texas in advance of the memo.

<sup>19</sup> 76 FR 48208, 48213 (August 8, 2011).

<sup>20</sup> 81 FR 74504, 74506 (October 26, 2016). EPA also determined in the CSAPR Update rulemaking that Georgia had no further transport obligation under CAA section 110(a)(2)(D)(i)(I) with respect to the 1997 Ozone NAAQS beyond the ozone season NO<sub>x</sub> emission reduction requirements established in the original CSAPR rulemaking. *Id.* at 74525.

<sup>21</sup> 40 CFR 52.38(a)(2), (b)(2); 52.39(c); 52.584; 52.585.

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

EPA promulgated FIPs requiring Georgia units to participate in the federal CSAPR NO<sub>x</sub> Annual Trading Program, the federal CSAPR SO<sub>2</sub> Group 2 Trading Program, and the federal CSAPR NO<sub>x</sub> Ozone Season Group 1 Trading Program in order to address Georgia's obligations under CAA section 110(a)(2)(D)(i)(I) with respect to the 1997 Annual PM<sub>2.5</sub> NAAQS, the 2006 24-hour PM<sub>2.5</sub> NAAQS, and the 1997 8-hour Ozone NAAQS in the absence of SIP provisions addressing those requirements. Approval of the portions of Georgia's SIP submittal adopting CSAPR state trading program rules for annual NO<sub>x</sub>, annual SO<sub>2</sub>, and ozone season NO<sub>x</sub> substantively identical to the corresponding CSAPR federal trading program regulations (or differing only with respect to the allowance allocation methodology) satisfies Georgia's obligation pursuant to CAA section 110(a)(2)(D)(i)(I) to prohibit emissions which will significantly contribute to nonattainment or interfere with maintenance of the 1997 Annual PM<sub>2.5</sub> NAAQS, the 2006 24-hour PM<sub>2.5</sub> NAAQS, and the 1997 8-hour Ozone NAAQS in any other state and therefore corrects the same deficiency in the SIP that otherwise would be corrected by those CSAPR FIPs. Under the CSAPR regulations, upon EPA's full and unconditional approval of a SIP revision as correcting the SIP's deficiency that is the basis for a particular CSAPR FIP, the obligation to participate in the corresponding CSAPR federal trading program is automatically eliminated for units subject to the state's jurisdiction (but not for any units located in any Indian country within the state's borders). Approval of the portions of Georgia's SIP submittal establishing CSAPR state trading program rules for annual NO<sub>x</sub>, annual SO<sub>2</sub>, and ozone season NO<sub>x</sub> emissions therefore results in automatic termination of the obligations of Georgia units to participate in the federal CSAPR NO<sub>x</sub> Annual Trading Program, the federal CSAPR SO<sub>2</sub> Group 2 Trading Program, and the federal CSAPR NO<sub>x</sub> Ozone Season Group 1 Trading Program.

As noted previously, the Phase 2 SO<sub>2</sub> budget established for Georgia in the CSAPR rulemaking has been remanded to EPA for reconsideration. As this action finalizes approval of these portions of the SIP revision as proposed, Georgia will have fulfilled its obligations to provide a SIP that addresses the interstate transport provisions of CAA section 110(a)(2)(D)(i)(I) with respect to the 1997 Annual PM<sub>2.5</sub> NAAQS, the 2006 24-hour PM<sub>2.5</sub> NAAQS, and the 1997 8-

hour Ozone NAAQS. Thus, EPA is no longer under an obligation to (nor does EPA have the authority to) address those transport requirements through implementation of a FIP, and approval of these portions of the SIP revision eliminates Georgia units' obligations to participate in the federal CSAPR NO<sub>x</sub> Annual Trading Program, the federal CSAPR SO<sub>2</sub> Group 2 Trading Program, and the federal CSAPR NO<sub>x</sub> Ozone Season Group 1 Trading Program. Elimination of Georgia units' obligations to participate in the federal trading programs includes elimination of the federally-established Phase 2 budgets capping allocations of CSAPR NO<sub>x</sub> Annual allowances, CSAPR SO<sub>2</sub> Group 2 allowances, and CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances to Georgia units under those federal trading programs. As approval of these portions of the SIP revision eliminates Georgia's remanded federally-established Phase 2 SO<sub>2</sub> budget and eliminates EPA's authority to subject units in Georgia to a FIP, approval of this SIP action addresses the judicial remand of Georgia's federally-established Phase 2 SO<sub>2</sub> budget.

In addition, EPA is approving the portions of Georgia's July 26, 2017, SIP revision removing Georgia's state trading provisions adopted to implement CAIR: Georgia Rules for Air Quality control at provisions 391-3-1-.02(12), "Clean Air Interstate Rule NO<sub>x</sub> Annual Trading Program" and 391-3-1-.02(13) "Clean Air Interstate Rule SO<sub>2</sub> Annual Trading Program."

#### 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. This action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a

substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
  - does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
  - is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
  - is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
  - is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
  - does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).
- The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has 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 December 12, 2017. Filing a petition for reconsideration by the

Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

**List of Subjects in 40 CFR Part 52**

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

Dated: September 29, 2017.  
**Onis “Trey” Glenn, III**  
*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 A—General Provisions**

**§ 52.38 [Amended]**

■ 2. Amend § 52.38:  
 ■ a. In paragraph (a)(8)(iii) after the word “Alabama” by adding the words “and Georgia”; and

■ b. In paragraph (b)(12)(iii), by removing the text “[none]” and adding the word “Georgia” in its place.

**§ 52.39 [Amended]**

■ 3. Amend § 52.39 paragraph (m)(3) after the word “Alabama” by adding the words “and Georgia”.

**Subpart L—Georgia**

■ 4. In § 52.570, the table in paragraph (c) is amended by revising the entries “391–3–1–.02(12)” and “391–3–1–.02(13),”; and adding in numerical order an entry for “391–3–1–.02(14)” to read as follows:

**§ 52.570 Identification of plan.**

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

**EPA-APPROVED GEORGIA REGULATIONS**

State citation	Title/subject	State effective date	EPA approval date	Explanation
* * * * *				
391–3–1–.02(12) ....	Cross State Air Pollution Rule NO <sub>x</sub> Annual Trading Program.	7/20/2017	10/13/2017, [Insert <b>Federal Register</b> citation].	
391–3–1–.02(13) ....	Cross State Air Pollution Rule SO <sub>2</sub> Annual Trading Program.	7/20/2017	10/13/2017, [Insert <b>Federal Register</b> citation].	
391–3–1–.02(14) ....	Cross State Air Pollution Rule NO <sub>x</sub> Ozone Season Trading Program.	7/20/2017	10/13/2017, [Insert <b>Federal Register</b> citation].	
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