



**6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R04-OAR-2007-0113; FRL-9964-06-Region 4]**

**Air Plan Approval;**

**Georgia: Permit Exemptions and Definitions**

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

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving portions 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. This direct final action approves changes to existing minor source permitting exemptions and approves a definition related to minor source permitting exemptions. EPA is approving these portions of this SIP revision because the State has demonstrated that they are consistent with the Clean Air Act (CAA or Act).

**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 comment by **[Insert date 30 days after date of publication in the Federal Register]**. If EPA receives such comment, 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-2007-0113 at <https://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 <https://www2.epa.gov/dockets/commenting-epa-dockets>.

**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](mailto:akers.brad@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On September 19, 2006, GA EPD submitted SIP revisions to EPA for review and approval into the Georgia SIP. GA EPD submitted a clarification on November 6, 2006, which fixed typographical errors in the original submission. The submission contains changes to a number of Georgia's air quality rules at Rule 391-3-1. EPA is approving the portions of the SIP

revisions that modify Rule 391-3-1-.01 – “Definitions,” and Rule 391-3-1-.03(6) – “Exemptions.” The changes requested by Georgia in the SIP revision are discussed below in Section II.

EPA is not acting on the changes to the following rule sections proposed by Georgia because the rule sections are not incorporated into the SIP: Rule 391-3-1-.02(2)(ppp) – “Commercial and Industrial Solid Waste Incinerators”; Rule 391-3-1-.02(8) – “New Source Performance Standards”; Rule 391-3-1-.02(9) – “Emission Standards for Hazardous Air Pollutants”; Rule 391-3-1-.03(9) – “Permit Fees”; and Rule 391-3-1-.03(10) – “Title V Operating Permits. EPA is not acting on changes to Rule 391-3-1-.02(2)(ooo) – “Heavy Duty Diesel Engine Requirements,” included in the September 19, 2006, submittal because the changes were withdrawn from EPA consideration by the State in a letter dated January 25, 2016. EPA is not acting on changes to Rule 391-3-1-.02(6) – “Specific Monitoring and Reporting Requirements for Particular Sources - Emission Statements,” at paragraph (a)(4) because a subsequent revision to the rules, submitted on March 5, 2007, was approved on November 27, 2009, and supersedes the September 19, 2006, submittal. *See* 74 FR 62249. Accordingly, GA EPD withdrew this superseded revision to Rule 391-3-1-.02(6) from EPA consideration in a letter dated December 1, 2016.

EPA has previously approved the majority of revisions to Georgia rules originally included in the September 19, 2006, submittal. The following revisions were previously approved on February 9, 2010 (75 FR 6309), as corrected on August 26, 2010 (75 FR 52470): Rule 391-3-1-.01 – “Definitions” at paragraph (llll), “Volatile Organic Compound (VOC)” and at paragraph (nnnn), “Procedures for Testing and Monitoring Sources of Air Pollutants”; Rule 391-

3-1-.02(2)(d) – “Fuel Burning Equipment”; Rule 391-3-1-.02(2)(tt) – “VOC Emissions From Major Sources”; Rule 391-3-1-.02(2)(yy) – “Emissions of Nitrogen Oxides [NO<sub>x</sub>] From Major Sources”; Rule 391-3-1-.02(2)(rrr) – “NO<sub>x</sub> Emissions from Small Fuel-Burning Equipment”; Rule 391-3-1-.02(4) – “Ambient Air Standards”; Rule 391-3-1-.02(5) – “Open Burning”; Rule 391-3-1-.03(6) – “Exemptions” at paragraph (b), “Combustion Equipment” and paragraph (j), “Construction Permit Exemption for Pollution Control Projects”; Rule 391-3-1-.03(11) – “Permit by Rule”; and the repeal of Rule 391-3-1-.05 – “Regulatory Exemptions.” The revisions to Rule 391-3-1-.02(2)(zz) – “Gasoline Dispensing Facilities – Stage II,” were approved on December 1, 2010. *See* 75 FR 74624. The revisions to Rule 391-3-1-.02(2)(mmm) – “NO<sub>x</sub> Emissions from Stationary Gas Turbines and Stationary Engines used to Generate Electricity,” were approved on August 1, 2015. *See* 80 FR 52627. EPA previously approved the revisions submitted to Rule 391-3-1-.03(6) – “Exemptions” at paragraph (i), “Other [sources]” on April 9, 2013. *See* 78 FR 21065. EPA also previously approved the revisions submitted to Rule 391-3-1-.03(6) – “Exemptions” at paragraph (j), “Construction Permit Exemption for Pollution Control Projects” on February 9, 2010. *See* 75 FR 6309. Finally, the change submitted to Rule 391-3-1-.03(6) – “Exemptions,” at paragraph (g), subparagraph 5, which revised applicability for an exemption for fuel burning operations at municipal solid waste landfills for NO<sub>x</sub>, was previously approved, as submitted on March 15, 2005, and therefore, is not before the EPA for consideration in this action. *See* 70 FR 24310 (May 9, 2005).

## **II. Analysis of Georgia’s Submittal**

### **A. Rule 391-3-1-.01 – “Definitions”**

Georgia seeks to add a definition of “pollution control projects” to its SIP at Rule 391-3-1-.01(qqqq). This definition lists certain projects, described as “environmentally beneficial,” that are exempted from the minor new source review (NSR) construction permit requirements under Rule 391-3-1-.03(6)(j). The exemption does not apply to sources subject to major NSR requirements under either Rule 391-3-1-.02(7) (“Prevention of Significant Deterioration [PSD] of Air Quality”), or Rule 391-3-1-.03(8) “Permit Requirements” under paragraph (c), (Georgia’s nonattainment new source review (NNSR)). The exemption for pollution control projects 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 pollution control projects for minor sources at Rule 391-3-1-.03(6)(j) on February 9, 2010. *See* 75 FR 6309. In this action, EPA is approving a definition of “pollution control projects” at Rule 391-3-1-.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 pollution control projects from the federal NSR regulations for major sources. Georgia’s major NSR rules are consistent with federal rules and the D.C. Circuit decision on pollution control projects for major NSR.

Section 110(l) of the CAA prevents EPA from approving a SIP revision that would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the Act. EPA has determined that the change to Rule 391-3-1-.01(qqqq) will not interfere with any applicable requirement

concerning attainment or any other applicable requirement of the CAA because the change clarifies a previously approved exemption from the construction permit requirements.

**B. Rule 391-3-1-.03(6) – “Exemptions”**

Georgia is revising existing exemptions from minor NSR permitting by adding language to clarify that these exemptions do not extend to sources that are subject to new source performance standards for stationary sources (NSPS) or national emission standards for hazardous air pollutants (NESHAPs). Georgia’s SIP at Rule 391-3-1-.03(6) currently provides exemptions from permitting requirements, so long as the exemption is not used to avoid any other “applicable requirement,” such as NSPS or NESHAPS. Rule 391-3-1.03(6)(g)1. currently exempts sanitary wastewater collection systems other than incineration equipment from obtaining minor source construction permits; Rule 391-3-1-.03(6)(g)2. exempts on site soil or groundwater decontamination units from obtaining these permits. The September 19, 2006, SIP revision changes these provisions to reiterate the condition that only systems and units in (g)1. and (g)2. that “are not subject to any standard, limitation or other requirement under section 111 or section 112 (excluding section 112(r))” of the CAA – corresponding to NSPS and NESHAPS, respectively – are exempted. These changes became state effective on July 13, 2006.

EPA has determined that these changes will not interfere with any applicable requirement concerning attainment or any other applicable requirement of the CAA and therefore satisfy section 110(l) of the CAA, because no substantive changes are made to the existing exemptions, and the clarifying amendments provide greater certainty to sources and the public about applicability of the Rule.

**III. 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 Rule 391-3-1-.01(qqqq), “Definitions,” effective August 14, 2016,<sup>1</sup> and Rule 391-3-1-.03(6)(g) “Permits,” effective August 9, 2012.<sup>2</sup> 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.<sup>3</sup> EPA has made, and will continue to make, these materials generally available through <https://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 information).

#### **IV. Final Action**

EPA is approving the aforementioned changes to the Georgia SIP at Rules 391-3-1-.01(qqqq) and 391-3-1-.03(6)(g) because they are consistent with the CAA. 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

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<sup>1</sup> 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 November 29, 2016, SIP revision, state effective on August 14, 2016, which EPA previously approved on January 5, 2017. *See* 82 FR 1207 (January 5, 2017).

<sup>2</sup> The effective date of the change to Rule 391-3-1-.03 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 26, 2012, SIP revision, which EPA previously approved on April 9, 2013. *See* 78 FR 21065.

<sup>3</sup> *See* 62 FR 27968 (May 22, 1997).

approve 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 public 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.

## **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. 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 this 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, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

Dated: June 14, 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. Amend § 52.570(c) by revising the entries for “391-3-1-.01” and “391-3-1-.03” to read as follows:

**§ 52.570 Identification of plan.**

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(c) \* \* \*

**EPA APPROVED GEORGIA REGULATIONS**

<b>State citation</b>	<b>Title/subject</b>	<b>State effective date</b>	<b>EPA approval date</b>	<b>Explanation</b>
391-3-1-.01	Definitions	8/14/2016	[Insert date of publication in Federal Register], [Insert Federal Register citation]	
**	**	*	*	*
391-3-1-.03	Permits	8/9/2012	[Insert date of publication in Federal Register], [Insert Federal Register citation]	
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[FR Doc. 2017-13536 Filed: 6/28/2017 8:45 am; Publication Date: 6/29/2017]