



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2017-0452; FRL-9966-43-Region 4]

### Air Plan Approval; Georgia; Cross-State Air Pollution Rule

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve 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 would approve 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. EPA is proposing to approve the portions of the SIP revision concerning these CSAPR state trading programs because these portions of the SIP revision meet the requirements of the Clean Air Act (CAA or Act) and EPA's regulations for approval of a CSAPR full SIP revision replacing the requirements of a CSAPR FIP. Under the CSAPR regulations, approval of these portions of the SIP revision would automatically eliminate 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 would satisfy 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 would remove from Georgia's SIP those state trading program rules adopted to comply with CAIR.

**DATES:** Comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2017-0452 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

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## **SUPPLEMENTARY INFORMATION:**

### **I. Summary**

EPA is proposing to approve the portions of the July 26, 2017, revision to the Georgia SIP concerning CSAPR<sup>1</sup> trading programs for annual emissions of NO<sub>x</sub> and SO<sub>2</sub> and ozone season emissions of NO<sub>x</sub>. Large EGUs in Georgia are subject to CSAPR FIPs that require the 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. CSAPR also provides a process for the submission and approval of SIP revisions to replace the requirements of CSAPR FIPs with SIP requirements under which a state's units participate in CSAPR state trading programs that are integrated with and, with certain permissible exceptions, substantively identical to the CSAPR federal trading programs.

The portions of the SIP revision proposed for approval would incorporate into Georgia's SIP state trading program regulations for annual NO<sub>x</sub> and SO<sub>2</sub> and ozone season NO<sub>x</sub> emissions that would replace EPA's federal trading program regulations for those emissions from Georgia units.<sup>2</sup> EPA is proposing to approve 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 that is integrated with and substantively identical to the federal trading program. Under the CSAPR regulations, approval of these portions of the SIP revision would automatically eliminate the obligations of large EGUs

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<sup>1</sup> Federal Implementation Plans; Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals, 76 FR 48208 (August 8, 2011) (codified as amended at 40 CFR 52.38 and 52.39 and subparts AAAAA through EEEEE of 40 CFR part 97).

<sup>2</sup> Under Georgia's regulations, the State will retain EPA's default allowance allocation methodology and EPA will remain the implementing authority for administration of the trading program. *See* sections IV and V.B.2, below.

in Georgia to participate in CSAPR's federal trading programs for annual NO<sub>x</sub>, annual SO<sub>2</sub> and ozone season NO<sub>x</sub> emissions under the corresponding CSAPR FIPs. EPA proposes to find that approval of these portions of the SIP revision would satisfy 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.

The Phase 2 SO<sub>2</sub> budget established for Georgia in the CSAPR rulemaking has been remanded to EPA for reconsideration.<sup>3</sup> If EPA finalizes approval of the 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 and the 2006 24-hour PM<sub>2.5</sub> NAAQS. Thus, EPA would no longer be under an obligation to (nor would EPA have the authority to) address those interstate transport requirements through implementation of a FIP, and approval of these portions of the SIP revision would eliminate Georgia units' obligations to participate in the federal CSAPR NO<sub>x</sub> Annual Trading Program and the federal CSAPR SO<sub>2</sub> Group 2 Trading Program. Elimination of Georgia units' obligations to participate in the federal trading programs would include elimination of the federally-established Phase 2 budgets capping allocations of CSAPR NO<sub>x</sub> Annual allowances and CSAPR SO<sub>2</sub> Group 2 allowances to Georgia units under those federal trading programs. As approval of these portions of the SIP revision would eliminate Georgia's remanded federally-established Phase 2 SO<sub>2</sub> budget and eliminate EPA's authority to subject units in Georgia to a

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<sup>3</sup> *EME Homer City Generation, L.P. v. EPA (EME Homer City II)*, 795 F.3d 118, 138 (D.C. Cir. 2015).

FIP, it is EPA's opinion that finalization of approval of this SIP action would address the judicial remand of Georgia's federally-established Phase 2 SO<sub>2</sub> budget.<sup>4</sup>

In addition, approval of the portions of the SIP revision identified above would remove Georgia's state trading programs provisions adopted to implement CAIR. EPA is proposing approval of this removal because CAIR is no longer in effect and has been replaced by CSAPR. As a result, the removal of CAIR is consistent with the CAA.

At this time, EPA is not acting on the portions of the submittal related to Georgia's Regional Haze SIP under the Clean Air Act or the visibility transport (prong 4) infrastructure SIP.

Section II provides background information on CAIR. Section III of this document summarizes the relevant aspects of the CSAPR federal trading programs and FIPs as well as the range of opportunities states have to submit SIP revisions to modify or replace the FIP requirements while continuing to rely on CSAPR's trading programs to address the states' obligations to mitigate interstate air pollution. Section IV describes the specific conditions for approval of such SIP revisions. Section V contains EPA's analysis of Georgia's SIP submittal, and Section VI sets forth EPA's proposed action on the submittal. Section VII addresses statutory and Executive Order reviews.

## **II. 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>5</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

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<sup>4</sup> Although the court in *EME Homer City II* remanded Georgia's Phase 2 SO<sub>2</sub> budget because it determined that the budget may be too stringent, 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. See 42 U.S.C. 7416, 7410(k)(3).

<sup>5</sup> 70 FR 25172 (May 12, 2005).

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>6</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>7</sup> In a subsequent decision on the merits, the Court vacated CSAPR based on a subset of petitioners' claims.<sup>8</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>9</sup> Throughout the initial round of D.C. Circuit proceedings and

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<sup>6</sup> See 76 FR 48208 (August 8, 2011).

<sup>7</sup> Order of December 30, 2011, in *EME Homer City Generation, L.P. v. EPA*, D.C. Cir. No. 11-1302.

<sup>8</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>9</sup> *EPA v. EME Homer City Generation, L.P.*, 134 S. Ct. 1584, 1600-01 (2014).

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>10</sup>

### **III. Background on CSAPR and CSAPR-related SIP revisions**

As discussed above, EPA issued CSAPR in July 2011 to address the requirements of CAA section 110(a)(2)(D)(i)(I) concerning interstate transport of air pollution. As amended (including by the 2016 CSAPR Update<sup>11</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-

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<sup>10</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>11</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).

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>12</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>13</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

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<sup>12</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>13</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.

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>14</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>15</sup> Specific conditions for approval of each form of SIP revision are set forth in the CSAPR regulations, as described in section IV below. 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>16</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.

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<sup>14</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>15</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>16</sup> 40 CFR 52.38(a)(4), (b)(4), (b)(8); 52.39(e), (h).

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>17</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>18</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 within the state’s borders.<sup>19</sup> Finally, if at the time a full SIP revision is approved EPA has already started recording

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<sup>17</sup> 40 CFR 52.38(a)(5), (b)(5), (b)(9); 52.39(f), (i).

<sup>18</sup> 40 CFR 52.38(a)(6), (b)(10)(i); 52.39(j).

<sup>19</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).

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>20</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>21</sup> However, Georgia has proposed to voluntarily adopt 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>22</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

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<sup>20</sup> 40 CFR 52.38(a)(7), (b)(11)(i); 52.39(k).

<sup>21</sup> *EME Homer City II*, 795 F.3d 118; *See also EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7 (D.C. Cir. 2012), *EPA v. EME Homer City Generation, L.P.*, 134 S. Ct. 1584 (2014). 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>22</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. The EPA also communicated orally with officials in Alabama, Georgia, South Carolina, and Texas in advance of the memo.

stringency. Under the CSAPR regulations, when such a SIP revision is approved, the corresponding FIP provisions are automatically withdrawn.

#### **IV. Conditions for approval of CSAPR-related SIP revisions**

Each CSAPR-related abbreviated or full SIP revision must meet the following general submittal conditions:

- *Timeliness and completeness of SIP submittal.* The SIP submittal completeness criteria in section 2.1 of appendix V to 40 CFR part 51 apply. In addition, if a state wants to replace the default allowance allocation or applicability provisions of a CSAPR federal trading program, the complete SIP revision must be submitted to EPA by December 1 of the year before the deadlines described below for submitting allocation or auction amounts to EPA for the first control period for which the state wants to replace the default allocation and/or applicability provisions.<sup>23</sup> This SIP submission deadline is inoperative in the case of a SIP revision that seeks only to replace a CSAPR FIP and federal trading program with a SIP and a substantively identical state trading program integrated with the federal trading program.

In addition to the general submittal conditions, a CSAPR-related abbreviated or full SIP seeking to address the allocation or auction of emission allowances must meet the following further conditions:

- *Methodology covering all allowances potentially requiring allocation.* For each federal trading program addressed by a SIP revision, the SIP revision's allowance allocation or auction methodology must replace both the federal program's default allocations to

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<sup>23</sup> 40 CFR 52.38(a)(4)(ii), (a)(5)(vi), (b)(4)(iii), (b)(5)(vii), (b)(8)(iv), (b)(9)(viii); 52.39(e)(2), (f)(6), (h)(2), (i)(6).

existing units<sup>24</sup> at 40 CFR 97.411(a), 97.511(a), 97.611(a), 97.711(a), or 97.811(a) as applicable, and the federal trading program's provisions for allocating allowances from the new unit set-aside (NUSA) for the state at 40 CFR 97.411(b)(1) and 97.412(a), 97.511(b)(1) and 97.512(a), 97.611(b)(1) and 97.612(a), 97.711(b)(1) and 97.712(a), or 97.811(b)(1) and 97.812(a), as applicable.<sup>25</sup> In the case of a state with Indian country within its borders, while the SIP revision may neither alter nor assume the federal program's provisions for administering the Indian country NUSA for the state, the SIP revision must include procedures addressing the disposition of any otherwise unallocated allowances from an Indian country NUSA that may be made available for allocation by the state after EPA has carried out the Indian country NUSA allocation procedures.<sup>26</sup>

- *Assurance that total allocations will not exceed the state budget.* For each federal trading program addressed by a SIP revision, the total amount of allowances auctioned or allocated for each control period under the SIP revision (prior to the addition by EPA of any unallocated allowances from any Indian country NUSA for the state) generally may not exceed the state's emissions budget for the control period less the sum of the amount of any Indian country NUSA for the state for the control period and any allowances already allocated to the state's units for the control period and recorded by EPA.<sup>27</sup> Under its SIP revision, a state is free to not allocate allowances to some or all potentially affected units, to allocate or auction allowances to entities other than

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<sup>24</sup> In the context of the approval conditions for CSAPR-related SIP revisions, an "existing unit" is a unit for which EPA has determined default allowance allocations (which could be allocations of zero allowances) in the rulemakings establishing and amending CSAPR. A document describing EPA's default allocations to existing units is available at [https://www.epa.gov/sites/production/files/2017-05/documents/csapr\\_allowance\\_allocations\\_final\\_rule\\_tsd.pdf](https://www.epa.gov/sites/production/files/2017-05/documents/csapr_allowance_allocations_final_rule_tsd.pdf).

<sup>25</sup> 40 CFR 52.38(a)(4)(i), (a)(5)(i), (b)(4)(ii), (b)(5)(ii), (b)(8)(iii), (b)(9)(iii); 52.39(e)(1), (f)(1), (h)(1), (i)(1).

<sup>26</sup> See 40 CFR 97.412(b)(10)(ii), 97.512(b)(10)(ii), 97.612(b)(10)(ii), 97.712(b)(10)(ii), 97.812(b)(10)(ii).

<sup>27</sup> 40 CFR 52.38(a)(4)(i)(A), (a)(5)(i)(A), (b)(4)(ii)(A), (b)(5)(ii)(A), (b)(8)(iii)(A), (b)(9)(iii)(A); 52.39(e)(1)(i), (f)(1)(i), (h)(1)(i), (i)(1)(i).

potentially affected units, or to allocate or auction fewer than the maximum permissible quantity of allowances and retire the remainder. Under the CSAPR NOx Ozone Season Group 2 Trading Program only, additional allowances may be allocated if the state elects to expand applicability to non-EGUs that would have been subject to the NOx Budget Trading Program established for compliance with the NOx SIP Call.<sup>28</sup>

- *Timely submission of state-determined allocations to EPA.* The SIP revision must require the state to submit to EPA the amounts of any allowances allocated or auctioned to each unit for each control period (other than allowances initially set aside in the state’s allocation or auction process and later allocated or auctioned to such units from the set-aside amount) by the following deadlines.<sup>29</sup> Note that the submission deadlines differ for amounts allocated or auctioned to units considered existing units for CSAPR purposes and amounts allocated or auctioned to other units.

<b>CSAPR NOx Annual, CSAPR NOx Ozone Season Group 1, CSAPR SO<sub>2</sub> Group 1, and CSAPR SO<sub>2</sub> Group 2 Trading Programs:</b>		
<b>Units</b>	<b>Year of the Control Period</b>	<b>Deadline for Submission to EPA of Allocations or Auction Results</b>
Existing	2017 and 2018	June 1, 2016
	2019 and 2020	June 1, 2017
	2021 and 2022	June 1, 2018
	2023 and later years	June 1 of the fourth year before the year of the control period
Other	All years	July 1 of the year of the control period

<b>CSAPR NOx Ozone Season Group 2 Trading Program:</b>		
<b>Units</b>	<b>Year of the Control Period</b>	<b>Deadline for Submission to EPA of Allocations or Auction Results</b>
Existing	2019 and 2020	June 1, 2018
	2021 and 2022	June 1, 2019
	2023 and 2024	June 1, 2020
	2025 and later years	June 1 of the fourth year before the year

<sup>28</sup> 40 CFR 52.38(b)(8)(iii)(A), (b)(9)(iii)(A).

<sup>29</sup> 40 CFR 52.38(a)(4)(i)(B)-(C), (a)(5)(i)(B)-(C), (b)(4)(ii)(B)-(C), (b)(5)(ii)(B)-(C), (b)(8)(iii)(B)-(C), (b)(9)(iii)(B)-(C); 52.39(e)(1)(ii)-(iii), (f)(1)(ii)-(iii), (h)(1)(ii)-(iii), (i)(1)(ii)-(iii).

		of the control period
Other	All years	July 1 of the year of the control period

- *No changes to allocations already submitted to EPA or recorded.* The SIP revision must not provide for any change to the amounts of allowances allocated or auctioned to any unit after those amounts are submitted to EPA or any change to any allowance allocation determined and recorded by EPA under the federal trading program regulations.<sup>30</sup>
- *No other substantive changes to federal trading program provisions.* The SIP revision may not substantively change any other trading program provisions, except in the case of a SIP revision that also expands program applicability as described below.<sup>31</sup> Any new definitions adopted in the SIP revision (in addition to the federal trading program’s definitions) may apply only for purposes of the SIP revision’s allocation or auction provisions.<sup>32</sup>

In addition to the general submittal conditions, a CSAPR-related abbreviated or full SIP revision seeking to expand applicability under the CSAPR NOx Ozone Season Group 1 or CSAPR NOx Ozone Season Group 2 Trading Programs (or an integrated state trading program) must meet the following further conditions:

- *Only electricity generating units with nameplate capacity of at least 15 MWe.* The SIP revision may expand applicability only to additional fossil fuel-fired boilers or combustion turbines serving generators producing electricity for sale, and only by lowering the generator nameplate capacity threshold used to determine whether a particular boiler or combustion turbine serving a particular generator is a potentially affected unit. The nameplate capacity threshold adopted in the SIP revision may not be

<sup>30</sup> 40 CFR 52.38(a)(4)(i)(D), (a)(5)(i)(D), (b)(4)(ii)(D), (b)(5)(ii)(D), (b)(8)(iii)(D), (b)(9)(iii)(D); 52.39(e)(1)(iv), (f)(1)(iv), (h)(1)(iv), (i)(1)(iv).

<sup>31</sup> 40 CFR 52.38(a)(4), (a)(5), (b)(4), (b)(5), (b)(8), (b)(9); 52.39(e), (f), (h), (i).

<sup>32</sup> 40 CFR 52.38(a)(4)(i), (a)(5)(ii), (b)(4)(ii), (b)(5)(iii), (b)(8)(iii), (b)(9)(iv); 52.39(e)(1), (f)(2), (h)(1), (i)(2).

less than 15 MWe.<sup>33</sup> In addition or alternatively, applicability under the CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program may be expanded to non-EGUs that would have been subject to the NO<sub>x</sub> Budget Trading Program established for compliance with the NO<sub>x</sub> SIP Call.<sup>34</sup>

- *No other substantive changes to federal trading program provisions.* The SIP revision may not substantively change any other trading program provisions, except in the case of a SIP revision that also addresses the allocation or auction of emission allowances as described above.<sup>35</sup>

In addition to the general submittal conditions and the other applicable conditions described above, a CSAPR-related full SIP revision must meet the following further conditions:

- *Complete, substantively identical trading program provisions.* The SIP revision must adopt complete state trading program regulations substantively identical to the complete federal trading program regulations at 40 CFR 97.402 through 97.435, 97.502 through 97.535, 97.602 through 97.635, 97.702 through 97.735, or 97.802 through 97.835, as applicable, except as described above in the case of a SIP revision that seeks to replace the default allowance allocation and/or applicability provisions.<sup>36</sup>
- *Only non-substantive substitutions for the term “State.”* The SIP revision may substitute the name of the state for the term “State” as used in the federal trading program regulations, but only to the extent that EPA determines that the substitutions do not substantively change the trading program regulations.<sup>37</sup>

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<sup>33</sup> 40 CFR 52.38(b)(4)(i), (b)(5)(i), (b)(8)(i), (b)(9)(i).

<sup>34</sup> 40 CFR 52.38(b)(8)(ii), (b)(9)(ii).

<sup>35</sup> 40 CFR 52.38(b)(4), (b)(5), (b)(8), (b)(9).

<sup>36</sup> 40 CFR 52.38(a)(5), (b)(5), (b)(9); 52.39(f), (i).

<sup>37</sup> 40 CFR 52.38(a)(5)(iii), (b)(5)(iv), (b)(9)(v); 52.39(f)(3), (i)(3).

- *Exclusion of provisions addressing units in Indian country.* The SIP revision may not impose requirements on any unit in any Indian country within the state’s borders and must not include the federal trading program provisions governing allocation of allowances from any Indian country NUSA for the state.<sup>38</sup>

## **V. Georgia’s SIP submittal and EPA’s analysis**

### *A. Georgia’s SIP submittal as it relates to CSAPR*

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>39</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>40</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>41</sup>

Georgia’s July 26, 2017, SIP revision incorporates into the SIP CSAPR state trading program regulations that would replace the CSAPR federal trading program regulations with regard to Georgia units’ SO<sub>2</sub> and NO<sub>x</sub> emissions. The SIP submittal includes revisions to two Georgia rules: Rule 391-3-1-.02(12), “Clean Air Interstate Rule NO<sub>x</sub> Annual Trading Program,”

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<sup>38</sup> 40 CFR 52.38(a)(5)(iv), (b)(5)(v), (b)(9)(vi); 52.39(f)(4), (i)(4).

<sup>39</sup> 76 FR 48208, 48213 (August 8, 2011).

<sup>40</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>41</sup> 40 CFR 52.38(a)(2), (b)(2); 52.39(c); 52.584(a), (b); 52.585.

is replaced by “Cross State Air Pollution Rule NO<sub>x</sub> Annual Trading Program;” and Rule 391-3-1-.02(13), “Clean Air Interstate Rule SO<sub>2</sub> Annual Trading Program,” is replaced by “Cross State Air Pollution Rule SO<sub>2</sub> Annual Trading Program.” In addition, the submittal adds Rule 391-3-1-.02(14), “Cross State Air Pollution Rule NO<sub>x</sub> Ozone Season Trading Program.” In general, each rule in Georgia’s CSAPR state trading program rule is designed to replace the corresponding federal trading program regulations. For example, Georgia Rule 391-3-1-.02(12), Cross State Air Pollution Rule NO<sub>x</sub> Annual Trading Program, is designed to replace subpart AAAAA of 40 CFR part 97 (i.e., 40 CFR 97.401 through 97.435).

With regard to form, some of the individual rules for each Georgia CSAPR state trading program are set forth as full regulatory text – notably the rules identifying the trading budgets, NUSA, Indian country NUSA, and the definition of “Permitting Authority” – but most of the rules incorporate the corresponding federal trading program section or sections by reference.

With regard to substance, the rules for each Georgia CSAPR state trading program differ from the corresponding CSAPR federal trading program regulations in two main ways. First, the term permitting authority is defined as the Georgia Environmental Protection Division of the Georgia Department of Natural Resources for units in Georgia only. Second, the Georgia rules omit some federal trading program provisions not applicable to Georgia’s state trading programs, including provisions setting forth the amounts of emissions budgets, NUSAs, Indian country NUSAs, and variability limits for other states and provisions relating to EPA’s administration of Indian country NUSAs.

The Georgia rules adopt the Phase 2 annual NO<sub>x</sub> and SO<sub>2</sub> budgets and the Group 1 ozone season NO<sub>x</sub> budgets found at 40 CFR 97.410(a)(2)(iv), 97.710(a)(2)(iv), and 97.510(a)(4)(iv),

respectively. Accordingly, EPA will evaluate the approvability of the Georgia SIP submission consistent with these budgets.

At this time, EPA is proposing to take action on the portions of Georgia's SIP submission designed to replace 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 with regard to Georgia units.<sup>42</sup>

*B. EPA's analysis of Georgia's SIP submittal as it relates to CSAPR*

As described in section V.A above, at this time EPA is proposing to take action on the portions of Georgia's SIP submittal designed to replace 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<sup>43</sup> for Georgia units.<sup>44</sup> The analysis discussed in this section addresses only the portions of Georgia's SIP submittal related to CSAPR on which EPA is taking action at this time. For simplicity, throughout this section EPA refers to the portions of the submittal on which EPA is proposing to take action as "the submittal" or "the SIP revision" without repeating the qualification that at this time EPA is analyzing and proposing to act on only portions of the SIP submittal.

*1. Timeliness and completeness of SIP submittal*

Georgia submitted its SIP revision to EPA on July 26, 2017, and EPA has determined that the submittal complies with the applicable minimum completeness criteria in section 2.1 of

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<sup>42</sup> In addition and as discussed above, the EPA is also proposing to take action on the portions of the SIP submittal related to removal of CAIR.

<sup>43</sup> Georgia's rules incorporate the provisions of, and, if approved, would replace the federal CSAPR NO<sub>x</sub> Ozone Season Group 1 Trading Program. *See* 40 CFR 52.38(b)(5). Following the CSAPR Update, Georgia is the only state whose units participate in this trading program; units in other states participate in the CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program. *See* 40 CFR 52.38(b)(2)(i); CSAPR Update, 81 FR at 74509. As a result, Georgia units will be unable to trade allowances with units in other states. *See* CSAPR Update, 81 FR at 74509. EPA notes that federal regulations provide an option for Georgia to join the Group 2 trading program. 40 CFR 52.38(b)(6); CSAPR Update, 81 FR at 74509.

<sup>44</sup> The other portions of the state submittal will be addressed in separate actions.

appendix V to 40 CFR part 51. The SIP submission deadline specified in 40 CFR 52.38(a)(5)(vi) and (b)(5)(vii) and 52.39(i)(6) is defined with reference to certain separate CSAPR deadlines for submission of state-determined allowance allocations to EPA and is therefore inoperative in the case of a SIP revision that does not seek to replace the EPA-administered allowance allocation methodology and process set forth in the federal trading program rules. Because Georgia is seeking to replace the federal trading program rules with substantively identical state trading program rules and is not seeking to replace the EPA-administered allowance allocation methodology and process, the SIP submission deadline does not apply.<sup>45</sup>

2. *Complete, substantively identical trading program provisions*

As discussed above, the Georgia SIP revision adopts state budgets identical to the Phase 2 budgets for Georgia under the federal trading programs and adopts almost all of the provisions of the federal CSAPR NO<sub>x</sub> Annual Trading Program, CSAPR SO<sub>2</sub> Group 2 Trading Program, and CSAPR NO<sub>x</sub> Ozone Season Group 1 Trading Program, including the default allocation provisions. Under the State's rules, EPA will administer the programs and will retain the authority to allocate and record allowances.

With a few exceptions, the Georgia rules comprising Georgia's CSAPR state trading program for annual NO<sub>x</sub> emissions either incorporate by reference or adopt full-text replacements for all of the provisions of 40 CFR 97.401 through 97.435; the Georgia rules comprising Georgia's CSAPR state trading program for SO<sub>2</sub> emissions either incorporate by reference or adopt full-text replacements for all of the provisions of 40 CFR 97.701 through 97.735; and the Georgia rules comprising Georgia's CSAPR state trading program for NO<sub>x</sub> ozone season emissions either incorporate by reference or adopt full-text replacements for all of the provisions of 40 CFR 97.501 through 97.535.

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<sup>45</sup> See 40 CFR 52.38(a)(5)(vi), (b)(5)(vii); 52.39(i)(6).

The first exception is that paragraphs 391-3-1-.02(12)(a), 391-3-1-.02(13)(a), and 391-3-1-.02(14)(a) of the Georgia rules substitute “Environmental Protection Division of the Georgia Department of Natural Resources” for the term “permitting authority” for units located within the state of Georgia. This substitution properly retains the definition in 40 CFR 97.402<sup>46</sup> for units outside of the State’s jurisdiction. This modification of the federal trading program rules merely provides clarity to Georgia sources, and these substitutions do not substantively change the provisions of CSAPR’s federal trading program regulations. As a result, this change is permitted under 40 CFR 52.38(a)(5), 52.38(b)(5) and 52.39(i).

The second exception is that paragraphs 391-3-1-.02(12), 391-3-1-.02(13), and 391-3-1-.02(14) of the Georgia rules omit the provisions of 40 CFR 97.410(a) and (b), 97.710(a) and (b), and 97.510(a) and (b), setting forth the amounts of the Phase 1 emissions budgets, NUSAs, and variability limits for Georgia and the amounts of the Phase 1 and Phase 2 emissions budgets, NUSAs, Indian country NUSAs, and variability limits for other states. Omission of the Georgia Phase 1 emissions budget, NUSA, and variability limit amounts is appropriate because Georgia’s state trading programs do not apply to emissions occurring in Phase 1 of CSAPR. Omission of the Phase 1 and Phase 2 budget, NUSA, Indian country NUSA, and variability limit amounts for other states from state trading programs in which only Georgia units participate does not undermine the completeness of the state trading programs. Georgia’s rules include full-text

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<sup>46</sup> As clarified in a letter from Georgia dated July 21, 2017, there is a typographical error such that each of Georgia’s three CSAPR rules references 40 CFR 97.402, instead of referencing 40 CFR 97.702 in 391-3-1-.02(13)(a) and 40 CFR 97.502 in paragraph 391-3-1-.02(14)(a). See July 21, 2017 Letter from Karen Hayes (Director, Air Protection Division, Georgia EPD) to V. Anne Heard (Acting Regional Administrator, EPA Region 4), available in the docket to this action. EPA views this typographical error as non-substantive because the underlying definition for the term “permitting authority” is the same for all three trading programs. Compare, e.g., 40 CFR 97.402 (Permitting authority means “permitting authority” as defined in 40 CFR 70.2 and 71.2) with 40 CFR 97.502 (Permitting authority means “permitting authority” as defined in 40 CFR 70.2 and 71.2). Regardless, Georgia has committed to fixing this error in the future.

replacement provisions for the remaining provisions of 40 CFR 97.410, 97.710, and 97.510 that are relevant to trading programs applicable only to Georgia units during Phase 2 of CSAPR.

The third exception is that Georgia Rules 391-3-1-.02(12), 391-3-1-.02(13), and 391-3-1-.02(14) omit 40 CFR 97.411(b)(2), 97.411(c)(5)(iii), 97.412(b), 97.421(h), 97.421(j), 97.711(b)(2), 97.711(c)(5)(iii), 97.712(b), 97.721(h), 97.721(j), 97.511(b)(2), 97.511(c)(5)(iii), 97.512(b), 97.521(h), and 97.521(j) concerning EPA's administration of Indian country NUSAs. Omission of these provisions from Georgia's state trading program rules is required, as discussed in section V.B.4 below.

None of the omissions undermine the completeness of Georgia's state trading programs, and EPA has preliminarily determined that Georgia's SIP revision makes no substantive changes to the provisions of the federal trading program regulations. Thus, Georgia's SIP revision meets the condition under 40 CFR 52.38(a)(5), 52.39(i), and 52.38(b)(5) that the SIP revision must adopt complete state trading program regulations substantively identical to the complete federal trading program regulations at 40 CFR 97.402 through 97.435, 97.702 through 97.735, and 97.502 through 97.535, respectively, except to the extent permitted in the case of a SIP revision that seeks to replace the default allowance allocation and/or applicability provisions.

3. *Only non-substantive substitutions for the term "State"*

The Georgia rules do not make any substitutions for the term "State."

4. *Exclusion of provisions addressing units in Indian country*

Georgia Rules 391-3-1-.02(12)(b), 391-3-1-.02(13)(b), and 391-3-1-.02(14)(b) incorporate by reference the applicability provisions of the federal trading program rules at 40 CFR 97.402, 97.702, and 97.502, respectively. There is no Indian country (as defined for purposes of CSAPR) within Georgia's borders, so the applicability provisions of the Georgia

rules necessarily do not extend to any units in Indian country. In addition, as required under 40 CFR sections 52.38(a)(5)(iv), 52.39(i)(4) and 52.38(b)(5)(v), Georgia's SIP revision excludes federal trading program provisions related to EPA's process for allocating and recording allowances from Indian country NUSAs (i.e., 40 CFR sections 97.411(b)(2), 97.411(c)(5)(iii), 97.412(b), 97.421(h), 97.421(j), 97.711(b)(2), 97.711(c)(5)(iii), 97.712(b), 97.721(h), 97.721(j), 97.511(b)(2), 97.511(c)(5)(iii), 97.512(b), 97.521(h) and 40 CFR 97.521(j)). Georgia's SIP revision therefore meets the conditions under 52.38(a)(5)(iv), 52.39(i)(4) and 52.38(b)(5)(v) that a SIP submittal must not impose any requirement on any unit in Indian country within the borders of the State and must exclude certain provisions related to administration of Indian country NUSAs.

*C. Georgia's SIP submittal as it relates to CAIR, and EPA's analysis*

In addition, Georgia's July 26, 2017, submittal seeks to remove state trading program rules adopted to comply with the CAIR from Georgia's SIP at 391-3-1-.02(12), "Clean Air Interstate Rule NO<sub>x</sub> Annual Trading Program," and Rule 391-3-1-.02(13), "Clean Air Interstate Rule SO<sub>2</sub> Annual Trading Program," because the CAIR program has been replaced by CSAPR.<sup>47</sup>

In this action, EPA proposes to approve the removal of these CAIR-related provisions from Georgia's SIP. As explained above, the D.C. Circuit remanded CAIR to EPA in 2008; however, the Court left CAIR in place while EPA worked to develop a new interstate transport rule. CSAPR was promulgated to respond to the Court's concerns and to replace CAIR. The implementation of CSAPR was delayed for several years beyond its originally expected implementation timeframe of 2012, and therefore, the sunset of CAIR was also deferred. CAIR was implemented through the 2014 compliance periods and was replaced by CSAPR on January 1, 2015. EPA promulgated regulations to sunset the CAIR program and it is no longer

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<sup>47</sup> As discussed above in section V.A., the State seeks to replace these provisions with state rules related to CSAPR.

in effect.<sup>48</sup> EPA therefore proposes to approve the removal of Georgia's SIP provisions related to CAIR.

## **VI. Incorporation by Reference**

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference 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).

## **VII. EPA's proposed action on Georgia's submittal**

EPA is proposing to approve 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. The proposed revision would revise Georgia Rules for Air Quality Control 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 would be integrated with the federal CSAPR NO<sub>x</sub> Annual Trading Program, the

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<sup>48</sup> 40 CFR 51.123(ff) (requirements related to NO<sub>x</sub>); 40 CFR 51.124(s) (requirements related to SO<sub>2</sub>).

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 would be substantively identical to the federal trading programs.<sup>49</sup> If EPA approves these portions of the SIP revision, Georgia units would 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 proposing to approve 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 that is integrated with and substantively identical to the federal trading program except for permissible differences, as discussed in section V above.

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) would satisfy 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

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<sup>49</sup> As previously discussed in sections IV and V.B.2, under Georgia's regulations, the State will retain EPA's default allowance allocation methodology and EPA will remain the implementing authority for administration of the trading program.

state and therefore would correct 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).<sup>50</sup> 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 would result 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 in section III above, the Phase 2 SO<sub>2</sub> budget established for Georgia in the CSAPR rulemaking has been remanded to EPA for reconsideration. If EPA 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 would no longer be under an obligation to (nor would EPA have the authority to) address those transport requirements through implementation of a FIP, and approval of these portions of the SIP revision would eliminate 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 would include elimination of the federally-established Phase 2 budgets capping allocations of CSAPR

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<sup>50</sup> 40 CFR 52.38(a)(6), (b)(10), 52.39(j); *see also* 52.584(a)(1), 52.584(b)(1); 52.585(a).

NOx Annual allowances, CSAPR SO<sub>2</sub> Group 2 allowances, and CSAPR NOx Ozone Season Group 1 allowances to Georgia units under those federal trading programs. As approval of these portions of the SIP revision would eliminate Georgia's remanded federally-established Phase 2 SO<sub>2</sub> budget and eliminate EPA's authority to subject units in Georgia to a FIP, it is EPA's opinion that finalization of approval of this SIP action would address the judicial remand of Georgia's federally-established Phase 2 SO<sub>2</sub> budget.

In addition, EPA is proposing to approve 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 NOx Annual Trading Program" and 391-3-1-.02(13) "Clean Air Interstate Rule SO<sub>2</sub> Annual Trading Program." If EPA finalizes approval of the proposed SIP revision, these CAIR provisions will be removed from the SIP. As explained above, CAIR was implemented through the 2014 compliance periods and was replaced by CSAPR on January 1, 2015. EPA has promulgated regulations to sunset the CAIR program and it is no longer in effect.<sup>51</sup> EPA therefore proposes to approve the removal of Georgia's SIP provisions related to CAIR.

### **VIII. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submittal 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 submittals, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed 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 proposed action:

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<sup>51</sup> 40 CFR 51.123(ff) (requirements related to NOx); 40 CFR 51.124(s) (requirements related to SO<sub>2</sub>).

- 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.

**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.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: August 7, 2017.

V. Anne Heard  
Acting Regional Administrator,  
Region 4.