

*Example 11. Above-market lease.* REIT K acquires an office building from an unrelated third party subject to a long-term lease with a single tenant under which the tenant pays above-market rents. The above-market lease is an intangible asset under GAAP. Seventy percent of the value of the above-market lease asset is attributable to income from the long-term lease that qualifies as rents from real property, as defined in section 856(d)(1). The remaining thirty percent of the value of the above-market lease asset is attributable to income from the long-term lease that does not qualify as rents from real property. The portion of the value of the above-market lease asset that is attributable to rents from real property (here, seventy percent) derives its value from real property, is inseparable from that real property, does not produce or contribute to the production of income other than consideration for the use or occupancy of space, and, therefore, is an interest in real property under section 856(c)(5)(C) and a real estate asset under section 856(c)(5)(B). The remaining portion of the above-market lease asset does not derive its value from real property and, therefore, is not a real estate asset.

*Example 12. Land use permit.* REIT L receives a special use permit from the government to place a cell tower on Federal Government land that abuts a federal highway. Government regulations provide that the permit is not a lease of the land, but is a permit to use the land for a cell tower. Under the permit, the government reserves the right to cancel the permit and compensate REIT L if the site is needed for a higher public purpose. REIT L leases space on the tower to various cell service providers. Each cell service provider installs its equipment on a designated space on REIT L's cell tower. The permit does not produce, or contribute to the production of, any income other than REIT L's receipt of payments from the cell service providers in consideration for their being allowed to use space on the tower. The permit is in the nature of a leasehold that allows REIT L to place a cell tower in a specific location on government land. Therefore, the permit is an interest in real property.

*Example 13. License to operate a business.* REIT M owns a building and receives a license from State to operate a casino in the building. The license applies only to REIT M's building and cannot be transferred to another location. REIT M's building is an inherently permanent structure under paragraph (d)(2)(i) of this section and, therefore, is real property. However, REIT M's license to operate a casino is not a right for the use, enjoyment, or occupation of REIT M's building but is rather a license to engage in the business of operating a casino in the building. Therefore, the casino license is not real property.

(h) *Effective/applicability date.* The rules of this section apply for taxable years beginning after August 31, 2016. For purposes of applying the first sentence of the flush language of section 856(c)(4) to a quarter in a taxable year that begins after August 31, 2016, the rules of this section apply in

determining whether the taxpayer met the requirements of section 856(c)(4) at the close of prior quarters. Taxpayers may rely on this section for quarters that end before the applicability date.

Approved: August 8, 2016.

**John Dalrymple,**

*Deputy Commissioner for Services and Enforcement.*

**Mark J. Mazur,**

*Assistant Secretary of the Treasury (Tax Policy).*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket Number USCG-2016-0665]

RIN 1625-AA00

#### Safety Zone; Great Egg Harbor Bay, Marmora, NJ

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing two temporary safety zones on the waters of Great Egg Harbor Bay in Marmora, NJ. The first safety zone includes all waters within 250 feet of vessel and machinery conducting demolition operations on the remaining portions of the Route 9, Beesley Point Bridge bascule span. This safety zone is necessary to provide for the safety of life on navigable waters during the demolition and will re-route vessel traffic through an alternate channel to facilitate heavy marine equipment operating in the main navigational channel to remove the bascule span of the bridge and will be in place throughout the entire duration of the demolition work.

The second safety zone includes all waters within 500 yards of a blasting vessel and equipment being used to conduct bridge pile blasting operations, which is the final phase of the demolition of the Route 9, Beesley Point Bridge bascule span. This safety zone will only be enforced during times of explosive detonation. The safety zone will temporarily restrict vessel traffic from transiting or anchoring in a portion of the Great Egg Harbor Bay while pile blasting and removal operations are being conducted to facilitate the removal of bridge piles from the demolished Route 9, Beesley Point Bridge.

**DATES:** This rule is effective without actual notice from August 31, 2016 through October 20, 2016. For the purposes of enforcement, actual notice will be used from August 22, 2016, until August 31, 2016. The second safety zone will be enforced on or about October 1, 2016, only during times of explosive detonation.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to, type USCG-2016-0665 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this rule, call or email Marine Science Technician First Class Tom Simkins, U.S. Coast Guard, Sector Delaware Bay, Waterways Management Division, Coast Guard; telephone (215) 271-4889, email [Tom.J.Simkins@uscg.mil](mailto:Tom.J.Simkins@uscg.mil).

#### SUPPLEMENTARY INFORMATION:

##### I. Table of Abbreviations

CFR Code of Federal Regulations  
DHS Department of Homeland Security  
FR Federal Register  
NPRM Notice of proposed rulemaking  
§ Section  
U.S.C. United States Code  
COTP Captain of the Port

##### II. Background Information and Regulatory History

In June of 2013, demolition work began on the Route 9, Beesley Point Bridge between Somers Point and Marmora, NJ. Route 52 Construction, the company performing this demolition work, has completed all demolition of the bridge and piles except the portion of the bridge which has the bascule span opening for the navigational channel.

During this phase of demolition heavy marine equipment, to include a large crane and barge, will be used to remove the large bascule span arms and what is left of the bridge tender house and roadway. The barge and crane must be placed in the navigational channel to properly secure and remove what remains of the bridge.

All piles from the demolished bridge south of the bascule span have been removed. All piles north of the bascule span have been removed with the exception of four piles, which are attached to the bascule span for support. The Coast Guard has reviewed Route 52 Construction's plan to move the main navigational channel 100 feet south of the most southern portion of the remaining bridge to allow vessel traffic to safely pass during the demolition of the bascule span. Once the bascule span is removed, the piles will be removed

and the bridge will be completely removed from the waterway.

The removal of the remaining piles, which are secured to the sea floor bed, will be completed by using explosives, after which the piles and debris will be removed. The Captain of the Port, Delaware Bay, has determined that potential hazards associated with pile blasting and removal operations, beginning on or about October 1, 2016, will be a safety concern for anyone operating within 500 yards of pile blasting and removal operations during times of explosive detonation.

The purpose of this rule is to promote maritime safety and protect vessels from the hazards of bridge demolition and pile blasting operations, and to maintain safety of navigation in the Great Egg Harbor Bay, in the vicinity of the Route 9, Beesley Point Bridge. The rule will provide for a clear transit route for vessels, provide a safety buffer around the crane and barge while demolition operations are conducted, and provide a safety buffer around the blasting vessel during times of explosive detonation.

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the final details for this event were not received by the Coast Guard until August 18, 2016, and the demolition work will begin August 22, 2016. The first safety zone is required by August 22, 2016, for the demolition of the remaining portion of the bridge, and it is impracticable to publish an NPRM and consider comments before that date. Allowing this event to go forward without a safety zone in place would expose mariners and the public to unnecessary dangers associated with bridge demolition operations. The crane and barge must be placed in the main navigational channel to facilitate the removal of the remaining portion of the bridge. Therefore, it is imperative that there is a clear transit route and safety zone around the demolition location.

Furthermore, the second safety zone is needed for blasting operations which will begin on or about October 1, 2016. It is impracticable to publish an NPRM and consider comments due to the short

window of time until the operation begins. Allowing this event to go forward without a safety zone in place would expose mariners and the public to unnecessary dangers associated with pile blasting operations.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register** for the reasons we stated for not publishing an NPRM. The Coast Guard expects minimal impact to vessels transiting through the alternate channel. Vessels will be able to safely transit through the alternate channel at all times, except during times of explosive detonation. The alternate channel will have the same horizontal clearance and no vertical clearance restriction, similar to the current navigational channel. Furthermore, notification for the first safety zone will be made via marine safety broadcast using VHF-FM channel 16 and through the Local Notice to Mariners.

For the second safety zone, the pile blasting operation, two blasting events will occur on consecutive days to complete both piers. Notification for the second safety zone will be a combination of broadcast notice to mariners, local notice to mariners, posted warning signs, 500 yard marine traffic safety zone maintained by the contractor's safety boats during time of explosive detonations, a 10 minute, 5 minutes, and 1 minute warning made by the blasting vessel via VHF-FM channel 16, and warning signals at 5 minutes with 3 short blasts of the air horn, and 1 minute warning of 2 short blasts of the air horn. The schedule of the signals will be posted along with all other required company, Local, State, and Federal signage.

### III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port, Delaware Bay has determined that potential hazards are associated with demolition and pile blasting operations of the Route 9, Beesley Point Bridge, over the Great Egg Harbor Bay, in Marmora, NJ from August 22, 2016, through October 20, 2016. The rule will provide for a clear transit route for vessels, provide a safety buffer around the crane and barge while demolition operations are conducted, and provide a safety buffer around the blasting vessel during times of explosive detonation.

The rule will minimally impact vessels transiting through the Great Egg Harbor Bay navigational channel, in the vicinity of the Route 9, Beesley Point

Bridge because vessels will be able to safely transit through an adequate alternate channel, except during times of explosive detonation. The alternate channel will have the same horizontal clearance and no vertical clearance restriction, similar to the current navigational channel.

### IV. Discussion of the Rule

On August 22, 2016, demolition work will begin on the remaining portion of the Route 9, Beesley Point Bridge, over the Great Egg Harbor Bay, in Marmora, NJ. The Captain of the Port, Delaware Bay, has determined that the hazards associated with demolition and pile blasting operations require two separate safety zones. The first safety zone will encompass all the navigable waters within 250 feet of the marine equipment and demolition operation. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Delaware Bay, or his designated representative. Vessels wishing to transit the waterway may navigate approximately 100 feet south of the main navigational channel to the alternate navigational channel to safely pass the demolition equipment. An adequate alternate navigational channel will be established 100 feet south of the most southern portion of the bascule span which will have the a horizontal clearance of 60 feet and an unlimited vertical clearance. The alternate navigational channel will be clearly marked with red and green buoys; during the evening the buoys will be lit with red and green lights to signify the channel. The alternate channel will have the same horizontal clearance and no vertical clearance restrictions; the State of New Jersey has marked the channel with best water for passage of vessels. Vessels are requested to contact the demolition crew via VHF-FM channel 13 or 16 to make satisfactory passing arrangement and maintain a safe speed when transiting the alternate navigational channel.

The second safety zone will be enforced starting on or about October 1, 2016, only during times of explosive detonation, and encompasses all navigable waters in the Great Egg Harbor Bay within 500 yards of vessels and machinery being used to conduct pile blasting and removal operations. The duration of the enforcement of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while explosive detonation occurs. There will be two blasting events occurring on consecutive days to complete both piers. Actual dates and times of explosive detonation

will be published with a combination of broadcast notice to mariners, local notice to mariners, posted warning signs, 500 yard marine traffic safety zone maintained by the contractors safety boats, a 10 minute, 5 minutes, and 1 minute warning made by the blasting vessel via VHF-FM channel 16, and warning signals at 5 minutes with 3 short blasts of the air horn, and 1 minute warning of 2 short blasts of the air horn. The schedule of the signals will be posted along with warning signs.

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Delaware Bay, or his designated representative. No vessels may transit through the safety zone during times of explosives detonation. During pile blasting explosive detonation, vessels will be required to maintain a 500-yard distance from vessels and equipment used to conduct pile blasting and removal operations. This 500 yard radius will be secured by two contractor safety boats in the adjacent waterways. For safety reasons associated with the blasting operation, during times of explosive detonation the alternate navigational channel will be closed. At all other times vessels may transit through the established alternate navigational channel approximately 100 feet south of the southernmost remaining pile of the Route 9, Beesley Point Bridge.

Signs will be posted to identify the blast area and warning signs will be posted with the schedule of the warning signals. The contractor will verify that all vessels and persons are clear of safety zone 10 minutes prior to the scheduled shot time and will remain secured until the blaster gives the "All Clear". All persons involved with securing the blast zone will be equipped with marine radios. A 10 minute, 5 minutes, and 1 minute warning made by the blasting vessel via VHF-FM channel 16, and warning signals at 5 minutes with 3 short blasts of the air horn, and 1 minute warning of 2 short blasts of the air horn. After every explosive detonation the blasting vessels will give the "All Clear" when the alternate channel is clear for vessels to transit.

## V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive order related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This finding is based on the limited size of the zone and the availability for vessels to transit freely through the alternate channel, around the first safety zone. Vessels will only be affected during times of explosive detonation, where the second safety zone will be enforced. The second safety zone is of a limited size and duration as blasting will occur only for a consecutive two day period. In addition, the zones will be well publicized to allow mariners to make alternative plans for transiting the affected area.

### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601-612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

It is expected that there will be minimal disruption to the maritime community. Before the effective period, the Coast Guard will issue maritime advisories widely available to users of the river to allow mariners to make alternative plans for transiting the affected areas. In addition, vessels may transit around the zone through an alternate channel, except during time of explosive detonation.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for

compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of

\$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves two safety zones, the first encompassing all the waters within 250 feet of demolition operations on the remaining portion of the Route 9, Beesley Point Bridge, over Great Egg Harbor Bay, in Marmora, NJ and the second encompassing all navigable waters in the Great Egg Harbor Bay within 500 yards of vessels and machinery being used to conduct pile blasting and removal operations during times of explosive detonation. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### **PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T05-0665, to read as follows:

#### **§ 165.T05-0665 Safety Zone; Great Egg Harbor Bay, Marmora, NJ.**

(a) *Regulated areas.* The following areas are safety zones:

(1) *Bascule span demolition zone.* All waters within 250 feet of vessels and machinery conducting demolition operations in Great Egg Harbor Bay, in the vicinity of Route 9, Beesley Point Bridge bascule span, in Marmora, NJ.

(2) *Bridge pile blasting zone.* All waters within 500 yards of the blasting vessel and equipment conducting pile blasting operations, in Great Egg Harbor Bay, in the vicinity of Route 9, Beesley Point Bridge, in Marmora, NJ.

(b) *Regulations.* The general safety zone regulations in § 165.23 apply to the safety zones created by this temporary section, § 165.T05-0665.

(1) All vessels and persons are prohibited from entering into or moving within the safety zones described in paragraph (a) of this section while they are subject to enforcement, unless authorized by the Captain of the Port, Delaware Bay, or by his designated representative.

(2) Persons or vessels seeking to enter or pass through the safety zones must contact the Captain of the Port, Delaware Bay, or his designated representative to seek permission to transit the area. The Captain of the Port, Delaware Bay can be contacted at telephone number 215-271-4807 or on Marine Band Radio VHF Channel 16 (156.8 MHz).

(3) Vessels may freely transit through the marked alternate channel, approximately 100 feet south of the most southern portion of the bascule span. The alternate channel has a horizontal clearance of 60 feet and unlimited vertical clearance. The alternate channel will be marked with red and green buoys and the buoys will be lit at night. Vessels are requested to contact the demolition crew via VHF-FM channel 13 or 16 to make satisfactory passing arrangement and maintain a safe speed when transiting the alternate navigational channel.

(4) No vessels may transit through the safety zone described in paragraph (a)(2) of this section during times of explosives detonation. During pile blasting detonation, vessels will be required to maintain a 500 yard distance from the blasting vessel and equipment. Within the 500 yards is the alternate channel, approximately 100 feet south

of the most southern portion of the bascule span. Therefore no vessel may transit the alternate channel during times of explosive detonation. Actual dates and times of explosive detonation will be announced with a combination of broadcast notice to mariners, local notice to mariners, posted warning signs, 500 yard marine traffic safety zone maintained by the contractors safety boats, 10 minute, 5 minutes, and 1 minute warning made by the blasting vessel via VHF-FM channel 16, and warning signals at 5 minutes with 3 short blasts of the air horn, and 1 minute warning of 2 short blasts of the air horn. The schedule of the signals will be posted along with all other required signage.

(5) This section applies to all vessels except those engaged in the following operations: enforcing laws, servicing aids to navigation, and emergency response vessels.

(c) *Definitions.* As used in this section:

*Captain of the Port Delaware Bay* means the Commander, U.S. Coast Guard Sector Delaware Bay, Philadelphia, PA.

*Designated representative* means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Delaware Bay to assist in enforcing the safety zone described in paragraph (a) of this section.

(d) *Enforcement.* The U.S. Coast Guard may be assisted by Federal, State and local agencies in the patrol and enforcement of the zone.

(e) *Enforcement period.* This first safety zone will be enforced from August 22, 2016, through October 20, 2016, unless cancelled earlier by the Captain of the Port. The second safety zone for pile blasting will only be enforced during times of explosive detonation. Pile Blasting operations are schedule to begin on or about October 1, 2016. Actual dates and times of explosive detonation will be published with a combination of broadcast notice to mariners, local notice to mariners, posted warning signs, 500 yard marine traffic safety zone maintained by the contractors safety boats, 10 minute, 5 minutes, and 1 minute warning made by the blasting vessel via VHF-FM channel 16, and warning signals at 5 minutes with 3 short blasts of the air horn, and 1 minute warning of 2 short blasts of the air horn. The schedule of the signals will be posted along with warning signs.

Dated: August 22, 2016.

**Benjamin A. Cooper,**  
*Captain, U.S. Coast Guard, Captain of the  
Port Delaware Bay.*

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**BILLING CODE 9110-04-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2016-0294; FRL-9951-52-  
Region 4]

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

**AGENCY:** Environmental Protection  
Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving portions of the October 26, 2015, State Implementation Plan (SIP) submittal from Alabama concerning the Cross-State Air Pollution Rule (CSAPR). Under CSAPR, large electricity generating units (EGUs) in Alabama are subject to Federal Implementation Plans (FIPs) requiring the units to participate in CSAPR's federal trading program for annual emissions of nitrogen oxides (NO<sub>x</sub>) and one of CSAPR's two federal trading programs for annual emissions of sulfur dioxide (SO<sub>2</sub>). This action approves the incorporation into Alabama's SIP of the state's regulations requiring Alabama EGUs to participate in new CSAPR state trading programs for annual NO<sub>x</sub> and SO<sub>2</sub> 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 except with regard to the provisions allocating emission allowances among Alabama units. EPA is approving the portions of the SIP revision concerning these CSAPR state trading programs because these portions of the SIP revision meet the requirements of the Clean Air Act (CAA or Act) and EPA's regulations for approval of a CSAPR full SIP revision replacing the requirements of a CSAPR FIP. Under the CSAPR regulations, approval of these portions of the SIP revision automatically eliminates Alabama units' obligations to participate in CSAPR's federal trading programs for annual NO<sub>x</sub> and SO<sub>2</sub> emissions under the corresponding CSAPR FIPs addressing interstate transport requirements for the 1997 and 2006 Fine Particulate Matter (PM<sub>2.5</sub>) national ambient air quality standards (NAAQS).

Approval of these portions of the SIP revision fully satisfies Alabama's good neighbor obligation under the CAA to prohibit emissions which will significantly contribute to nonattainment or interfere with maintenance of the 1997 and 2006 PM<sub>2.5</sub> NAAQS in any other state. This approval also addresses the judicial remand of the federally-established CSAPR Phase 2 SO<sub>2</sub> budget for Alabama. EPA is not acting at this time on the portion of Alabama's SIP submittal intended to replace Alabama units' obligations to participate in CSAPR's federal trading program for ozone-season NO<sub>x</sub> emissions under a separate CSAPR FIP.

**DATES:** This rule is effective September 30, 2016.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No EPA-R04-OAR-2016-0294. 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:** Steven Scofield, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street SW., Atlanta, Georgia 30303-8960. Mr. Scofield can be reached by telephone at (404) 562-9034 or via electronic mail at [scofield.steve@epa.gov](mailto:scofield.steve@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

#### **I. 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.<sup>1</sup> As amended, 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 three NAAQS: the 1997 ozone NAAQS, the 1997 annual PM<sub>2.5</sub> NAAQS, and the 2006 24-hour PM<sub>2.5</sub> 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. As a mechanism for achieving compliance with the emissions limitations, CSAPR established four federal emissions trading programs: A program for annual NO<sub>x</sub> emissions, a program for ozone-season NO<sub>x</sub> emissions, and two geographically separate programs for annual SO<sub>2</sub> emissions. CSAPR also established FIP requirements applicable to the large electricity generating units in each covered state. The CSAPR FIP provisions require each state's units to participate in up to three of the four CSAPR trading programs.

CSAPR includes provisions under which states may submit and EPA will approve SIP revisions to modify or replace the CSAPR FIP requirements while allowing states to continue to meet their transport-related obligations using either CSAPR's federal emissions trading programs or state emissions trading programs integrated with the federal programs.<sup>2</sup> Through such a SIP revision, a state may replace EPA's default provisions for allocating emission allowances among the state's units, employing any state-selected methodology to allocate or auction the allowances, subject to timing conditions and limits on overall allowance quantities. In the case of CSAPR's federal trading program for ozone-season NO<sub>x</sub> emissions (or an integrated state trading program), a state may also expand trading program applicability to include certain smaller electricity

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

<sup>2</sup> See 40 CFR 52.38, 52.39. States also retain the ability to submit SIP revisions to meet their transport-related obligations using mechanisms other than the CSAPR federal trading programs or integrated state trading programs.