



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2015-0248; FRL-9957-89-Region 4]

Air Plan Approval; Georgia; Atlanta;

Requirements for the 2008 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve the portion of a state implementation plan (SIP) revision submitted on February 6, 2015, by the State of Georgia, through the Georgia Environmental Protection Division (GA EPD), addressing the nonattainment new source review (NNSR) requirements for the 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS) for the Atlanta, Georgia 2008 8-hour ozone nonattainment area (hereinafter referred to as the “Atlanta Area” or “Area”). The Atlanta Area is comprised of 15 counties in Atlanta (Bartow, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, and Rockdale). This action is being taken pursuant to the Clean Air Act (CAA or Act) and its implementing regulations.

DATES: This direct final rule is effective [insert date 60 days after date of publication in the Federal Register] without further notice, unless EPA receives adverse comments by [insert date 30 days after date of publication in the Federal Register]. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the Federal Register and

inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2015-0248 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: Kelly Sheckler of 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. Mrs. Sheckler can be reached by telephone at (404) 562-9222 or via electronic mail at sheckler.kelly@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On March 12, 2008, EPA promulgated a revised 8-hour ozone NAAQS of 0.075 parts per million (ppm). *See* 73 FR 16436 (March 27, 2008). Under EPA's regulations at 40 CFR 50.15,

the 2008 8-hour ozone NAAQS is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.075 ppm. Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement. The ambient air quality monitoring data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in appendix I of part 50.

Upon promulgation of a new or revised NAAQS, the CAA requires EPA to designate as nonattainment any area that is violating the NAAQS based on the three most recent years of ambient air quality data at the conclusion of the designation process. The Atlanta Area was designated nonattainment for the 2008 8-hour ozone NAAQS on April 30, 2012 (effective July 20, 2012) using 2009-2011 ambient air quality data. *See* 77 FR 30088 (May 21, 2012). At the time of designation, the Atlanta Area was classified as a marginal nonattainment area. On March 6, 2015, EPA issued a final rule entitled, “Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements” (SIP Requirements Rule), which establishes the requirements that state, tribal, and local air quality management agencies must meet as they develop implementation plans for areas where air quality exceeds the 2008 8-hour ozone NAAQS.¹ *See* 80 FR 12264. Areas that were designated as marginal ozone nonattainment areas were required to attain the 2008 8-hour ozone NAAQS no later than July 20,

¹ The SIP Requirements Rule addresses a range of nonattainment area SIP requirements for the 2008 ozone NAAQS, including requirements pertaining to attainment demonstrations, reasonable further progress (RFP), reasonably available control technology, reasonably available control measures, major new source review, emission inventories, and the timing of SIP submissions and of compliance with emission control measures in the SIP. The rule also revokes the 1997 ozone NAAQS and establishes anti-backsliding requirements.

2015, based on 2012-2014 monitoring data. *See* 40 CFR 51.1103. The Atlanta Area did not attain the 2008 8-hour ozone NAAQS by July 20, 2015, and therefore on April 11, 2016, the EPA Administrator signed a final rule reclassifying the Atlanta Area from a marginal nonattainment area to a moderate nonattainment area for the 2008 8-hour ozone standard. *See* 81 FR 26697 (May 4, 2016). Moderate areas are required to attain the 2008 8-hour ozone NAAQS no later than July 20, 2018, six years after the effective date of the initial nonattainment designations.² *See* 40 CFR 51.1103.

Based on the initial nonattainment designation for the 2008 8-hour ozone standard, Georgia was required to develop a SIP revision addressing certain CAA requirements for the Atlanta Area. On February 6, 2015, Georgia submitted a SIP revision addressing the emissions inventory, emissions statements, and NNSR requirements related to the 2008 8-hour ozone NAAQS for the Atlanta Area.³ On August 11, 2015, EPA approved Georgia's SIP revision as meeting the requirements of sections 110, 182(a)(1), and 182(a)(3)(B) of the CAA by addressing the emissions inventory and emissions statements requirements for the 2008 8-hour ozone NAAQS for the Atlanta Area. *See* 80 FR 48036. EPA is now taking action on the NNSR

² Subsequent to the reclassification of the Atlanta Area, EPA determined that the Area has attained the 2008 8-hour ozone NAAQS based on 2013-2015 monitoring data. *See* 81 FR 45419 (July 14, 2016). However, an attainment determination is not equivalent to a redesignation under CAA section 107(d)(3). The Area will remain nonattainment for the 2008 8-hour ozone NAAQS and subject to the NNSR requirements for that NAAQS until such time as EPA determines that the Area meets the requirements for redesignation to attainment.

³ States have three years after the effective date of designation for the 2008 8-hour ozone NAAQS to submit SIP revisions addressing NNSR for their nonattainment areas. *See* 40 CFR 51.1114. Georgia's SIP revision also certified that its SIP-approved state regulation addressing nonattainment new source review for all new stationary sources and modified existing stationary sources in the Atlanta Area, 391-3-1-.03(8) - Permit Requirements, exceeds the requirements of section 182(a)(2)(C) for the 2008 8-hour ozone NAAQS. However, EPA does not believe that the two-year deadline contained in CAA section 182(a)(2)(C) applies to NNSR SIP revisions for implementing the 8-hour ozone NAAQS. *See* 80 FR 12264, 12267 (March 6, 2015); 70 FR 71612, 71683 (November 29, 2005). The submission of NNSR SIPs due on November 15, 1992, satisfied the requirement for states to submit NNSR SIP revisions to meet the requirements of CAA sections 172(c)(5) and 173 within two years after the date of enactment of the 1990 CAA Amendments. *Id.*

portion of Georgia's February 6, 2015, SIP revision. EPA's analysis of how this SIP revision addresses the NNSR requirements for the 2008 8-hour ozone NAAQS is provided below.

II. Analysis of Georgia's Nonattainment New Source Review Requirements

The minimum SIP requirements for NNSR permitting programs for the 2008 8-hour ozone NAAQS are located in 40 CFR 51.165. *See* 40 CFR 51.1114. These NNSR program requirements include those promulgated in the "Phase 2 Rule" implementing the 1997 8-hour ozone NAAQS (75 FR 71018 (November 29, 2005)) and the SIP Requirements Rule implementing the 2008 8-hour ozone NAAQS. Under the Phase 2 Rule, the SIP for each ozone nonattainment area must contain NNSR provisions that: set major source thresholds for NO_x and VOC pursuant to 40 CFR 51.165(a)(1)(iv)(A)(1)(i)-(iv) and (2); classify physical changes as a major source if the change would constitute a major source by itself pursuant to 40 CFR 51.165(a)(1)(iv)(A)(3); consider any significant net emissions increase of NO_x as a significant net emissions increase for ozone pursuant to 40 CFR 51.165(a)(1)(v)(E); consider certain increases of VOC emissions in extreme ozone nonattainment areas as a significant net emissions increase and a major modification for ozone pursuant to 40 CFR 51.165(a)(1)(v)(F); set significant emissions rates for VOC and NO_x as ozone precursors pursuant to 40 CFR 51.165(a)(1)(x)(A)-(C) and (E); contain provisions for emissions reductions credits pursuant to 40 CFR 51.165(a)(3)(ii)(C)(1)-(2); provide that the requirements applicable to VOC also apply to NO_x pursuant to 40 CFR 51.165(a)(8); and set offset ratios for VOC and NO_x pursuant to 40 CFR 51.165(a)(9)(i)-(iii) (renumbered as (a)(9)(ii)-(iv) under the SIP Requirements Rule for the 2008 8-hour ozone NAAQS). Under the SIP Requirements Rule for the 2008 8-hour ozone NAAQS, the SIP for each ozone nonattainment area designated nonattainment for the 2008 8-

hour ozone NAAQS and designated nonattainment for the 1997 ozone NAAQS on April 6, 2015, must also contain NNSR provisions that include the anti-backsliding requirements at 40 CFR 51.1105. *See* 40 CFR 51.165(a)(12).

Georgia’s longstanding SIP-approved NNSR program, established in Air Quality Control Rule 391-3-1-.03(8) - *Permit Requirements*, applies to the construction and modification of major stationary sources in nonattainment areas. In its February 6, 2015 SIP revision, Georgia certifies that the version of Air Quality Control Rule 391-3-1-.03(8) in the SIP exceeds the federal NNSR requirements for the Atlanta Area. EPA last approved revisions to the SIP-approved version of Georgia’s NNSR rule in 2010 addressing, among other things, the NNSR requirements in the Phase 2 Rule that were relevant to the counties designated as nonattainment for the 1997 8-hour ozone NAAQS in and around the Atlanta metropolitan area (1997 Atlanta Area) and that were not already satisfied by the SIP-approved rule.⁴ *See* 75 FR 71020 (November 22, 2010). Georgia’s rule revision did not include Phase 2 Rule requirements for 8-hour ozone nonattainment areas classified as serious or above because the 1997 Atlanta Area was classified as a moderate nonattainment area.

The version of Rule 391-3-1-.03(8) that is contained in the current SIP has not changed since the 2010 rulemaking.⁵ This version of the rule covers the entire Atlanta Area and remains adequate to meet all applicable NNSR requirements for the 2008 8-hour ozone NAAQS. The Phase 2 requirements for 8-hour ozone nonattainment areas classified as serious or above remain

⁴ The 1997 Atlanta Area was comprised of Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, Spalding and Walton Counties.

⁵ The entry for Rule 391-3-1-.03 in the table of SIP-approved Georgia regulations at 40 CFR 52.570(e) is incorrect. The “Explanation” associated with the version of 391-3-1-.03 approved by EPA on April 9, 2013 (78 FR 21065) should read “Changes specifically to (6) – Exemptions” rather than “Changes specifically to (8) – Permit Requirements.” EPA will correct this inadvertent error in a future action.

inapplicable because the Atlanta Area is classified as a moderate nonattainment area for the 2008 8-hour NAAQS and the anti-backsliding requirements added in the 2008 8-hour ozone implementation rule are inapplicable because the Atlanta Area was redesignated to attainment for the 1997 8-hour ozone NAAQS in 2013.

III. Final Action

EPA is approving the portion of Georgia's February 6, 2015, SIP revision addressing the NNSR requirements for the 2008 8-hour ozone NAAQS for the Atlanta Area. EPA has concluded that the State's submission fulfills the 40 CFR 51.1114 revision requirement and meets the requirements of CAA section 110 and the minimum SIP requirements of 40 CFR 51.165.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this Federal Register publication, EPA is publishing a separate document that will serve as the proposal to approve the NNSR portion of the SIP revision should adverse comments be filed. This rule will be effective **[insert date 60 days after date of publication in the Federal Register]** without further notice unless the Agency receives adverse comments by **[insert date 30 days after date of publication in the Federal Register]**.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All adverse comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on **[insert**

date 60 days after date of publication in the Federal Register] and no further action will be taken on the proposed rule.

IV. 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, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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 this action 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. This action is 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 this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action 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, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 7, 2017.

V. Anne Heard,
Acting 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 L-Georgia

2. In §52.570, the table in paragraph (e) is amended by adding the entry “2008 8-hour ozone NAAQS Nonattainment New Source Review Requirements for the Atlanta Area” at the end of the table to read as follows:

§52.570 Identification of plan.

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(e) * * *

EPA-Approved Georgia Non-Regulatory Provisions

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
**	**	*	*	*
2008 8-hour ozone NAAQS Nonattainment New Source Review Requirements for the Atlanta Area	Bartow, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, and Rockdale Counties	2/6/2015	[insert date of publication in the Federal Register], [insert Federal Register citation]	

[FR Doc. 2017-05459 Filed: 3/21/2017 8:45 am; Publication Date: 3/22/2017]