Dated: January 25, 2018.

Sarang V. Damle,

General Counsel and Associate Register of Copyrights.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2016–0315; FRL–9973–46–Region 4]

Air Plan Approval; Georgia; Regional Haze Plan and Prong 4 (Visibility) for the 2012 $PM_{2.5}$, 2010 NO_2, 2010 SO_2, and 2008 Ozone NAAQS

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to take the following four actions regarding the Georgia State Implementation Plan (SIP): Approve the portion of Georgia's July 26, 2017, SIP submittal seeking to change reliance from the Clean Air Interstate Rule (CAIR) to Cross-State Air Pollution Rule (CSAPR) for certain regional haze requirements; convert EPA's limited approval/limited disapproval of Georgia's regional haze SIP to a full approval; remove EPA's Federal Implementation Plan (FIP) for Georgia which replaced reliance on CAIR with reliance on CSAPR to address the deficiencies identified in the limited disapproval of Georgia's regional haze SIP; and approve the visibility prong of Georgia's infrastructure SIP submittals for the 2012 Fine Particulate Matter ($PM_{2.5}$), 2010 Nitrogen Dioxide (NO_2), 2010 Sulfur Dioxide (SO_2), and 2008 8-hour Ozone National Ambient Air Quality Standards (NAAQS).

DATES: Comments must be received on or before March 5, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No EPA–R04–OAR–2016–0315 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: 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.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Regional Haze Plans 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 plans 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. Under the Regional Haze Rule (RHR), states are directed to conduct BART determinations for such ''BART-eligible'' sources that may be anticipated to cause or contribute to any visibility impairment in a Class I area. Rather than requiring source-specific BART controls, states also have the flexibility to adopt an emissions trading program or other alternative program as long as the alternative provides greater reasonable progress towards improving visibility than BART. *See* 40 CFR 51.308(e)(2). EPA provided states with this flexibility in the RHR, adopted in 1999, and further refined the criteria for assessing whether an alternative program provides for greater reasonable progress in two subsequent rulemakings. *See* 64 FR 35714 (July 1, 1999); 70 FR 39104 (July 6, 2005); 71 FR 60612 (October 13, 2006).

EPA demonstrated that CAIR would achieve greater reasonable progress than BART in revisions to the regional haze program made in 2005.[1] *See* 70 FR 39104 (July 6, 2005). In those revisions, EPA amended its regulations to provide that states participating in the CAIR cap-and-trade programs pursuant to an EPA-approved CAIR SIP or states that remain subject to a CAIR FIP need not require affected BART-eligible electric generating units (EGUs) to install, operate, and maintain BART for emissions of SO_2 and nitrogen oxides (NO_X). As a result of EPA's determination that CAIR was ''better-than-BART,'' a number of states in the CAIR region, including Georgia, relied on the CAIR cap-and-trade programs as an alternative to BART for EGU emissions of SO_2 and NO_X in designing their regional haze plans. 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.[2] 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 for a LTS sufficient to achieve the state-adopted RPGs. On these grounds, EPA finalized a limited disapproval of Georgia's regional haze

[1] CAIR created regional cap-and-trade programs to reduce SO_2 and NO_X emissions in 27 eastern states (and the District of Columbia), including Georgia, that contributed to downwind nonattainment or interfered with maintenance of the 1997 8-hour ozone NAAQS or the 1997 $PM_{2.5}$ NAAQS.

[2] CSAPR requires 28 eastern states to limit their statewide emissions of SO_2 and/or NO_X 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 $PM_{2.5}$ NAAQS, the 2006 24-hour $PM_{2.5}$ 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 NO_X, and/or ozone-season NO_X 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.

plan on June 7, 2012 (77 FR 33642), and in the same action, promulgated a FIP to replace reliance on CAIR with reliance on CSAPR to address the deficiencies in Georgia's regional haze plan. EPA finalized a limited approval of Georgia's regional haze SIP on June 28, 2012 (77 FR 38501), as meeting the remaining applicable regional haze requirements set forth in the CAA and the RHR.

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.[3] *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.[4]

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 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_2 emissions budgets for Alabama, Georgia, South Carolina, and Texas and the Phase 2 ozone-season NO_X budgets for 11 states. This litigation ultimately delayed implementation of CSAPR for three years, from January 1, 2012, when CSAPR's cap-and-trade programs were originally scheduled to replace the CAIR cap-and-trade programs, to January 1, 2015. Thus, the rule's Phase 2 budgets that were originally promulgated to begin on January 1, 2014, began on January 1, 2017.

On September 29, 2017 (82 FR 45481), EPA issued a final rule affirming the continued validity of the Agency's 2012 determination that participation in CSAPR meets the RHR's criteria for an alternative to the application of source-specific BART. EPA has determined that changes to CSAPR's geographic scope resulting from the actions EPA has taken or expects to take in response to the D.C. Circuit's budget remand do not affect the continued validity of participation in CSAPR as a BART alternative, because the changes in geographic scope would not have adversely affected the results of the air quality modeling analysis upon which the EPA based the 2012 determination. EPA's September 29, 2017, determination was based, in part, on EPA's final action approving a SIP revision from Alabama (81 FR 59869 (August 31, 2016)) adopting Phase 2 annual NO_X and SO_2 budgets equivalent to the federally-developed budgets and on SIP revisions submitted by Georgia and South Carolina to also adopt Phase 2 annual NO_X and SO_2 budgets equivalent to the federally-developed budgets.[5] Since that time, EPA has approved the SIP revisions from Georgia and South Carolina. *See* 82 FR 47930 (October 13, 2017) and 82 FR 47936 (October 13, 2017), respectively.

A portion of Georgia's July 26, 2017, SIP submittal seeks to correct the deficiencies identified in the June 7, 2012, limited disapproval of its regional haze plan submitted on February 11, 2010, and supplemented on November 19, 2010, by replacing reliance on CAIR with reliance on CSAPR.[6] Specifically, Georgia requests that EPA amend the State's regional haze plan by replacing its reliance on CAIR with CSAPR to satisfy SO_2 and NO_X BART requirements and first implementation period SO_2 reasonable progress requirements for EGUs formerly subject to CAIR,[7] and to support the RPGs for the Class I areas in Georgia for the first implementation period. EPA is proposing to approve the regional haze portion of the SIP submittal and amend the SIP accordingly.

B. Infrastructure SIPs

By statute, plans 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 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.[8]

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

[3] 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).

[4] 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 SIPs from Alabama, Minnesota, and Wisconsin relying on CSAPR participation for BART purposes. *See* 82 FR 47393 (October 12, 2017) for Alabama; 77 FR 34801, 34806 (June 12, 2012) for Minnesota; and 77 FR 46952, 46959 (August 7, 2012) for Wisconsin.

[5] EPA proposed to approve the Georgia and South Carolina SIP revisions adopting CSAPR budgets on August 16, 2017 (82 FR 38866), and August 10, 2017 (82 FR 37389), respectively.

[6] On October 13, 2017, (82 FR 47930), EPA approved the portions of the July 26, 2017, SIP submission incorporating into Georgia's SIP the State's regulations requiring Georgia EGUs to participate in CSAPR state trading programs for annual NO_X and SO_2 emissions integrated with the CSAPR federal trading programs and thus replacing the corresponding FIP requirements. In the October 13, 2017, action, EPA did not take any action regarding Georgia's request in this July 26, 2017, SIP submission to revise the State's regional haze plan nor regarding the prong 4 element of the 2008 8-hour ozone, 2010 1-hour NO_2, 2010 1-hour SO_2, and 2012 $PM_{2.5}$ NAAQS.

[7] In its regional haze plan, Georgia concluded and EPA found acceptable the State's determination that no additional controls beyond CAIR are reasonable for SO_2 for affected Georgia EGUs for the first implementation period, with the exception of five EGUs at three facilities owned by Georgia Power. *See* 77 FR 11464 (February 27, 2012).

[8] For additional information regarding EPA's approach to the review of infrastructure SIP submissions, see, *e.g.,* 81 FR 57544 (August 23, 2016) (proposal to approve portions of Georgia's infrastructure SIP for the 2012 $PM_{2.5}$ NAAQS).

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.

Through this action, EPA is proposing to convert the conditional approvals of the prong 4 portions of Georgia's infrastructure SIP submissions for the 2008 8-hour Ozone, 2010 1-hour NO_2, 2010 1-hour SO_2, and 2012 annual $PM_{2.5}$ NAAQS to full approvals, as discussed in section III of this notice.[9] All other applicable infrastructure SIP requirements for these SIP submissions have been or will be addressed in separate rulemakings. A brief background regarding the NAAQS relevant to this proposal is provided below. For comprehensive information on these NAAQS, please refer to the **Federal Register** notices cited in the following subsections.

1. 2010 1-Hour SO_2 NAAQS

On June 2, 2010, EPA revised the 1-hour primary SO_2 NAAQS to an hourly standard of 75 parts per billion (ppb) based on a 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations. *See* 75 FR 35520 (June 22, 2010). States were required to submit infrastructure SIP submissions for the 2010 1-hour SO_2 NAAQS to EPA no later than June 2, 2013. Georgia submitted an infrastructure SIP submission for the 2010 1-hour SO_2 NAAQS on October 22, 2013, as supplemented on July 25, 2014. This proposed action only addresses the prong 4 element of that submission.[10]

2. 2010 1-Hour NO_2 NAAQS

On January 22, 2010, EPA promulgated a new 1-hour primary NAAQS for NO_2 at a level of 100 ppb, based on a 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum concentrations. *See* 75 FR 6474 (February 9, 2010). States were required to submit infrastructure SIP submissions for the 2010 1-hour NO_2 NAAQS to EPA no later than January 22, 2013. Georgia submitted an infrastructure SIP submission for the 2010 1-hour NO_2 NAAQS on March 25, 2013. This proposed action only addresses the prong 4 element of this submission.[11]

3. 2012 $PM_{2.5}$ NAAQS

On December 14, 2012, EPA revised the annual primary $PM_{2.5}$ NAAQS to 12 micrograms per cubic meter ($\mu g/m^3$). *See* 78 FR 3086 (January 15, 2013). States were required to submit infrastructure SIP submissions for the 2012 $PM_{2.5}$ NAAQS to EPA no later than December 14, 2015. Georgia submitted an infrastructure SIP submission for the 2012 $PM_{2.5}$ NAAQS on December 14, 2015. This proposed action only addresses the prong 4 element of that submission.[12]

4. 2008 8-Hour Ozone NAAQS

On March 12, 2008, EPA revised the 8-hour Ozone NAAQS to 0.075 parts per million. *See* 73 FR 16436 (March 27, 2008). States were required to submit infrastructure SIP submissions for the 2008 8-hour Ozone NAAQS to EPA no later than March 12, 2011. Georgia submitted an infrastructure SIP for the 2008 8-hour Ozone NAAQS on May 14, 2012. This proposed action only addresses the prong 4 element of that submission.[13]

II. What are the prong 4 requirements?

CAA section 110(a)(2)(D)(i)(II) requires a state's implementation plan to contain provisions prohibiting sources in that state from emitting pollutants in amounts that interfere with any other state's efforts to protect visibility under part C of the CAA (which includes sections 169A and 169B). EPA most recently issued guidance for infrastructure SIPs on September 13, 2013 (2013 Guidance).[14] The 2013 Guidance states that these prong 4 requirements can be satisfied by approved SIP provisions that EPA has found to adequately address any contribution of that state's sources that impacts the visibility program requirements in other states. The 2013 Guidance also states that EPA interprets this prong to be pollutant-specific, such that the infrastructure SIP submission need only address the potential for interference with protection of visibility caused by the pollutant (including precursors) to which the new or revised NAAQS applies.

The 2013 Guidance lays out how a state's infrastructure SIP submission may satisfy prong 4. One way that a state can meet the requirements is via confirmation in its infrastructure SIP submission that the state has an approved regional haze plan 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 plan 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.

Alternatively, in the absence of a fully approved regional haze plan, a state may meet the requirements of prong 4 through a demonstration in its infrastructure SIP submission that emissions within its jurisdiction do not interfere with other air agencies' plans to protect visibility. Such an infrastructure SIP submission would need to include measures to limit visibility-impairing pollutants and ensure that the reductions conform with any mutually agreed regional haze RPGs for mandatory Class I areas in other states.

III. What is EPA's analysis of how Georgia addressed prong 4 and regional haze?

Georgia's May 14, 2012, 2008 8-hour Ozone infrastructure SIP submission; March 25, 2013, 2010 1-hour NO_2 submission; October 22, 2013, 2010 1-hour SO_2 submission as supplemented

[9] On September 26, 2016, EPA conditionally approved the prong 4 portions of Georgia's infrastructure SIP submissions for the 2008 8-hour Ozone, 2010 1-hour NO_2, 2010 1-hour SO_2, and 2012 annual $PM_{2.5}$ NAAQS. *See* 81 FR 65899.

[10] The other portions of Georgia's 2010 1-hour SO_2 infrastructure submission submitted on October 22, 2013, and supplemented on July 25, 2014, were addressed in a separate action. *See* 81 FR 25355 (April 28, 2016).

[11] The other portions of Georgia's March 25, 2013, 2010 1-hour NO_2 infrastructure submission were addressed in a separate action. *See* 81 FR 63106 (September 14, 2016).

[12] Most of the other portions of Georgia's December 14, 2015, $PM_{2.5}$ infrastructure submission were addressed in a separate action. *See* 81 FR 83156 (November 21, 2016). EPA is evaluating the remaining portions of Georgia's December 14, 2015, $PM_{2.5}$ infrastructure submission and will consider action on those portions in a separate action.

[13] The other portions of Georgia's May 14, 2012, 2008 ozone infrastructure SIP submission were addressed in a separate action. *See* 80 FR 61109 (October 9, 2015).

[14] ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2),'' Memorandum from Stephen D. Page, September 13, 2013.

on July 25, 2014; and December 14, 2015, 2012 annual $PM_{2.5}$ submission rely on the State having a fully approved regional haze plan to satisfy its prong 4 requirements. However, EPA has not fully approved Georgia's regional haze plan, as the Agency issued a limited disapproval of the State's original regional haze plan on June 7, 2012, due to its reliance on CAIR.

On May 26, 2016, Georgia submitted a commitment letter to EPA to submit a SIP revision that adopts provisions for participation in the CSAPR annual NO_X and annual SO_2 trading programs, including annual NO_X and annual SO_2 budgets that are at least as stringent as the budgets codified for Georgia, and revises its regional haze plan to replace reliance on CAIR with CSAPR for certain regional haze provisions. In its letter, Georgia committed to providing this SIP revision within one year of EPA's final conditional approval of the prong 4 portions of the infrastructure SIP revisions. On September 26, 2016 (81 FR 65899), EPA conditionally approved the prong 4 portion of Georgia's infrastructure SIP submissions for the 2008 8-hour Ozone, 2010 1-hour NO_2, 2010 1-hour SO_2, and 2012 annual $PM_{2.5}$ NAAQS based on this commitment letter from the State. In accordance with the State's May 26, 2016, commitment letter, Georgia submitted a SIP revision on July 26, 2017, to adopt provisions for participation in the CSAPR annual NO_X and annual SO_2 trading programs and to replace reliance on CAIR with reliance on CSAPR for certain regional haze provisions. As noted above, EPA approved the portion of Georgia's July 26, 2017, SIP revision adopting CSAPR. *See* 82 FR 47930 (October 13, 2017).

EPA is proposing to approve the regional haze portion of the State's July 26, 2017, SIP revision replacing reliance on CAIR with CSAPR, and to convert EPA's previous action on Georgia's regional haze plan 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 plan. Specifically, EPA's approval of the regional haze portion of Georgia's July 26, 2017, SIP revision would satisfy the SO_2 and NO_X BART requirements and first implementation period SO_2 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. Thus, EPA is also proposing to remove EPA's FIP for Georgia which replaced reliance on CAIR with reliance on CSAPR to address the deficiencies identified in the limited disapproval of Georgia's regional haze SIP. Because a state may satisfy prong 4 requirements through a fully approved regional haze plan, EPA is therefore also proposing to convert the conditional approvals to full approvals of the prong 4 portion of Georgia's May 14, 2012, 2008 8-hour Ozone infrastructure SIP submission; March 25, 2013, 2010 1-hour NO_2 submission; October 22, 2013, 2010 1-hour SO_2 submission as supplemented on July 25, 2014; and December 14, 2015, 2012, annual $PM_{2.5}$ submissions.

IV. Proposed Action

As described above, EPA is proposing to take the following actions: (1) Approve the regional haze portion of Georgia's July 26, 2017, SIP submission to change reliance from CAIR to CSAPR; (2) convert EPA's limited approval/limited disapproval of Georgia's February 11, 2010, regional haze plan as supplemented on November 19, 2010, to a full approval; (3) remove EPA's FIP for Georgia which replaced reliance on CAIR with reliance on CSAPR to address the deficiencies identified in the limited disapproval of Georgia's regional haze SIP; and (4) convert EPA's September 26, 2016, conditional approvals to full approvals of the prong 4 portion of Georgia's May 14, 2012, 2008 8-hour Ozone submission; March 25, 2013, 2010 1-hour NO_2 submission; the State's October 22, 2013, 2010 1-hour SO_2 submission as supplemented on July 25, 2014; and the State's December 14, 2015, 2012 annual $PM_{2.5}$ submission. All other applicable infrastructure requirements for the infrastructure SIP submissions have been or will be addressed in separate rulemakings.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, these proposed actions merely propose to approve state law as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law. For that reason, these proposed 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);
- Are not Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory actions because SIP approvals are exempted under Executive Order 12866;
- 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 (Pub. L. 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.

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: January 22, 2018.

Onis ''Trey'' Glenn, III,

Regional Administrator, Region 4.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 170630611–8032–01]

RIN 0648–BH01

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic; Regulatory Amendment 4

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement management measures described in Regulatory Amendment 4 to the Fishery Management Plan for Spiny Lobster in the Gulf of Mexico and South Atlantic (FMP), as prepared and submitted by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils). If implemented, this proposed rule would increase the annual catch limit (ACL) for spiny lobster based on updated landings information and revised scientific recommendations. This proposed rule would also prohibit the use of traps for recreational harvest of spiny lobster in the South Atlantic exclusive economic zone (EEZ) off Georgia, South Carolina, and North Carolina. The purposes of this proposed rule and Regulatory Amendment 4 are to ensure catch levels for spiny lobster are based on the best scientific information available, to prevent overfishing, and to minimize potential negative effects of traps on habitat and protected species interactions in the South Atlantic EEZ.

DATES: Written comments must be received on or before March 4, 2018.

ADDRESSES: You may submit comments on the proposed rule identified by ''NOAA–NMFS–2017–0125'' by any of the following methods:

• *Electronic submissions:* Submit electronic comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0125,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Submit all written comments to Nikhil Mehta, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Electronic copies of Regulatory Amendment 4, which includes an environmental assessment and a regulatory flexibility analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office website at *http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_sa/spiny_lobster/A4_lobster_acl/a4_lobster_acl_index.html.*

FOR FURTHER INFORMATION CONTACT: Nikhil Mehta, telephone: 727–824–5305, or email: *nikhil.mehta@noaa.gov.*

SUPPLEMENTARY INFORMATION: The spiny lobster fishery of the Gulf of Mexico (Gulf) and the South Atlantic is managed under the FMP. The FMP was prepared by the Councils and implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C 1801 *et seq.*).

Background

In 2012, NMFS implemented Amendment 10 to the FMP, which included an overfishing limit (OFL), acceptable biological catch (ABC), ACL, annual catch target (ACT), accountability measure (AM), and status determination criteria for spiny lobster (76 FR 75488; December 2, 2011). The OFL and ABC were specified using Tier 3a of the Gulf Council's ABC Control Rule (control rule), as recommended by the Scientific and Statistical Committees (SSCs) of the South Atlantic and Gulf of Mexico Fishery Management Councils (Councils). Applying the control rule, the SSCs recommended an OFL equal to the mean of the most recent 10 years of landings (fishing years 2000/2001 through 2009/2010) plus 2 standard deviations, and an ABC equal to the mean of the most recent 10 years of landings plus 1.5 standard deviations. This resulted in an OFL of 7.9 million lb (3.58 million kg) and an ABC of 7.32 million lb (3.32 million kg). The maximum sustainable yield (MSY) proxy and overfishing threshold (maximum fishing mortality threshold (MFMT)) were set equal to the OFL. The ACL was set equal to the ABC. The ACT, which equals the optimum yield (OY), was set at 90 percent of the ACL.

Since that time, the spiny lobster ACT has been exceeded three times, the ACL has been exceeded twice, and the OFL has been exceeded once. The AM established in Amendment 10 requires that the Councils convene a review panel if the spiny lobster ACT is exceeded, and the National Standard 1 guidelines state that if the ACL is exceeded more than once in a 4-year period, then the system of ACLs and AMs should be re-evaluated and modified, as necessary, to improve its performance and effectiveness (50 CFR 600.310(g)(7)). Therefore, The Councils convened a Spiny Lobster Review Panel (Review Panel) in February 2015, and again in March 2016, to assess whether action was needed to prevent the ACL from being exceeded. The Review Panel recommended that the catch levels for spiny lobster be based on the mean of landings during the fishing years 1991/1992 through 2015/2016, which is a longer time period than the 10-year period that was used to determine the current catch levels (fishing years 2000/2001 through 2009/2010). This is because the landings were historically low during the 2000/2001 through 2009/2010 time period used for the calculation of the current catch levels. The Review Panel determined that using the longer time period to calculate catch levels would better capture the dynamics of the fishery. Both SSCs agreed with the Review Panel and recommended using the longer time series of landings under Tier 3a of the control rule for setting the OFL and ABC. Using the longer time series of landings results in a revised OFL of 10.46 million lb (4.74 million kg) and a revised ABC of 9.60 million lb (4.35 million kg). Although the revised OFL and ABC are higher than the current OFL and ABC, using the longer time series is a more precautionary approach for calculating OFL and ABC than using the most recent 10 years of landings (2006/2007 through 2015/2016) because these landings have been historically high. The longer time series