



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2017-0078; FRL-9969-43-Region 4]

Air Plan Approval;

Georgia: New Source Review Updates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve changes to the Georgia State Implementation Plan (SIP) to revise new source review (NSR) permitting regulations. EPA is approving a SIP revision submitted by the State of Georgia, through the Georgia Department of Natural Resources' Environmental Protection Division (GA EPD), on December 15, 2011, July 25, 2014, and November 12, 2014. This action is being taken pursuant to the Clean Air Act (CAA or Act).

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

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2017-0078. All documents in the docket are listed on the 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 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: D. Brad Akers, 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. Mr. Akers can be reached via telephone at (404) 562-9089 or via electronic mail at akers.brad@epa.gov.

SUPPLEMENTARY INFORMATION:

I. What Action is the Agency Taking?

On November 12, 2014, GA EPD submitted a SIP revision to EPA for approval that involves changes to Georgia's regulations to make them consistent with federal requirements for NSR permitting, among other changes. As described below, EPA is approving certain portions of this Georgia submission that makes changes to Rule 391-3-1-.02(7) - "Prevention of Significant Deterioration of Air Quality (PSD)," which applies to the construction and modification of any major stationary source in areas designated as attainment or unclassifiable as required by part C of title I of the CAA. Georgia's PSD regulations at Rule 391-3-1-.02(7) were last updated in the SIP on April 9, 2013. *See* 78 FR 21065. EPA is also approving Rule 391-3-

1.03(8) - “Permit Requirements” at paragraph (g), which revises NNSR rules, and at paragraph (d) as explained in the August 15, 2017 (82 FR 38646) direct final rule.

Georgia’s November 12, 2014 SIP revision makes changes to the PSD regulations to reflect changes to the federal PSD regulations at 40 CFR 52.21, including provisions promulgated in the following federal rule: “Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5}):¹ Amendment to the Definition of ‘Regulated NSR Pollutant’ Concerning Condensable Particulate Matter,” Final Rule, 77 FR 65107 (October 25, 2012) (hereinafter referred to as the PM_{2.5} Condensables Correction Rule). Georgia’s November 12, 2014 SIP revision also makes changes to Georgia’s PSD program to incorporate plantwide applicability limits (PALs) for greenhouse gases (GHGs) as allowed in the federal rule entitled “Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule Step 3 and GHG Plantwide Applicability Limits.” See 77 FR 41051 (July 12, 2012) (hereinafter referred to as the GHG Step 3 Rule).²

¹ Airborne particulate matter (PM) with a nominal aerodynamic diameter of 2.5 micrometers or less (a micrometer is one-millionth of a meter, and 2.5 micrometers is less than one-seventh the average width of a human hair) are considered to be “fine particles” and are also known as PM_{2.5}. Fine particles in the atmosphere are made up of a complex mixture of components including sulfate; nitrate; ammonium; elemental carbon; a great variety of organic compounds; and inorganic material (including metals, dust, sea salt, and other trace elements) generally referred to as “crustal” material, although it may contain material from other sources. The health effects associated with exposure to PM_{2.5} include potential aggravation of respiratory and cardiovascular disease (i.e., lung disease, decreased lung function, asthma attacks and certain cardiovascular issues). On July 18, 1997, EPA revised the NAAQS for PM to add new standards for fine particles, using PM_{2.5} as the indicator. Previously, EPA used PM₁₀ (inhalable particles smaller than or equal to 10 micrometers in diameter) as the indicator for the PM NAAQS. EPA established health-based (primary) annual and 24-hour standards for PM_{2.5}, setting an annual standard at a level of 15.0 micrograms per cubic meter (µg/m³) and a 24-hour standard at a level of 65 µg/m³ (62 FR 38652). At the time the 1997 primary standards were established, EPA also established welfare-based (secondary) standards identical to the primary standards. The secondary standards are designed to protect against major environmental effects of PM_{2.5}, such as visibility impairment, soiling, and materials damage. On October 17, 2006, EPA revised the primary and secondary 24-hour NAAQS for PM_{2.5} to 35 µg/m³ and retained the existing annual PM_{2.5} NAAQS of 15.0 µg/m³ (71 FR 61236). On January 15, 2013, EPA published a final rule revising the annual PM_{2.5} NAAQS to 12 µg/m³ (78 FR 3086).

² The PM_{2.5} Condensables Correction Rule and the GHG Step 3 Rule are discussed in more detail in the August 15, 2017 direct final rule, which is being withdrawn in the rules section of this **Federal Register**. See 82 FR 38605.

At this time, EPA is not acting on the changes to Rule 391-3-1-.01 - “Definitions,” at paragraphs (lll) and (nnn), and Rule 391-3-1-.02(4) - “Ambient Air Standards,” as included in the November 12, 2014 submittal, because EPA approved them on July 31, 2015. *See* 80 FR 45609.

EPA is also not acting on a change included in the November 12, 2014 submittal at Rule 391-3-1-.02(7)(a)(2)(iv). This provision would have incorporated by reference the federal definition of the term “subject to regulation,” but provided that incorporation of the federal regulation would be automatically rescinded if certain triggering events occurred. EPA previously disapproved the portion of a January 13, 2011 SIP revision that sought to include Rule 391-3-1-.02(7)(a)(2)(iv) in the SIP. *See* 81 FR 11438 (March 4, 2016). Because this provision is not part of Georgia’s SIP, EPA is not acting on the State’s proposed change to that provision.

Finally, EPA is not acting on the changes included in the November 12, 2014 submittal regarding a new definition of the term “regulated NSR pollutant” at Rule 391-3-1-.02(7)(a)(2)(ix) because Georgia withdrew these changes from EPA’s consideration in a December 1, 2016 letter.³

II. Background

On August 15, 2017 (82 FR 38646), EPA proposed to approve several changes to Georgia’s SIP, including changes to Rule 391-3-1-.02(7) in the State’s November 12, 2014, SIP revision adopting the PM_{2.5} Condensables Correction Rule and GHG PALs from the GHG Step 3 Rule. The proposed rule accompanied a direct final rule published on the same day in the

³ In the December 1, 2016 letter, Georgia also withdrew changes regarding the term “regulated NSR pollutant” at Rule 391-3-1-.02(7)(a)(2)(ix). The December 1, 2016 letter is included in the docket for this action.

Federal Register. See 82 FR 38605. EPA received an adverse comment on the portion of the rulemaking regarding the changes to Rule 391-3-1-.02(7) concerning GHG permitting.

Accordingly, EPA is withdrawing the direct final action through a separate action published elsewhere in this issue of the **Federal Register**. EPA did not receive comments on Rule 391-3-1-.03(8) - “Permit Requirements” see the August 15, 2017, direct final action for more information concerning the approval of this rule.

III. Response to Comment

As stated previously, EPA received one adverse comment on the direct final rule. This comment is located in the docket for this action, and a summary of the comment and EPA’s response is provided below.

Comment: The Commenter “agree[d] with the action being taken,” but asserted that EPA should “require PSD permits for GHG only sources . . . and disapprove the Georgia SIP revision and put in place a FIP [Federal Implementation Plan] which would control GHGs of major stationary sources.”⁴

Response: Georgia has a SIP-approved PSD program that includes the regulation of GHG-only sources under Step 2 of the GHG Tailoring Rule. See 76 FR 55572 (September 8, 2011).

Georgia did not request removal of the Step 2 regulations from its SIP in the November 12, 2014

⁴ On January 2, 2011, GHG emissions were, for the first time, covered by the PSD and title V operating permit programs. See 75 FR 17004 (April 2, 2010). To establish a process for phasing in the permitting requirements for stationary sources of GHGs under the CAA PSD and title V programs, on June 3, 2010, the EPA published a final rule entitled “Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule” (hereinafter referred to as the GHG Tailoring Rule). See 75 FR 31514. In Step 1 of the GHG Tailoring Rule, which began on January 2, 2011, the EPA limited application of PSD and title V requirements to sources of GHG emissions only if they were subject to PSD or title V “anyway” due to their emissions of pollutants other than GHGs. These sources are referred to as “anyway sources.” In Step 2 of the GHG Tailoring Rule, which applied as of July 1, 2011, the PSD and title V permitting requirements applied to some sources that were classified as major sources based solely on their GHG emissions or potential to emit GHGs. Step 2 also applied PSD permitting requirements to modifications of otherwise major sources that would increase only GHG emissions above the level in the EPA regulations. EPA generally described the sources covered by PSD during Step 2 of the GHG Tailoring Rule as “Step 2 sources” or “GHG-only sources.”

SIP revision; therefore, Step 2 permitting is outside the scope of this action. As it relates to GHG permitting, this action only incorporates the GHG PAL provisions from EPA's GHG Step 3 Rule into Georgia's SIP.

Although Step 2 permitting is beyond the scope of this action, EPA notes that the United States Supreme Court invalidated EPA's regulation of Step 2 sources in *Utility Air Regulatory Group (UARG) v. EPA*, 134 S. Ct. 2427 (2014). In accordance with this decision, the United States Court of Appeals for the District of Columbia Circuit vacated the federal regulations that implemented Step 2 of the GHG Tailoring Rule. See *Coalition for Responsible Regulation, Inc. v. EPA*, 606 Fed. Appx. 6, 7 (D.C. Cir. 2015). Subsequently, EPA removed the vacated elements from its rules. See 80 FR 50199 (August 19, 2015). EPA therefore no longer has the authority to conduct PSD permitting for Step 2 sources, approve provisions submitted by a state for inclusion in its SIP providing this authority, or put a FIP in place to permit Step 2 sources.

IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of Georgia Rule 391-3-1-.02(7) - "Prevention of Significant Deterioration" at subparagraph (a)(1), effective October 14, 2014,⁵ which revises PSD rules, and Rule 391-3-1-.03(8) "Permit Requirements" at paragraph (g), effective September 13, 2011, which revises NNSR rules, and at paragraph (d), effective August 1, 2013, which revises generally applicable permitting requirements. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and/or at the EPA Region 4 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more

⁵ See Section I, above, for additional detail.

information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.⁶

V. Final Action

EPA is approving the aforementioned changes to the Georgia SIP regarding the PM_{2.5} Condensables Correction Rule and GHG PALs from the GHG Step 3 Rule, submitted on November 12, 2014, because they are consistent with the CAA and its implementing regulations.

VI. 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. 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.*);

⁶ 62 FR 27968 (May 22, 1997).

- 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 mandates 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 Clean Air Act; 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. 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, Carbon monoxide, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

Dated: September 29, 2017.

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

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart L - Georgia

2. Section 52.570(c) is amended by revising the entries “391-3-1-.02(7)” and “391-3-1-.03” to read as follows:

§ 52.570 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED GEORGIA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
**	**	*	*	*
391-3-1-.02(7)	Prevention of Significant Deterioration of Air Quality (PSD)	10/14/2014	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	EPA is not incorporating the revision to Georgia Rule 391-3-1-.02(7)(a)(2)(iv) included in Georgia’s November 12, 2014 SIP submittal because that provision is not in the SIP. <i>See</i> March 4, 2016 publication. The version of Georgia Rule

				391-3-1-.02(7) in the SIP does not incorporate by reference: 1) the provisions amended in the Ethanol Rule to exclude facilities that produce ethanol through a natural fermentation process from the definition of “chemical process plants” in the major NSR source permitting program found at 40 CFR 52.21(b)(1)(i)(a) and (b)(1)(iii)(t), or 2) the provisions at 40 CFR 52.21(b)(2)(v) and (b)(3)(iii)(c) that were stayed indefinitely by the Fugitive Emissions Interim Rule, see March 30, 2011 publication.
**	**	*	*	*
391-3-1-.03	Permits	8/1/2013	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	Changes specifically to (8)—Permit Requirements at (d) (state effective August 1, 2013) and (g) (state effective

				September 13, 2011).
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[FR Doc. 2017-22250 Filed: 10/13/2017 8:45 am; Publication Date: 10/16/2017]