

M–20–02, “Guidance Implementing Executive Order 13891, Titled “Promoting the Rule of Law Through Improved Agency Guidance Documents”,” dated October 31, 2019, or is improperly treating a guidance document as a binding requirement.

(b) Each component responsible for issuing guidance documents shall:

(1) Submit final guidance documents to the DoD Regulatory Policy Team at the email address *osd.mc-alex.ocmo.mbx.guidance-documents@mail.mil* for posting to the Department’s central website.

(2) Address complaints from the public that they are not following the requirements of OMB’s Memorandum M–20–02, “Guidance Implementing Executive Order 13891, Titled “Promoting the Rule of Law Through Improved Agency Guidance Documents”,” dated October 31, 2019, or are improperly treating a guidance document as a binding requirement.

§ 339.10 Petitions for guidance.

(a) Any person may petition the Department to withdraw or modify a particular guidance document by sending a written request to the DoD Regulatory Program staff at email address *osd.mc-alex.ocmo.mbx.guidance-documents@mail.mil*. Please use the words “GUIDANCE: [Insert the title of the guidance document]” in the subject line of the email message. The DoD Regulatory Program staff will provide the request to the issuing component of the guidance document for response.

(b) The issuing component should respond to all requests within 90 days after receipt of the request, or as timely as possible given any constraints of the request. For recordkeeping purposes, the issuing component will provide a copy of their response to the DoD Regulatory Program staff at email address *osd.mc-alex.ocmo.mbx.guidance-documents@mail.mil*.

§ 339.11 Rescinded guidance.

(a) All effective guidance documents must appear on the central website. If the guidance document does not appear on the central website, the guidance is rescinded and without effect.

(b) No component may cite, use, or rely on guidance documents that are rescinded, except to establish historical facts.

§ 339.12 Exigent circumstances.

In emergency situations or when the proposing component is required by statutory deadline, court order, or executive order to act more quickly than

normal review procedures allow, the proposing component shall coordinate with OGC and the appropriate DoD or OSD Federal Register Liaison Officer to notify OIRA as soon as possible and, to the extent practicable, shall comply with the requirements of this part at the earliest opportunity.

§ 339.13 Reports to Congress and GAO.

Upon the issuance of a final guidance document, the appropriate Federal Register Liaison Officer will submit a report to Congress and GAO in accordance with the procedures described in 5 U.S.C. 801 (the “Congressional Review Act”). If the CRA procedures are not followed, the guidance document can be nullified.

§ 339.14 Use of guidance documents.

Guidance documents cannot create binding requirements that do not already exist by statute or regulation. Accordingly, noncompliance with guidance documents cannot be used as a basis for proving violations of applicable law. Guidance documents can do no more, with respect to prohibition of conduct, than articulate the Department’s understanding of how a statute or regulation applies to particular circumstances.

Dated: May 26, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2007–0113; FRL–10009–10–Region 4]

Air Plan Approval; Georgia: Definition for Permitting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a portion of a State Implementation Plan (SIP) revision submitted by the State of Georgia, through the Georgia Department of Natural Resources’ Environmental Protection Division (GA EPD) on September 19, 2006, with a clarification submitted on November 6, 2006, and a supplemental submittal transmitted on November 27, 2019. EPA is approving portions of a definition that impacts existing minor new source review (NSR) permitting regulations

because the State has demonstrated it is consistent with the Clean Air Act (CAA or Act).

DATES: This rule is effective June 29, 2020.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2007–0113. All documents in the docket are listed on the *www.regulations.gov* website. 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 and Radiation 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 and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Mr. Akers can also be reached via telephone at (404) 562–9089 or via electronic mail at *akers.brad@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. What action is EPA finalizing?

EPA is approving certain changes to the Georgia SIP that were provided to EPA by GA EPD via a letter dated September 19, 2006. EPA previously approved the majority of the changes to Georgia rules originally included in the September 19, 2006, submittal.¹ In addition, GA EPD has withdrawn several portions of the SIP revision from

¹ EPA approved portions of the September 19, 2006, SIP revision as follows: Changes to Rule 391–3–1–.01, *Definitions*, were approved on February 9, 2010 (75 FR 6309); changes to Rule 391–3–1–.02, *Provisions*, were approved on February 9, 2010 (75 FR 6309), December 1, 2010 (75 FR 74642), and September 1, 2015 (80 FR 52627); and changes to Rule 391–3–1–.03, *Permits*, were approved on April 9, 2013 (78 FR 21065) and November 22, 2019 (84 FR 64427).

EPA consideration.² In this action, EPA is approving the portion of this SIP revision that makes changes to the State's Rule 391–3–1–.01, *Definitions*. The portion of the SIP revision considered adds a definition for “Pollution control project” (PCP)—which GA EPD describes as environmentally-beneficial projects that reduce criteria pollutant emissions—that relates to minor NSR applicability for construction permitting under Rule 391–3–1–.03, *Permits*. The changes to this rule and EPA's rationale for approval are described in more detail in EPA's notice of proposed rulemaking (NPRM) published on March 16, 2020. See 85 FR 14843.

Comments on EPA's March 16, 2020, NPRM were due on April 15, 2020. EPA received comments which, as discussed in Section III below, do not challenge the underlying rationale for EPA's proposed action. Accordingly, EPA is finalizing action on the March 16, 2020, NPRM.

II. EPA's Analysis of the Georgia's Submittal

EPA is approving portions of the definition of “Pollution control project” into the Georgia SIP at Rule 391–3–1–.01(qqqq). This definition lists certain projects, described as “environmentally beneficial,” that are exempted from the minor NSR³ construction permit requirements pursuant to Rule 391–3–1–.03(6)(j). The exemption does not apply to sources subject to major NSR requirements under either 391–3–1–.02(7) (“Prevention of Significant Deterioration [PSD] of Air Quality”), or 391–3–1–.03(8) “Permit Requirements” under paragraph (c), (Georgia's nonattainment new source review (NNSR) program). The exemption for PCPs applies to minor sources only, limiting any emissions increases from the exempted projects to below the

major source thresholds for all pollutants.

EPA previously approved the exemption for PCPs for minor sources at .03(6)(j) on February 9, 2010 (75 FR 6309) but did not act on the PCP definition at Rule 391–3–1–.01(qqqq) at that time. In this action, EPA is approving a definition of “Pollution control project” at .01(qqqq). Because this definition only applies to minor sources, it is not impacted by the United States Court of Appeals for the District of Columbia Circuit decision in *New York v. EPA*, 413 F.3d 3 (D.C. Cir.), in which the D.C. Circuit vacated an exemption for PCPs from the federal NSR regulations for major sources. Georgia's previously approved NSR regulations governing major sources are consistent with federal requirements and the D.C. Circuit decision on PCPs for major NSR.

On June 29, 2017 (82 FR 29469), EPA published a NPRM proposing approval of changes to 391–3–1–.01, *Definitions*, and 391–3–1–.03, *Permits*, and published an accompanying direct final rule. See 82 FR 29418. EPA specifically proposed to approve a definition of “Pollution control project” at 391–3–1–.01(qqqq), which included subparagraphs .01(qqqq)1. through 8., as a clarifying amendment to an existing exemption from minor NSR permitting at 391–3–1–.03(6)(j). The proposed rule stated that if EPA received adverse comment on the direct final rule, then the Agency would withdraw the direct final rule and address public comments received in a subsequent final rule based on the proposed rule. EPA received one adverse comment regarding the portion of the direct final rule revising 391–3–1–.01, *Definitions*, and EPA accordingly withdrew the direct final rule on August 22, 2017.⁴ See 82 FR 39671.

Since the August 22, 2017, withdrawal of EPA's direct final rule, GA EPD has withdrawn several portions of the definition at .01(qqqq) from EPA consideration. Specifically, on November 27, 2019, GA EPD withdrew .01(qqqq)1. and .01(qqqq)3. through 8., and submitted a supplemental justification for the approval of .01(qqqq)2. into the SIP.⁵ The remaining list of projects EPA is considering in this action at .01(qqqq)2. are as follows: “[e]lectrostatic precipitators, baghouses,

high-efficiency multiclones, or scrubbers for control of particulate matter or other air contaminants.” EPA proposed to approve this remaining portion of the definition on March 16, 2020. See 85 FR 14843.

EPA is approving the remaining portion of the definition, specifically the introductory paragraph and subparagraph .01(qqqq)2. EPA has evaluated the exemption and believes, in its technical judgment, that the listed projects will reduce emissions of both NAAQS and non-NAAQS pollutants. Additionally, EPA notes that these projects will not lead to collateral emissions increases of any NAAQS pollutants. As a result, these types of projects already qualify for Georgia's preexisting minor NSR exemption at Rule 391–3–1–.03(6)(i)3. That provision exempts projects that fall below certain specified emissions thresholds. Since the projects included under Rule 391–3–1–.01(qqqq)2. will not increase emissions of any NAAQS pollutant, they would previously have been exempted under those thresholds. Therefore, the revision will not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in CAA section 171), or any other applicable requirement of the CAA, consistent with CAA section 110(l). EPA believes that these projects are otherwise appropriately exempted from Georgia's minor NSR program under CAA section 110(a)(2)(C). That provision requires a program within the State to regulate the construction and modification of sources such that the NAAQS are maintained. By definition, a project that will not lead to any emissions increases will not negatively impact the NAAQS.

To the extent CAA section 193 applies to this action, EPA has concluded that the revision is consistent with the requirements of that provision because these changes will not lead to any increases of NAAQS pollutants. See EPA's March 16, 2020, NPRM (85 FR 14843) for more detail on EPA's rationale for approval.

III. Response to Comments

EPA received two comments that do not directly address the March 16, 2020, NPRM. EPA also received one comment that generally supports the proposed action, but raises other points that are summarized and discussed below.

Comment 1: The Commenter requests that EPA adequately publicize that Georgia Rule 391–3–1.01(qqqq)1. and (qqq)3. through 8.—which GA EPD withdrew from EPA consideration—are not part of the SIP. Specifically, the Commenter requests that EPA include

² GA EPD withdrew portions of the September 19, 2006, SIP revision as follows: 391–3–1–.02 on January 25, 2016 and portions of 391–3–1–.01 on November 27, 2019.

³ EPA's regulations governing the implementation of NSR permitting programs are contained in 40 CFR 51.160–51.166; 52.21, 52.24; and part 51, Appendix S. The CAA NSR program is composed of three separate programs: PSD, NNSR, and Minor NSR. PSD is established in part C of title I of the CAA and applies to major stationary sources in areas that meet the national ambient air quality standards (NAAQS)—“attainment areas”—as well as areas where there is insufficient information to determine if the area meets the NAAQS—“unclassified areas.” The NNSR program is established in part D of title I of the CAA and applies to major stationary sources in areas that are not in attainment of the NAAQS—“nonattainment areas.” The Minor NSR program applies to stationary sources that do not require PSD or NNSR permits. Together, these programs are referred to as the NSR programs.

⁴ The adverse comment received on the June 29, 2017, proposed rule is included in the docket for this action.

⁵ The November 27, 2019, partial withdrawal letter and accompanying Attachment A transmitting supporting documentation for the remainder of the SIP revision are included in the docket for this action.

an explanation at 40 CFR 52.570(c), “EPA Approved Georgia Regulations,” confirming that these provisions are not included in the SIP and that this explanation remain in place as long as these provisions remain in the State’s regulations.

Response 1: The Commenter does not challenge the substance of the State rule EPA has proposed to approve into Georgia’s SIP. Consistent with its current practice, EPA Region 4 will identify exceptions from the SIP-approved version of Rule 391–3–1–.01 in the explanations column of the Georgia SIP table at § 52.570(c), and the explanation will remain in place until the need for the explanation is eliminated through an approved SIP revision.

Comment 2: The Commenter requests that EPA include the aforementioned explanation on EPA Region 4’s website titled “EPA Approved Statutes and Regulations in the Georgia SIP”⁶ and notes that exceptions at Rule 391–3–1–.01 listed at 40 CFR 52.570(c) are not reproduced on the website. The Commenter states that it is essential that EPA’s website correctly identify the approved State regulations to ensure that the public is adequately informed of the operative provisions of the Georgia SIP.

Response 2: These comments regarding Region 4’s website are outside the scope of this action. However, EPA acknowledges that the Region 4 website may have created confusion. The website titled “Approved Air Quality Implementation Plans in Georgia” contains the following statement:

About this website: The official SIPs, TIPs, and FIPs are contained in regulations promulgated in the **Federal Register** and codified in the U.S. Code of Federal Regulations (CFR). EPA’s web-versions of the approved SIPs, TIPs, and FIPs are for reference. While we make every effort to maintain the accuracy of the files accessible here, inconsistencies may occur. Please contact us using the link below if you find any errors in these files.

To add clarity, EPA Region 4 has revised this statement as follows and placed it on all three of its websites related to Georgia’s SIP:⁷

About this website: This website does not necessarily represent the current version of

the SIPs, TIPs, or FIPs. The official SIPs, TIPs, and FIPs are contained in regulations promulgated in the **Federal Register** and codified in the U.S. Code of Federal Regulations (CFR). While we make every effort to maintain the accuracy of the files accessible here, inconsistencies may occur. Please contact us using the link below if you find any errors in these files.

Comment 3: The Commenter urges EPA to ensure that Georgia implements its SIP and not allow the State to apply the exemptions at 391–3–1–.01(qqqq)1. and (qqqq)3. through 8 to minor NSR. The Commenter states that it has experience with the State implementing State regulations that differ from the SIP and provides information related to the issuance of an air permit as an example.

Response 3: EPA agrees that it retains oversight authority to ensure that states are adequately implementing SIP-approved rules. Should EPA discover evidence to support a determination that GA EPD is misapplying the exemptions approved through this action, the Agency retains oversight authority to remedy this issue, such as through a failure to implement action. EPA appreciates the Commenter’s specific information regarding a GA EPD permitting action. However, the Commenter’s statements related to this unrelated permitting action are outside the scope of this action.

IV. Incorporation by Reference

In this document, 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 the Georgia Rule 391–3–1–.01, entitled “Definitions,” effective July 23, 2018 which adds a definition for a “Pollution control project.”^{8,9} EPA has made, and will continue to make, these materials generally available through 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). 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 in the next update to the SIP compilation.¹⁰

V. Final Action

EPA is approving the portion of the September 19, 2006, SIP revision that adds a definition at Rule 391–3–1–.01(qqqq). EPA believes this change is consistent with the CAA and will not impact the NAAQS or interfere with any other applicable requirement of the Act.

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);
- 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 (Pub. L. 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);

⁶ This website is located at <https://www.epa.gov/sips-ga/epa-approved-statutes-and-regulations-georgia-sip>. It is a sub-site of the website titled “Approved Air Quality Implementation Plans in Georgia,” located at <https://www.epa.gov/sips-ga>, which is a sub-site of the website titled “Approved Air Quality Implementation Plans in Region 4,” located at <https://www.epa.gov/air-quality-implementation-plans/approved-air-quality-implementation-plans-region-4>.

⁷ See footnote 6.

⁸ The effective date of the change to Rule 391–3–1–.01 made in Georgia’s September 19, 2006, SIP revision is July 13, 2006. However, for purposes of the state effective date included at 40 CFR 52.570(c), that change to Georgia’s rule is captured and superseded by Georgia’s update in a July 31, 2018, SIP revision, state effective on July 23, 2018, which EPA previously approved on November 22, 2019. See 84 FR 64427.

⁹ Except for (qqqq)1. and (qqqq)3. through 8., which were withdrawn from EPA consideration on November 27, 2019.

¹⁰ See 62 FR 27968 (May 22, 1997).

- 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 July 28, 2020. 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.

Mary Walker,

Regional Administrator, Region 4.

Accordingly, 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 entry for “391–3–1–.01” to read as follows:

§ 52.570 Identification of plan.

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(c) * * *

EPA APPROVED GEORGIA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
391–3–1–.01	Definitions	7/23/2018	5/29/2020, [Insert citation of publication].	Except the first paragraph, sections (a)–(nn), (pp)–(ccc), (eee)–(jjj), (nnn)–(bbb), (ddd)–(mmm), (rrr)–(sss), approved on 12/4/2018 with a State-effective date of 7/20/2017; sections (ddd) and (ccc)—approved on 2/2/1996 with a State-effective date of 11/20/1994; (nnnn), approved on 1/5/2017 with a State-effective date of 8/14/2016; and sections (oooo) (pppp), (qqqq)1., and (qqqq)3. through (qqqq)8. which are not in the SIP.
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