6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2017-0364; FRL-9965-99-Region 4]

Air Plan Approval; South Carolina; Cross-State Air Pollution Rule

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve portions of a draft revision to the South Carolina State Implementation Plan (SIP) concerning the Cross-State Air Pollution Rule (CSAPR) that was submitted by South Carolina for parallel processing on May 26, 2017. Under CSAPR, large electricity generating units (EGUs) in South Carolina are subject to Federal Implementation Plans (FIPs) requiring the units to participate in CSAPR's federal trading program for annual emissions of nitrogen oxides (NOx) and one of CSAPR's two federal trading programs for annual emissions of sulfur dioxide (SO_2). This action would approve the State's regulations requiring large South Carolina EGUs to participate in new CSAPR state trading programs for annual NOx and SO_2 emissions integrated with the CSAPR federal trading programs, replacing the corresponding FIP requirements. These CSAPR state trading programs are substantively identical to the CSAPR federal trading programs, with the State retaining EPA's default allowance allocation methodology and EPA remaining the implementing authority for administration of the trading program. EPA is proposing to approve the portions of the draft SIP revision concerning these CSAPR state trading programs because these portions of the draft 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 draft SIP revision would automatically eliminate South Carolina units' obligations to participate in CSAPR's federal trading programs for annual NOx and SO_2 emissions under the corresponding CSAPR FIPs addressing interstate transport requirements for the 1997 Annual Fine Particulate Matter ($PM_{2.5}$) national ambient air quality standards (NAAQS). Approval of these portions of the SIP revision would satisfy South Carolina's good neighbor obligation for the 1997 Annual $PM_{2.5}$ NAAQS.

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-2017-0364 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.

FOR FURTHER INFORMATION CONTACT: Ashten Bailey, Air Regulatory Management Section, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection

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SUPPLEMENTARY INFORMATION:

I. Summary

EPA is proposing to approve the portions of the May 26, 2017, draft revision to the South Carolina SIP concerning CSAPR[1] trading programs for annual emissions of NOx and SO_2. Large EGUs in South Carolina are subject to CSAPR FIPs that require the units to participate in the federal CSAPR NOx Annual Trading Program and the federal CSAPR SO_2 Group 2 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 draft SIP revision proposed for approval would incorporate into South Carolina's SIP state trading program regulations for annual NOx and SO_2 emissions that would replace EPA's federal trading program regulations for those emissions for South Carolina units for control periods in 2017 and later years.[2] EPA is proposing to approve these portions of the draft 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 draft SIP revision would automatically

[1] 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).

[2] Under South Carolina's draft 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.

eliminate the obligations of large EGUs in South Carolina (but not any units in Indian country within South Carolina's borders) to participate in CSAPR's federal trading programs for annual NOx and SO_2 emissions under the corresponding CSAPR FIPs. EPA proposes to find that approval of these portions of the draft SIP revision would satisfy South Carolina'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 $PM_{2.5}$ NAAQS in any other state.

The Phase 2 SO_2 budget established for South Carolina in the CSAPR rulemaking has been remanded to EPA for reconsideration.[3] If EPA finalizes approval of the portions of the draft SIP revision as proposed, South Carolina will have fulfilled its obligations to provide a SIP that address the interstate transport provisions of CAA section 110(a)(2)(D)(i)(I) with respect to the 1997 Annual $PM_{2.5}$ 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 draft SIP revision would eliminate South Carolina units' obligations to participate in the federal CSAPR NOx Annual Trading Program and the federal CSAPR SO_2 Group 2 Trading Program. Elimination of South Carolina units' obligations to participate in the federal trading programs would include elimination of the federally-established Phase 2 budgets capping allocations of CSAPR NOx Annual allowances and CSAPR SO_2 Group 2 allowances to South Carolina units under those federal trading programs. As approval of these portions of the draft SIP revision would eliminate South Carolina's remanded federally-established Phase 2 SO_2 budget and eliminate EPA's authority to subject units in South Carolina to a FIP, it is EPA's opinion that finalization of approval of this

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

SIP action would address the judicial remand of South Carolina's federally-established Phase 2 SO_2 budget.[4]

EPA is proposing to approve the draft SIP revision through parallel processing. Should South Carolina not submit a final SIP revision to EPA and/or should EPA not be able to finalize a full approval action addressing interstate transport provisions of CAA section 110(a)(2)(D)(i)(I) with respect to the 1997 Annual $PM_{2.5}$ NAAQS, EPA will undertake further reconsideration of the FIP pursuant to the judicial remand.

Section II of this document describes the requirements and steps for parallel processing. Section III 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 South Carolina's SIP draft submittal, and Section VI sets forth EPA's proposed action on the draft submittal. Section VII addresses required statutory and Executive Order reviews.

II. What is "parallel processing?"

Parallel processing refers to a concurrent state and federal proposed rulemaking action. Generally, the state submits a copy of the proposed regulation or other revisions to EPA before conducting its public hearing. EPA reviews this proposed state action, and prepares a notice of proposed rulemaking. EPA's notice of proposed rulemaking is published in the Federal Register during the same timeframe that the state is holding its public hearing. The state and EPA then

[4] Although the court in *EME Homer City II* remanded South Carolina's Phase 2 SO_2 budget because it determined that the budget may be too stringent, nothing in the court's decision affects South Carolina'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).

provide for concurrent public comment periods on both the state action and federal action. If the state's formal SIP revision is changed from the draft SIP revision, EPA will evaluate those changes and may publish another notice of proposed rulemaking. A final rulemaking action by EPA will occur only after the SIP revision has been adopted by South Carolina and submitted formally to EPA for incorporation into the SIP.

On May 26, 2017, the State of South Carolina, through South Carolina Department of Health and Environmental Control (SCDHEC), submitted a request for parallel processing for a draft SIP revision related to the interstate transport provisions of CAA section 110(a)(2)(D)(i)(I) with respect to the 1997 Annual $PM_{2.5}$ NAAQS. This revision was noticed for public comment by the State on May 26, 2017, and is not yet state-effective. Through this proposed rulemaking, EPA is proposing parallel approval of this draft SIP revision.

Once the May 26, 2017, draft revision is state-effective, South Carolina will need to provide EPA with a formal SIP revision. After South Carolina submits the formal SIP revision (including a response to any public comments raised during the State's public participation process), EPA will evaluate the revision. If the formal SIP revision is changed from the draft SIP revision, EPA will evaluate those changes for significance. If any such changes are found by EPA to be significant, then the Agency intends to re-propose the action based upon the revised submission.

While EPA may not be able to have a concurrent public comment process with the State, the SCDHEC-requested parallel processing allows EPA to begin to take action on the State's draft SIP revision in advance of the submission of the formal SIP revision. As stated above, the final rulemaking action by EPA will occur only after the SIP revision has been: (1) adopted by

South Carolina, (2) submitted formally to EPA for incorporation into the SIP, and (3) evaluated for changes.

III. Background on CSAPR and CSAPR-related SIP revisions

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 the 2016 CSAPR Update[5]), CSAPR requires 27 Eastern states to limit their statewide emissions of SO_2 and/or NOx in order to mitigate transported air pollution unlawfully impacting other states' ability to attain or maintain four NAAQS: the 1997 Annual $PM_{2.5}$ NAAQS, the 2006 24-hour $PM_{2.5}$ 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_2, annual NOx, and/or ozone season NOx 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 NOx emissions, two geographically separate programs for annual SO_2 emissions, and two geographically separate programs for ozone-season NOx emissions. CSAPR also establishes FIP requirements applicable to the large EGUs in each covered state. Currently, the CSAPR FIP provisions require each state's units to participate in up to three of the five CSAPR trading programs.

[5] 81 FR 74504 (October 26, 2016). The CSAPR Update was promulgated to address interstate pollution with respect to the 2008 ozone NAAQS and to address a judicial remand of certain original CSAPR ozone season NOx budgets promulgated with respect to the 1997 ozone NAAQS. 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 NAAQS, so that starting in 2017, CSAPR includes two geographically separate trading programs for ozone season NOx emissions covering EGUs in a total of 23 states. *See* 40 CFR 52.38(b)(1)-(2).

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.[6] 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 NOx emissions (or an integrated state trading program), a state may also expand trading program applicability to include certain smaller electricity generating units.[7] 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.[8] 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

[6] *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.
[7] States covered by both the CSAPR Update and the NOx SIP Call have the additional option to expand applicability under the CSAPR NOx Ozone Season Group 2 Trading Program to include non-electric generating units that would have participated in the former NOx Budget Trading Program.
[8] 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).

approval replaces the default allowance allocation and/or applicability provisions of a CSAPR federal trading program for the state.[9] 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.[10] 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.[11] 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

[9] 40 CFR 52.38(a)(4), (b)(4), (b)(8); 52.39(e), (h).
[10] 40 CFR 52.38(a)(5), (b)(5), (b)(9); 52.39(f), (i).
[11] 40 CFR 52.38(a)(6), (b)(10)(i); 52.39(j).

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.[12] 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.[13]

On July 28, 2015, the United States Court of Appeals for the District of Columbia Circuit (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_2 trading budget for South Carolina.[14] However, South Carolina 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_2 budget equal to the state's remanded Phase 2 SO_2 emission budget.[15] EPA notes that nothing in the court's decision affects South Carolina's authority to seek incorporation into its SIP of a state-established budget as stringent as the remanded federally-established budget or

[12] 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).
[13] 40 CFR 52.38(a)(7), (b)(11)(i); 52.39(k).
[14] *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_2 budgets for Alabama, Georgia, and Texas. The court also remanded Phase 2 ozone-season NOx budgets for eleven states, including South Carolina.
[15] *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_2 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.

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.

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.[16] 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:

[16] 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).

- *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 existing units[17] 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.[18] 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.[19]
- *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

[17] 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.
[18] 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).
[19] *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).

EPA.[20] 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 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-electric generating units that would have been subject to the NOx Budget Trading Program established for compliance with the NOx SIP Call.[21]

- *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.[22] 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.

CSAPR NOx Annual, CSAPR NOx Ozone Season Group 1, CSAPR SO_2 Group 1, and CSAPR SO_2 Group 2 Trading Programs:		
Units	**Year of the Control Period**	**Deadline for Submission to EPA of Allocations or Auction Results**
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

[20] 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).
[21] 40 CFR 52.38(b)(8)(iii)(A), (b)(9)(iii)(A).
[22] 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).

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

CSAPR NOx Ozone Season Group 2 Trading Program:		
Units	**Year of the Control Period**	**Deadline for Submission to EPA of Allocations or Auction Results**
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 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.[23]
- *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.[24] 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.[25]

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:

[23] 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).
[24] 40 CFR 52.38(a)(4), (a)(5), (b)(4), (b)(5), (b)(8), (b)(9); 52.39(e), (f), (h), (i).
[25] 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).

- *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 less than 15 MWe.[26] In addition or alternatively, applicability under the CSAPR NOx Ozone Season Group 2 Trading Program may be expanded to non-electric generating units that would have been subject to the NOx Budget Trading Program established for compliance with the NOx SIP Call.[27]
- *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.[28]

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

[26] 40 CFR 52.38(b)(4)(i), (b)(5)(i), (b)(8)(i), (b)(9)(i).
[27] 40 CFR 52.38(b)(8)(ii), (b)(9)(ii).
[28] 40 CFR 52.38(b)(4), (b)(5), (b)(8), (b)(9).

applicable, except as described above in the case of a SIP revision that seeks to replace the default allowance allocation and/or applicability provisions.[29]

- *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.[30]
- *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.[31]

V. South Carolina's SIP draft submittal and EPA's analysis

A. South Carolina's draft SIP submittal

In the CSAPR rulemaking, EPA determined that air pollution transported from EGUs in South Carolina would unlawfully affect other states' ability to attain or maintain the 1997 8-hour ozone NAAQS and the 1997 Annual $PM_{2.5}$ NAAQS, and included South Carolina in the CSAPR ozone season NOx trading program and the annual SO_2 and NOx trading programs.[32] In the CSAPR Update rulemaking, EPA determined that South Carolina was no longer linked to any identified downwind nonattainment or maintenance receptors for the 1997 8-hour ozone NAAQS or 2008 8-hour ozone NAAQS, and removed South Carolina from the CSAPR ozone season

[29] 40 CFR 52.38(a)(5), (b)(5), (b)(9); 52.39(f), (i).
[30] 40 CFR 52.38(a)(5)(iii), (b)(5)(iv), (b)(9)(v); 52.39(f)(3), (i)(3).
[31] 40 CFR 52.38(a)(5)(iv), (b)(5)(v), (b)(9)(vi); 52.39(f)(4), (i)(4).
[32] 76 FR 48208, 48213 (August 8, 2011).

NOx trading program beginning in 2017.[33] South Carolina's units meeting the CSAPR applicability criteria are consequently currently subject to CSAPR FIPs that require participation in the CSAPR NOx Annual Trading Program and the CSAPR SO_2 Group 2 Trading Program.[34] South Carolina's May 26, 2017, draft SIP revision incorporates into the SIP CSAPR state trading program regulations that would replace the CSAPR federal trading program regulations with regard to South Carolina units' SO_2 and annual NOx emissions. The draft SIP submittal includes the addition of South Carolina Regulation 61-62.97, Cross-State Air Pollution Rule (CSAPR) Trading Program. This rule will contain two subparts: 61-62.97, Subpart A - South Carolina CSAPR NOx Annual Trading Program, and 61-62.97 Subpart B - South Carolina CSAPR SO_2 Group 2 Trading Program. In general, each subpart in South Carolina's draft CSAPR state trading program rule is designed to replace the corresponding federal trading program regulations. For example, South Carolina draft Regulation 61-62.97, Subpart A – South Carolina CSAPR NOx 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 draft rules for each South Carolina CSAPR state trading program are set forth as full regulatory text – notably the rules identifying the trading budgets, NUSAs, and Indian country NUSA – but most of the draft rules incorporate the corresponding federal trading program section or sections by reference.

With regard to substance, the draft rules for each South Carolina CSAPR state trading program differ from the corresponding CSAPR federal trading program regulations in two main ways. First, the applicability provisions in the South Carolina draft rules require participation in

[33] 81 FR 74504, 74524 (October 26, 2016). Removal of South Carolina from the CSAPR ozone season trading program beginning in 2017 addressed the portion of the D.C. Circuit's remand in *EME Homer City II* related to South Carolina's ozone season NOx budget for the 1997 8-hour ozone NAAQS. *Id*.
[34] 40 CFR 52.38(a)(2), (b)(2); 52.39(c); 52.2140(a), (b); 52.2141.

South Carolina CSAPR state trading programs only for units in South Carolina, not for units in any other state or in Indian country within the borders of South Carolina or any other state. Second, the South Carolina draft rules omit some federal trading program provisions not applicable to South Carolina'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 South Carolina draft rules adopt the Phase 2 annual NOx and SO_2 budgets found at 40 CFR 97.410(a)(18)(iv) and 97.710(a)(6)(iv), respectively. Accordingly, EPA will evaluate the approvability of the South Carolina draft SIP submission consistent with these budgets.

At this time, EPA is proposing to take action on the portions of South Carolina's draft SIP submission designed to replace the federal CSAPR NOx Annual Trading Program and the federal CSAPR SO_2 Group 2 Trading Program with regard to South Carolina units.

B. EPA's analysis of South Carolina's draft submittal

As described in section V.A above, at this time EPA is proposing to take action on the portions of South Carolina's draft SIP submittal designed to replace the federal CSAPR NOx Annual Trading Program and the federal CSAPR SO_2 Group 2 Trading Program for South Carolina units.[35] The analysis discussed in this section addresses only the portions of South Carolina's draft SIP submittal on which EPA is taking action at this time. For simplicity, throughout this section EPA refers to the portions of the draft submittal on which EPA is proposing to take action as "the draft submittal" or "the draft SIP revision" without repeating the qualification that at this time EPA is analyzing and proposing to act on only portions of the draft SIP submittal.

[35] The other portions of the draft state submittal will be addressed in separate actions.

1. Timeliness and completeness of SIP submittal

South Carolina submitted its draft SIP revision to EPA on May 26, 2017, and EPA has determined that the submittal complies with the applicable minimum completeness criteria for parallel processing in section 2.3 of appendix V to 40 CFR part 51.[36] The SIP submission deadline specified in 40 CFR 52.38(a)(5)(vi) 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 South Carolina 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.[37]

2. Complete, substantively identical trading program provisions

As discussed above, the South Carolina draft SIP revision adopts state budgets identical to the Phase 2 budgets for South Carolina under the federal trading programs and adopts almost all of the provisions of the federal CSAPR NOx Annual Trading Program and CSAPR SO_2 Group 2 Trading Program, including the default allocation provisions. Under the State's draft rules, EPA would administer the programs and would retain the authority to allocate and record allowances.

With the following exceptions, the South Carolina draft rules comprising South Carolina's CSAPR state trading program for annual NOx emissions either incorporate by reference or adopt full-text replacements for all of the provisions of 40 CFR 97.402 through

[36] The requirements of paragraph 2.1 must be met prior to publication of EPA's final determination of plan approvability. 40 CFR 51, App. V, 2.3.2.
[37] *See* 40 CFR 52.38(a)(5)(vi) and 52.39(i)(6).

97.435, and the South Carolina draft rules comprising South Carolina's CSAPR state trading program for SO_2 emissions either incorporate by reference or adopt full-text replacements for all of the provisions of 40 CFR 97.702 through 97.735.

The first exception is that, as discussed below in section V.B.3, paragraphs 61-62.97.A.3 and B.3 of the South Carolina draft rules limit applicability of the rules to units located in South Carolina, excluding units located in Indian country within South Carolina's borders. This modification of the applicability provisions in the federal trading program rules is appropriate for state trading program rules which necessarily must be designed to apply only to sources subject to the State's jurisdiction.

The second exception is that South Carolina draft rule 61-62.97 omits the provisions of 40 CFR 97.410(a) and (b) and 97.710(a) and (b) setting forth the forth amounts of the Phase 1 emissions budgets, NUSAs, Indian country NUSAs, and variability limits for South Carolina 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 South Carolina Phase 1 emissions budget, NUSA, Indian country NUSA, and variability limit amounts is appropriate because South Carolina'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 South Carolina units participate does not undermine the completeness of the state trading programs. South Carolina's draft rules include full-text replacement provisions for the remaining provisions of 40 CFR 97.410 and 97.710 that are relevant to trading programs applicable only to South Carolina units during Phase 2 of CSAPR.

The third exception is that South Carolina draft rule 61-62.97 omits 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), and 97.721(j), concerning EPA's administration of Indian country NUSAs. Omission of these provisions from South Carolina's state trading program rules is required, as discussed in section V.B.4 below.

None of the omissions undermine the completeness of the South Carolina's state trading programs and EPA has determined that South Carolina's draft SIP revision makes no substantive changes to the provisions of the federal trading program regulations. Thus, South Carolina's draft SIP revision meets the condition under 40 CFR 52.38(a)(5) and 52.39(i) 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 and 97.702 through 97.735, 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"

Paragraphs 61-62.97.A.3 and B.3 of the South Carolina draft rules substitute the phrase "The following units in South Carolina (but not in Indian country within South Carolina's borders)," for the phrase "The following units in a State (and Indian country within the borders of such State)" in the corresponding federal trading program regulations at 40 CFR 97.410(a)(1) and 97.710(a)(1) and at 97.410(b) and 97.710(b), respectively. These provisions of the South Carolina draft rules define the units that are required to participate in South Carolina's CSAPR state trading programs. The substitutions appropriately exclude units located in other states and units located in Indian country within the borders of South Carolina or any other state, thereby limiting the applicability of South Carolina's state trading programs to units that are subject to

South Carolina's jurisdiction. These substitutions do not substantively change the provisions of CSAPR's federal trading program regulations. The remaining South Carolina rules do not substitute for the term "State" as used in the federal trading program regulations. EPA proposes to find that South Carolina's draft SIP revision therefore meets the condition under 40 CFR 52.38(a)(5)(iii) and 52.39(i)(3) that 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 provisions of the federal trading program regulations.

4. Exclusion of provisions addressing units in Indian country

As discussed above in section V.B.3, paragraphs 61-62.97.A.3 and B.3 of the South Carolina draft rules explicitly exclude units in Indian country within South Carolina's borders from the applicable requirements of the state rule. In addition, as required under 40 CFR sections 52.38(a)(5)(iv) and 52.39(i)(4), South Carolina's draft 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), and 97.721(h) and 97.721(j)). South Carolina's draft SIP revision therefore meets the conditions under 52.38(a)(5)(iv) and 52.39(i)(4) 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.[38]

VI. EPA's proposed action on South Carolina's draft submittal

EPA is proposing to approve the portions of South Carolina's May 26, 2017, draft SIP submittal concerning the establishment for South Carolina units of CSAPR state trading

[38] A FIP will remain in place for any units that are in Indian country within South Carolina's borders.

programs for annual NOx and SO_2 emissions. The proposed draft revision would adopt into the SIP state trading program rules to be codified in SC Code of Annotated Regulations at 61-62.97, "Cross-State Air Pollution Rule (CSAPR) Trading Program." These South Carolina CSAPR state trading programs would be integrated with the federal CSAPR NOx Annual Trading Program and the federal CSAPR SO_2 Group 2 Trading Program, respectively, and would be substantively identical to the federal trading programs.[39] If EPA approves these portions of the proposed draft SIP revision, South Carolina units therefore would generally be required to meet requirements under South Carolina'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 draft 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 South Carolina units to participate in the federal CSAPR NOx Annual Trading Program and the federal CSAPR SO_2 Group 2 Trading Program in order to address South Carolina's obligations under CAA section 110(a)(2)(D)(i)(I) with respect to the 1997 Annual $PM_{2.5}$ NAAQS in the absence of SIP provisions addressing those requirements. Approval of the portions of South Carolina's draft SIP submittal adopting CSAPR state trading program rules for annual NOx and SO_2 substantively identical to the corresponding CSAPR federal trading program regulations (or differing only with respect to the allowance allocation methodology) would satisfy South Carolina's obligation pursuant to CAA section

[39] As previously discussed in sections IV and V.B.2, under South Carolina's draft regulations, the State will retain EPA's default allowance allocation methodology and EPA will remain the implementing authority for administration of the trading program.

110(a)(2)(D)(i)(I) to prohibit emissions which will significantly contribute to nonattainment or interfere with maintenance of the 1997 Annual $PM_{2.5}$ NAAQS in any other 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).[40] Approval of the portions of South Carolina's draft SIP submittal establishing CSAPR state trading program rules for annual NOx and SO_2 emissions therefore would result in automatic termination of the obligations of South Carolina units to participate in the federal CSAPR NOx Annual Trading Program and the federal CSAPR SO_2 Group 2 Trading Program.

As noted in section III above, the Phase 2 SO_2 budget established for South Carolina in the CSAPR rulemaking has been remanded to EPA for reconsideration. If EPA finalizes approval of these portions of the SIP revision as proposed, South Carolina will have fulfilled its obligations to provide a SIP that address the interstate transport provisions of CAA section 110(a)(2)(D)(i)(I) with respect to the 1997 Annual $PM_{2.5}$ 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 South Carolina units' obligations to participate in the federal CSAPR NOx Annual Trading Program and the federal CSAPR SO_2 Group 2 Trading Program. Elimination of South Carolina units' obligations to participate in the federal trading programs would include elimination of the federally-established Phase 2 budgets capping allocations of CSAPR NOx

[40] 40 CFR 52.38(a)(6); 52.39(j); see also 52.2140(a)(1); 52.2141(a).

Annual allowances and CSAPR SO_2 Group 2 allowances to South Carolina units under those federal trading programs. As approval of these portions of the SIP revision would eliminate South Carolina's remanded federally-established Phase 2 SO_2 budget and eliminate EPA's authority to subject units in South Carolina to a FIP, it is EPA's opinion that finalization of approval of this SIP action would address the judicial remand of South Carolina's federally-established Phase 2 SO_2 budget.

EPA's proposed approval is contingent on South Carolina's submission of a final SIP revision to address interstate transport provisions of CAA section 110(a)(2)(D)(i)(I) with respect to the 1997 Annual $PM_{2.5}$ NAAQS. Should South Carolina not submit a final SIP revision to EPA addressing interstate transport provisions of CAA section 110(a)(2)(D)(i)(I) with respect to the 1997 Annual $PM_{2.5}$ NAAQS and/or should EPA not be able to finalize a full approval action, EPA will undertake further reconsideration of the FIP pursuant to the judicial remand. The Agency has made the preliminary determination that these proposed actions are consistent with the CAA and EPA's regulations for approval of a CSAPR full SIP revision replacing the requirements of a CSAPR FIP.

VII. 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:

- 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).

In addition, this proposed rule for South Carolina does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because it does not have substantial direct effects on an Indian Tribe. The Catawba Indian Nation Reservation is located within the state of South Carolina. Pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27-16-120, "all state and local environmental laws and regulations apply to the [Catawba Indian Nation] and Reservation and are fully enforceable by all relevant state and local agencies and authorities." However, the draft rules proposed for approval exclude units in Indian country from the applicable requirements of the draft rules and exclude federal trading provisions related to EPA's process for allocating and recording allowances from Indian country NUSAs. EPA notes this action will not 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: July 28, 2017.

V. Anne Heard,

Acting Regional Administrator,

Region 4.

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