



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA-R04-OAR-2018-0710; FRL-9999-44-Region 4]**

### **Air Plan Approval; GA; Nonattainment New Source Review**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision provided by the State of Georgia, through the Georgia Environmental Protection Division (GA EPD) of the Department of Natural Resources, via a letter dated July 2, 2018. Specifically, EPA is proposing to approve changes to Georgia's Nonattainment New Source Review (NNSR) permitting rules. This action is being proposed pursuant to the Clean Air Act (CAA or Act) and its implementing regulations.

**DATES:** Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Submit your comments, identified by Docket ID No. at EPA-R04-OAR-2018-0710 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:** Sean Lakeman, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S.

Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9043. Mr. Lakeman can also be reached via electronic mail at [lakeman.sean@epa.gov](mailto:lakeman.sean@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The New Source Review (NSR) program is a preconstruction permitting program that requires certain stationary sources of air pollution to obtain permits prior to beginning construction. The NSR permitting program applies to new construction and to modifications of existing sources. New construction and modifications that emit “regulated NSR pollutants” over certain thresholds are subject to major NSR requirements, while smaller emitting sources and modifications may be subject to minor NSR requirements.

Major NSR permits for sources that are located in attainment or unclassifiable areas are referred to as Prevention of Significant Deterioration (PSD) permits. Major NSR permits for sources located in nonattainment areas and that emit pollutants above the specified thresholds for which the area is in nonattainment are referred to as NNSR permits.

A new stationary source is subject to major NSR requirements if its potential to emit (PTE) a regulated NSR pollutant exceeds certain emission thresholds. If it exceeds the applicable threshold, the NSR regulations define it as a “major stationary source.” An existing major stationary source triggers major NSR permitting requirements when it undergoes a “major modification,” which occurs when a source undertakes a physical change or change in method of operation (*i.e.*, a “project”) that would result in (1) a significant emissions increase from the project, and (2) a significant net emissions increase from the source. *See, e.g.*, 40 CFR 52.21(b)(2)(i) and 40 CFR 52.21(b)(52). Georgia Rule 391-3-1-.03(8) – *Permit Requirements* contains the State’s NNSR permitting requirements and identifies the counties subject to those requirements.

Effective January 6, 1992, EPA designated 13 counties surrounding Atlanta, Georgia, as nonattainment for the 1-hour ozone NAAQS and classified them as a “serious” nonattainment area (hereinafter referred to as the Atlanta 1-hour Ozone Area).<sup>1</sup> *See* 56 FR 56694 (November 6, 1991). Effective January 1, 2004, the Atlanta 1-hour Ozone Area was reclassified as a “severe” nonattainment area. *See* 68 FR 55469 (September 26, 2003). This classification requires, among other things, that a “major source” and a “major stationary source” be defined to include certain sources that emit or have the potential to emit 25 tons or more of nitrogen oxides (NO<sub>x</sub>) or volatile organic compounds (VOC) and that emissions offsets apply at a ratio of at least 1.3 or 1.2:1 (depending on the criteria in CAA section 182(d)(2)).<sup>2</sup> EPA redesignated the Atlanta 1-

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<sup>1</sup> The Atlanta 1-hour Ozone Area consisted of the following counties: Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Paulding, and Rockdale. The 1-hour ozone NAAQS was set at 0.12 parts per million (ppm) with attainment defined when the expected number of days per calendar year, with maximum hourly average concentration greater than 0.12 ppm, is equal to or less than one.

<sup>2</sup> For ozone, the offset ratio is the ratio of the total emissions reductions of NO<sub>x</sub> or VOCs to the total increased emissions of those pollutants.

hour Ozone Area to attainment for the 1-hour ozone NAAQS, effective June 14, 2005. *See* 70 FR 34660 (June 15, 2005). Effective June 15, 2005, EPA revoked the 1-hour ozone NAAQS. *See* 69 FR 23951 (April 30, 2004) and 70 FR 44470 (August 3, 2005).

Effective June 15, 2004, 20 counties surrounding Atlanta were designated as nonattainment and classified as a “marginal” nonattainment area for the 1997 8-hour ozone NAAQS (hereinafter referred to as the Atlanta 1997 8-hour Ozone Area).<sup>3</sup> *See* 69 FR 23858 (April 30, 2004). Effective April 7, 2008, the Atlanta 1997 8-hour Ozone Area was reclassified as a “moderate” nonattainment area. *See* 73 FR 12013 (March 6, 2008). This classification requires, among other things, that a “major source” and a “major stationary source” be defined to include certain sources that emit or have the potential to emit 100 tons or more of NO<sub>x</sub> or VOC and that emissions offsets apply at a ratio of at least 1.15:1. The Atlanta 1997 8-hour Ozone Area was redesignated to attainment, effective January 1, 2014. *See* 78 FR 72040 (December 2, 2013). Effective April 6, 2015, EPA revoked the 1997 8-Hour Ozone NAAQS. *See* 80 FR 12264 (March 6, 2015).

Effective July 20, 2012, 15 counties surrounding Atlanta were designated as nonattainment and classified as a “marginal” nonattainment area for the 2008 8-hour ozone NAAQS (hereinafter referred to as the Atlanta 2008 8-hour Ozone Area).<sup>4</sup> *See* 77 FR 30088 (May 21, 2012). This classification requires, among other things, that a “major source” and a

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<sup>3</sup> The Atlanta 1997 8-hour Ozone Area consisted of the following counties: Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, Spalding, and Walton. The 1997 8-hour ozone NAAQS was set at 0.08 ppm based on an annual fourth-highest daily maximum 8-hour average concentration averaged over three years.

<sup>4</sup> The Atlanta 2008 8-hour Ozone Area consisted of the following counties: Bartow, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, and Rockdale. The 2008 8-hour ozone NAAQS is set at 0.075 ppm based on an annual fourth-highest daily maximum 8-hour average concentration averaged over three years.

“major stationary source” be defined to include certain sources that emit or have the potential to emit 100 tons or more of NO<sub>x</sub> or VOC and that emissions offsets apply at a ratio of at least 1.1:1. The Atlanta 2008 8-hour Ozone Area was redesignated to attainment, effective June 2, 2017. See 82 FR 25523 (June 2, 2017).

Approximately one year later, on June 4, 2018, EPA published a Federal Register notice announcing that seven counties surrounding Atlanta were designated as nonattainment and classified as a “marginal” nonattainment area for the 2015 8-hour ozone NAAQS (hereinafter referred to as the Atlanta 2015 8-hour Ozone Area).<sup>5</sup> See 83 FR 25776 (effective August 3, 2018). As discussed above, the “marginal” classification requires that a “major source” and a “major stationary source” be defined to include certain sources that emit or have the potential to emit 100 tons or more of NO<sub>x</sub> or VOC and that emissions offsets apply at a ratio of at least 1.1:1.

Due to the redesignations identified above and the nonattainment designation for the 2015 8-hour ozone NAAQS, the ozone nonattainment area surrounding Atlanta now consists of seven counties – Bartow, Clayton, Cobb, DeKalb, Fulton, Gwinnett, and Henry. Via a letter dated July 2, 2018, GA EPD provided a SIP revision to EPA to modify the NNSR requirements in Rule 391-3-1-.03(8) – *Permit Requirements* as discussed below.<sup>6</sup> In this proposed action, EPA is proposing to approve the changes to Georgia’s Rule 391-3-1-.03(8) because these changes are consistent with the CAA. EPA’s analysis is provided below.

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<sup>5</sup> The Atlanta 2015 8-hour Ozone Area consists of the following counties: Bartow, Clayton, Cobb, DeKalb, Fulton, Gwinnett, and Henry. The 2015 8-hour ozone NAAQS is set at 0.070 ppm based on an annual fourth-highest daily maximum 8-hour average concentration averaged over three years.

<sup>6</sup> EPA received the submittal on July 6, 2018. Georgia’s cover letter also requested revision to Rule 391-3-1-.03(10) – *Title V Operating Permits*. However, EPA is not acting on that revision because Rule 391-3-1-.03(10) is not part of the SIP.

## II. Analysis of State's Submittal

EPA is proposing to approve changes to NNSR permitting requirements in Rule 391-3-1-.03(8) that remove the NNSR provision specific to the counties that were part of the Atlanta 1-hour Ozone Area and remove references to that provision, and apply permitting requirements to certain electric generating units (EGUs) located in counties in the maintenance area for the 1997 8-hour ozone NAAQS.<sup>7</sup> Specifically, Georgia is removing Rule 391-3-1-.03(8)(c)(13) – *Additional Provisions for Ozone Non-Attainment Areas for Counties that were Formerly Part of the 1-hour Ozone Non-Attainment Area*; revising and renaming Rule 391-3-1-.03(8)(c)(14) – *Additional Provisions for Ozone Non-Attainment Areas for Counties that were Not Formerly Part of the 1-hour Ozone Non-Attainment Area*; revising Rule 391-3-1-.03(8)(c)(15) – *Additional Provisions for Electrical Generating Units Located in Areas Contributing to the Ambient Air Level of Ozone in the Metropolitan Atlanta Ozone Non-Attainment Area* and removing references to Rule 391-3-1-.03(8)(c)(13) located at Rule 391-3-1-.03(8)(c)(12)(iv) and Rules 391-3-1-.03(8)(g)(2)(i), (5)(i), and (6)(i). These changes have the effect of applying the NNSR permitting requirements of Rule 391-3-1-.03(8)(c)(14) to the counties located in the Atlanta 2015 8-hour Ozone Area and to the counties located in the maintenance area for the 2008 8-hour ozone NAAQS.

Rule 391-3-1-.03(8)(c)(13) applies “severe” ozone nonattainment area NNSR requirements to the counties formerly included in the Atlanta 1-hour Ozone Area. Among other things, Rule 391-3-1-.03(8)(c)(13) defines “major source” and “major stationary source” to include certain sources that emit or have the potential to emit at least 25 tons per year of VOC or NOx; identifies the net emissions increase triggering the permitting requirement as a result of a

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<sup>7</sup> An area redesignated to attainment is referred to as a maintenance area.

physical or operational change at a major stationary source; and sets an emissions offset ratio of at least 1.3:1.

As mentioned above, EPA redesignated the Atlanta 1-hour Ozone Area to attainment on June 14, 2005 (70 FR 34660) and revoked the 1-hour standard on August 4, 2005 (70 FR 44470). EPA has also redesignated the Atlanta 1997 8-hour Ozone Area and Atlanta 2008 8-hour Ozone Area to attainment and revoked the 1997 8-hour ozone standard. EPA is proposing to approve the removal of Rule 391-3-1-.03(8)(c)(13), thereby eliminating “severe” ozone nonattainment area NNSR requirements for the counties formerly included in the Atlanta 1-hour Ozone Area.

Rule 391-3-1-.03(8)(c)(14), among other things, defines “major source” and “major stationary source” to include certain sources that emit or have the potential to emit at least 100 tons per year of VOC or NO<sub>x</sub>; identifies the net emissions increase triggering the permitting requirement as a result of a physical or operational change at a major stationary source; and sets an emissions offset ratio of at least 1.15:1 (i.e., the rule applies “moderate” ozone nonattainment area NNSR requirements to the counties listed therein). The revised rule adds the 13 counties from Rule 391-3-1-.03(8)(c)(13), (i.e., the counties that comprised the Atlanta 1-hour Ozone Area) and removes five counties (Barrow, Carroll, Hall, Spalding, and Walton) so that Rule 391-3-1-.03(8)(c)(14) applies to all of the counties in the 2008 ozone NAAQS maintenance area and the Atlanta 2015 8-hour Ozone Area.<sup>8</sup> The revision also changes the title of the rule to “Additional Provisions for Ozone Non-Attainment Areas.”

The “Additional Provisions for Electrical Generating Units Located in Areas Contributing to the Ambient Air Level of Ozone in the Metropolitan Atlanta Ozone Non-

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<sup>8</sup> The revised rule applies to the following counties: Bartow, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, and Rockdale.

Attainment Area” at Rule 391-3-1-.03(8)(c)(15), among other things, define “major source” and “major stationary source” to include certain sources that emit or have the potential to emit at least 100 tons per year of VOC or NO<sub>x</sub>; identify the net emissions increase threshold triggering the permitting requirement as a result of a physical or operational change at a major stationary source; require Best Available Control Technology for the units subject to the permitting requirement; and set an emissions offset ratio of at least 1.1:1. The revision adds the five counties (Barrow, Carroll, Hall, Spalding, and Walton) removed from Rule 391-3-1-.03(8)(c)(14).<sup>9</sup> None of the counties listed in Rule 391-3-1-.03(8)(c)(15) are part of the Atlanta 2015 8-hour Ozone Area or the maintenance area for the 2008 ozone NAAQS.

Lastly, the submission requests removal of references to Rule 391-3-1-.03(8)(c)(13) at Rule 391-3-1-.03(8)(c)(12)(iv) and Rules 391-3-1-.03(8)(g)(2)(i), (5)(i), and (6)(i).

EPA is proposing to approve the changes described in Georgia’s July 2, 2018, SIP revision because it is no longer necessary for the State to retain either the NNSR provisions developed to address the former severe nonattainment area for the 1-hour ozone NAAQS or the NNSR program for the five counties removed from Rule 391-3-1-.03(8)(c)(14) that are part of the maintenance area for the 1997 ozone NAAQS and are designated as attainment for all ozone NAAQS. These changes are acceptable under the ozone implementation rules for the 1997 and 2008 ozone NAAQS because the anti-backsliding provisions contained therein do not apply.<sup>10</sup>

The changes are also acceptable under CAA section 110(l), which prevents EPA from approving

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<sup>9</sup> The revised rule applies to the following counties: Banks, Barrow, Butts, Carroll, Chattooga, Clarke, Dawson, Floyd, Gordon, Hall, Haralson, Heard, Jackson, Jasper, Jones, Lamar, Lumpkin, Madison, Meriwether, Monroe, Morgan, Oconee, Pickens, Pike, Polk, Putnam, Spalding, Troup, Upson, and Walton.

<sup>10</sup> See 40 CFR 51.905 and 51.1105, respectively. As discussed above, EPA redesignated the Atlanta 1-hour Ozone Area to attainment and subsequently revoked the 1-hour standard; redesignated the Atlanta 1997 8-hour Ozone Area to attainment and subsequently revoked the 1997 8-hour standard; and redesignated the Atlanta 2008 8-hour Ozone Area to attainment.

a SIP revision that would interfere with any applicable requirements concerning attainment and reasonable further progress or any other applicable CAA requirement, for the following reasons.<sup>11</sup> First, NSR only applies to new sources and to existing sources that undergo a physical change or change in the method of operation (i.e., it is a prospective permitting program). Therefore, the conditions in the NNSR permits issued in the counties within the former Atlanta ozone nonattainment areas, along with any associated emissions offsets, will remain in effect. Second, EPA's NSR permitting rules and Georgia's SIP-approved regulations implementing those requirements prohibit the State from issuing permits to new or modified stationary sources if such construction or modification would interfere with attainment or maintenance of any NAAQS. 40 CFR 51.160 requires each state's SIP to contain enforceable procedures that prevent the permitting of new sources or modifications that would interfere with the attainment or maintenance of a NAAQS, and Georgia's SIP contains such a provision at Rule 391-3-1-.03(8)(a).<sup>12</sup> These two rules are applicable to all NSR programs – minor NSR, PSD, and NNSR. Third, new major sources and major modifications covered under the NNSR program in Rule 391-3-1-.03(8)(c)(14) that are located in counties formerly within the Atlanta 1-hour Ozone Area must still obtain emissions offsets at an emissions reduction to emissions increase ratio greater

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<sup>11</sup> EPA also evaluated the applicability of CAA section 193 to the proposed changes. Section 193 is a general savings clause stating that no control requirement in effect before November 15, 1990, in any nonattainment area for any air pollutant may be modified after November 15, 1990 in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant. Section 193 is not applicable to this proposed action because Georgia first adopted the rules at issue after November 15, 1990.

<sup>12</sup> The SIP-approved version of Rule 391-3-1-.03(8)(a) states that "Each application for a permit to construct a new stationary source or modify an existing stationary source shall be subjected to a preconstruction or premodification review by the Director [of the Division of Environmental Protection or his designee]. The Director shall determine prior to issuing any permit that the proposed construction or modification will not cause or contribute to a failure to attain (as expeditiously as practicable) or maintain any ambient air quality standard, a significant deterioration of air quality, or a violation of any applicable emission limitation or standard of performance or other requirement under the [Georgia Air Quality] Act or this Chapter (391-3-1). Each person applying to the Director for a permit to construct a new stationary source or modify an existing stationary source shall provide information required by the Director to make such determination."

than one, thereby ensuring that any future new sources and major modifications will result in a net decrease in ozone precursor emissions.

### **III. Incorporation by Reference**

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Georgia Rule 391-3-1-.03(8) – *Permit Requirements*, which revises the State’s permit rules, state effective June 18, 2018. EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 4 office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

### **IV. Proposed Action**

EPA is proposing to approve the aforementioned changes to the Georgia SIP, submitted in a letter dated July 2, 2018, because they are consistent with the CAA and federal regulations.

### **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. This action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed 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);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- 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.

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

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Volatile organic compounds, Nitrogen Oxides.

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

Dated: August 27, 2019.

Mary S. Walker,  
Regional Administrator,  
Region 4.

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