



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R04-OAR-2017-0104; FRL-9969-21-Region 4]**

**Air Plan Approval; Alabama; Regional Haze Plan and Prong 4 (Visibility) for the 2012  
PM<sub>2.5</sub>, 2010 NO<sub>2</sub>, 2010 SO<sub>2</sub>, and 2008 Ozone NAAQS**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking the following four actions regarding the Alabama State Implementation Plan (SIP): approving the portion of Alabama's October 26, 2015, SIP submittal seeking to change reliance from the Clean Air Interstate Rule (CAIR) to the Cross-State Air Pollution Rule (CSAPR) for certain regional haze requirements; converting EPA's limited approval/limited disapproval of Alabama's July 15, 2008, regional haze SIP to a full approval; approving the visibility prong of Alabama's infrastructure SIP submittals for the 2012 Fine Particulate Matter (PM<sub>2.5</sub>), 2010 Nitrogen Dioxide (NO<sub>2</sub>), and 2010 Sulfur Dioxide (SO<sub>2</sub>) National Ambient Air Quality Standards (NAAQS); and converting EPA's disapproval of the visibility portion of Alabama's infrastructure SIP submittal for the 2008 Ozone NAAQS to an approval.

**DATES:** This rule will be effective [Insert date 30 days after date of publication in the Federal Register].

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2017-0104. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) web site. Although listed in the index, some information may not be publicly available, i.e.,

Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Michele Notarianni, Air Regulatory Management Section, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Ms. Notarianni can be reached by telephone at (404) 562-9031 or via electronic mail at [notarianni.michele@epa.gov](mailto:notarianni.michele@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

**A. Regional Haze SIPs and Their Relationship with CAIR and CSAPR**

Section 169A(b)(2)(A) of the Clean Air Act (CAA or Act) requires states to submit regional haze SIPs that contain such measures as may be necessary to make reasonable progress towards the natural visibility goal, including a requirement that certain categories of existing major stationary sources built between 1962 and 1977 procure, install, and operate Best Available Retrofit Technology (BART) as determined by the state. In revisions to the regional

haze program made in 2005, EPA amended its regulations to provide that states participating in the CAIR cap-and-trade programs<sup>1</sup> pursuant to an EPA-approved CAIR SIP or states that remain subject to a CAIR Federal Implementation Plan (FIP) need not require affected BART-eligible electric generating units (EGUs) to install, operate, and maintain BART for emissions of SO<sub>2</sub> and nitrogen oxides (NO<sub>x</sub>). See 70 FR 39104. As a result of EPA's determination that CAIR was "better-than-BART," a number of states in the CAIR region, including Alabama, relied on the CAIR cap-and-trade programs as an alternative to BART for EGU emissions of SO<sub>2</sub> and NO<sub>x</sub> in designing their regional haze SIPs. These states also relied on CAIR as an element of a long-term strategy (LTS) for achieving their reasonable progress goals (RPGs) for their regional haze programs. However, in 2008, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) remanded CAIR to EPA without vacatur to preserve the environmental benefits provided by CAIR. *North Carolina v. EPA*, 550 F.3d 1176, 1178 (D.C. Cir. 2008). On August 8, 2011 (76 FR 48208), acting on the D.C. Circuit's remand, EPA promulgated CSAPR to replace CAIR and issued FIPs to implement the rule in CSAPR-subject states.<sup>2</sup> Implementation of CSAPR was scheduled to begin on January 1, 2012, when CSAPR would have superseded the CAIR program.

Due to the D.C. Circuit's 2008 ruling that CAIR was "fatally flawed" and its resulting status as a temporary measure following that ruling, EPA could not fully approve regional haze SIPs to the extent that they relied on CAIR to satisfy the BART requirement and the requirement

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<sup>1</sup> CAIR created regional cap-and-trade programs to reduce SO<sub>2</sub> and NO<sub>x</sub> emissions in 27 eastern states (and the District of Columbia), including Alabama, that contributed to downwind nonattainment or interfered with maintenance of the 1997 8-hour ozone NAAQS or the 1997 PM<sub>2.5</sub> NAAQS.

<sup>2</sup> CSAPR requires 28 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 ozone NAAQS, the 1997 annual PM<sub>2.5</sub> NAAQS, the 2006 24-hour PM<sub>2.5</sub> NAAQS, and the 2008 8-hour ozone NAAQS. The CSAPR emissions limitations are defined in terms of maximum statewide "budgets" for emissions of annual SO<sub>2</sub>, annual NO<sub>x</sub>, and/or ozone-season NO<sub>x</sub> by each covered state's large EGUs. The CSAPR state budgets are implemented in two phases of generally increasing stringency, with the Phase 1 budgets applying to emissions in 2015 and 2016 and the Phase 2 budgets applying to emissions in 2017 and later years.

for a LTS sufficient to achieve the state-adopted RPGs. On these grounds, EPA finalized a limited disapproval of Alabama's regional haze SIP on June 7, 2012, triggering the requirement for EPA to promulgate a FIP unless Alabama submitted and EPA approved a SIP revision that corrected the deficiency. *See* 77 FR 33642. EPA finalized a limited approval of Alabama's regional haze SIP on June 28, 2012, as meeting the remaining applicable regional haze requirements set forth in the CAA and the Regional Haze Rule (RHR). *See* 77 FR 38515.

In the June 7, 2012, limited disapproval action, EPA also amended the RHR to provide that participation by a state's EGUs in a CSAPR trading program for a given pollutant – either a CSAPR federal trading program implemented through a CSAPR FIP or an integrated CSAPR state trading program implemented through an approved CSAPR SIP revision – qualifies as a BART alternative for those EGUs for that pollutant.<sup>3</sup> *See* 40 CFR 51.308(e)(4). Since EPA promulgated this amendment, numerous states covered by CSAPR have come to rely on the provision through either SIPs or FIPs.<sup>4</sup>

Numerous parties filed petitions for review of CSAPR in the D.C. Circuit, and on August 21, 2012, the court issued its ruling, vacating and remanding CSAPR to EPA and ordering continued implementation of CAIR. *EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7, 38 (D.C. Cir. 2012). The D.C. Circuit's vacatur of CSAPR was reversed by the United States Supreme Court on April 29, 2014, and the case was remanded to the D.C. Circuit to resolve remaining issues in accordance with the high court's ruling. *EPA v. EME Homer City Generation, L.P.*, 134 S. Ct. 1584 (2014). On remand, the D.C. Circuit affirmed CSAPR in most

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<sup>3</sup> Legal challenges to the CSAPR-Better-than-BART rule from state, industry, and other petitioners are pending. *Utility Air Regulatory Group v. EPA*, No. 12-1342 (D.C. Cir. filed August 6, 2012).

<sup>4</sup> EPA has promulgated FIPs relying on CSAPR participation for BART purposes for Georgia, Indiana, Iowa, Kentucky, Michigan, Missouri, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia, 77 FR at 33654, and Nebraska, 77 FR 40150, 40151 (July 6, 2012). EPA has approved Minnesota's and Wisconsin's SIPs relying on CSAPR participation for BART purposes. *See* 77 FR 34801, 34806 (June 12, 2012) for Minnesota and 77 FR 46952, 46959 (August 7, 2012) for Wisconsin.

respects, but invalidated without vacating some of the CSAPR budgets as to a number of states. *EME Homer City Generation, L.P. v. EPA*, 795 F.3d 118 (D.C. Cir. 2015). The remanded budgets include the Phase 2 SO<sub>2</sub> emissions budgets for Alabama, Georgia, South Carolina, and Texas and the Phase 2 ozone-season NO<sub>x</sub> budgets for 11 states. On September 21, 2017, the EPA Administrator signed a final rule affirming the continued validity of EPA's 2012 determination that CSAPR meets the RHR's criteria for a BART alternative. EPA determined that changes to CSAPR's geographic scope resulting from the actions that the Agency has taken or expects to take in response to the D.C. Circuit's remand do not affect the continued validity of participation in CSAPR as a BART alternative.<sup>5</sup>

## **B. Infrastructure SIPs**

By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) of the CAA are to be submitted by states within three years (or less, if the Administrator so prescribes) after promulgation of a new or revised NAAQS to provide for the implementation, maintenance, and enforcement of the new or revised NAAQS. EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of sections 110(a)(1) and 110(a)(2) as "infrastructure SIP" submissions. Sections 110(a)(1) and (2) require states to address basic SIP elements such as for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the newly established or revised NAAQS. More specifically, section 110(a)(1) provides the procedural and timing requirements for infrastructure SIPs. Section 110(a)(2) lists specific elements that states must meet for the infrastructure SIP requirements related to a newly established or revised NAAQS. The contents of an infrastructure SIP submission may vary depending upon the data and

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<sup>5</sup> The pre-publication version of this rule is available at: <https://www.epa.gov/airmarkets/interstate-transport-fine-particulate-matter-revision-federal-implementation-plan>.

analytical tools available to the state, as well as the provisions already contained in the state's implementation plan at the time in which the state develops and submits the submission for a new or revised NAAQS.

Section 110(a)(2)(D) has two components: 110(a)(2)(D)(i) and 110(a)(2)(D)(ii). Section 110(a)(2)(D)(i) includes four distinct components, commonly referred to as "prongs," that must be addressed in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state (prong 1) and from interfering with maintenance of the NAAQS in another state (prong 2). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state (prong 3) or from interfering with measures to protect visibility in another state (prong 4). Section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement.

A state can meet prong 4 requirements via confirmation in its infrastructure SIP submission that the state has an approved regional haze SIP that fully meets the requirements of 40 CFR 51.308 or 51.309. 40 CFR 51.308 and 51.309 specifically require that a state participating in a regional planning process include all measures needed to achieve its apportionment of emission reduction obligations agreed upon through that process. A fully approved regional haze SIP will ensure that emissions from sources under an air agency's jurisdiction are not interfering with measures required to be included in other air agencies' plans to protect visibility.

Alabama's August 20, 2012, 2008 8-hour Ozone infrastructure SIP submission; April 23, 2013, and December 9, 2015, 2010 1-hour NO<sub>2</sub> submissions; April 23, 2013, 2010 1-hour SO<sub>2</sub> submission; and December 9, 2015, 2012 annual PM<sub>2.5</sub> submission rely on the State having a fully approved regional haze SIP to satisfy its prong 4 requirements. EPA is approving the regional haze portion of the State's October 26, 2015, SIP revision and converting EPA's previous action on Alabama's regional haze SIP from a limited approval/limited disapproval to a full approval because final approval of this portion of the SIP revision would correct the deficiencies that led to EPA's limited approval/limited disapproval of the State's regional haze SIP. Specifically, EPA's approval of this portion of Alabama's October 26, 2015, SIP revision would satisfy the SO<sub>2</sub> and NO<sub>x</sub> BART requirements and SO<sub>2</sub> reasonable progress requirements for EGUs formerly subject to CAIR and the requirement that a LTS include measures as necessary to achieve the State-adopted RPGs. Because a state may satisfy prong 4 requirements through a fully approved regional haze SIP, EPA is also approving the prong 4 portion of Alabama's April 23, 2013, and December 9, 2015, 2010 1-hour NO<sub>2</sub> infrastructure submissions; the April 23, 2013, 2010 1-hour SO<sub>2</sub> infrastructure submission; and the December 9, 2015, 2012 annual PM<sub>2.5</sub> submission; and converting EPA's February 7, 2017, disapproval of the prong 4 portions of Alabama's August 20, 2012, 2008 8-hour Ozone infrastructure submission to an approval.

In a notice of proposed rulemaking (NPRM) published on August 17, 2017 (82 FR 39090), EPA proposed to take the following actions regarding Alabama's October 26, 2015, SIP submittal, contingent upon the now final determination that CSAPR continues to qualify as an alternative to the application of BART under the RHR: 1) approve the regional haze portion of Alabama's October 26, 2015, SIP submission to change reliance from CAIR to CSAPR; 2)

convert EPA's limited approval/limited disapproval of Alabama's July 15, 2008, regional haze SIP to a full approval; 3) approve the prong 4 portion of Alabama's April 23, 2013, and December 9, 2015, 2010 1-hour NO<sub>2</sub> submissions; April 23, 2013, 2010 1-hour SO<sub>2</sub> submission; and December 9, 2015, 2012 annual PM<sub>2.5</sub> submission; and 4) convert EPA's February 7, 2017, disapproval of the prong 4 portion of Alabama's August 20, 2012, 2008 8-hour Ozone submission to an approval. The details of Alabama's submission and the rationale for EPA's actions are explained in the NPRM. Comments on the proposed rulemaking were due on or before September 18, 2017. EPA received no adverse comments on the proposed action.

## **II. Final Actions**

As described above, EPA is taking the following actions: 1) approving the regional haze portion of Alabama's October 26, 2015, SIP submission to change reliance from CAIR to CSAPR; 2) converting EPA's limited approval/limited disapproval of Alabama's July 15, 2008, regional haze SIP to a full approval; 3) approving the prong 4 portion of Alabama's April 23, 2013, and December 9, 2015, 2010 1-hour NO<sub>2</sub> submissions; April 23, 2013, 2010 1-hour SO<sub>2</sub> submission; and December 9, 2015, 2012 annual PM<sub>2.5</sub> submission; and 4) converting EPA's February 7, 2017, disapproval of the prong 4 portion of Alabama's August 20, 2012, 2008 8-hour Ozone submission to an approval. All other applicable infrastructure requirements for the infrastructure SIP submissions have been or will be addressed in separate rulemakings.

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

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. Accordingly, these actions merely approve state

law as meeting federal requirements and do not impose additional requirements beyond those imposed by state law. For that reason, these actions:

- are not significant regulatory actions 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);
- do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- are 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.*);
- do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- are 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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of these actions must be filed in the United States Court of Appeals for the appropriate circuit by [insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of these actions for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. These

actions may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

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

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

Dated: September 29, 2017.

Onis “Trey” Glenn, III,  
Regional Administrator,  
Region 4.

40 CFR part 52 is amended as follows:

**PART 52-APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

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

**Subpart B — Alabama**

2. Section 52.50(e) is amended by adding new entries for “110(a)(1) and (2) Infrastructure Requirements for the 2010 1-hour NO<sub>2</sub> NAAQS”, “110(a)(1) and (2) Infrastructure Requirements for the 2010 1-hour SO<sub>2</sub> NAAQS”, “110(a)(1) and (2) Infrastructure Requirements for the 2012 Annual PM<sub>2.5</sub> NAAQS” and “Regional Haze Plan Revision” at the end of the table to read as follows:

**§ 52.50 Identification of plan.**

\* \* \* \* \*

(e) \* \* \*

**EPA-Approved Alabama Non-Regulatory Provisions**

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
**	**	*	*	*
110(a)(1) and (2) Infrastructure Requirements for the 2010 1-hour NO <sub>2</sub> NAAQS	Alabama	12/9/2015	[Insert date of publication in <u>Federal Register</u> ], [Insert Federal Register citation]	Addressing Prong 4 of Section 110(a)(2)(D)(i)(I) only.

110(a)(1) and (2) Infrastructure Requirements for the 2010 1-hour SO <sub>2</sub> NAAQS	Alabama	4/23/2013	[Insert date of publication in <u>Federal Register</u> ], [Insert Federal Register citation]	Addressing Prong 4 of Section 110(a)(2)(D)(i)(I) only.
110(a)(1) and (2) Infrastructure Requirements for the 2012 Annual PM <sub>2.5</sub> NAAQS	Alabama	12/9/2015	[Insert date of publication in <u>Federal Register</u> ], [Insert Federal Register citation]	Addressing Prong 4 of Section 110(a)(2)(D)(i)(I) only.
Regional Haze Plan Revision	Alabama	10/26/2015	[Insert date of publication in <u>Federal Register</u> ], [Insert Federal Register citation]	

3. Section 52.53 is amended by removing and reserving paragraph (e) to read as follows:

**§ 52.53 Approval status.**

\* \* \* \* \*

(e) [Reserved]

**§ 52.61 [Removed and reserved]**

4. Section 52.61 is removed and reserved.

[FR Doc. 2017-21954 Filed: 10/11/2017 8:45 am; Publication Date: 10/12/2017]