



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2009-0226; FRL-9990-74-Region 4]

Air Plan Approval; GA: Emission Reduction Credits

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 the emission reduction credits (ERC) regulation. EPA is approving portions of the SIP revision submitted by the State of Georgia, through the Georgia Department of Natural Resources' Environmental Protection Division (GA EPD) on September 15, 2008. The revision expands the eligibility for sources in Barrow County that can participate in the ERC Program, adds a provision for reevaluation of the Certificates of ERC, changes the administrative fees, and eliminates an exemption for certain types of ERCs. 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-2009-0226. 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: Madolyn Sanchez, 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. Ms. Sanchez can be reached via telephone at (404) 562-9644 or via electronic mail at sanchez.madolyn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On September 15, 2008, GA EPD submitted a SIP revision to EPA for approval that involves changes to Georgia's emissions reduction credits rule and the administrative fees found in Georgia Rule 391-3-1-.03(13). Rule 391-3-1-.03(13) provides for the creation, banking, transfer, and use of nitrogen oxides (NO_x) and volatile organic compounds (VOC) ERCs in Federally designated ozone nonattainment areas in Georgia and administrative fees associated with the ERC Program.

GA EPD oversees the ERC Program, which was created in 1999 and approved into Georgia's SIP on July 10, 2001. *See* 66 FR 35906. The ERC Program facilitates construction permitting for major emission sources that are subject to nonattainment new source review (NNSR) permitting in Georgia ozone nonattainment areas. Emissions point sources within the 25-county area surrounding Atlanta that require Best Available Control Technology and offset permitting are also eligible for the ERC Program.

The ERC Program allows eligible sources that voluntarily reduce emissions in the affected counties to certify and "bank" these reductions as ERCs for future use by themselves or others. The banked ERCs hold their value for ten years, at which point they begin devaluing ten percent per year until they have reached 50 percent of their original value. The ERC Program is intended to help the Atlanta area achieve compliance with federal standards for ground-level ozone. The ERC does not allow for any increase in emissions of NO_x or VOC in the area to which it is applicable. In this action, EPA is approving the portion of Georgia's submission that makes changes to the applicability, discounting and revocation, and administrative fees sections of Rule 391-3-1-.03(13) - "Emission Reduction Credits."

II. Analysis of State's Submittals

The September 15, 2008, SIP revision involves changes to Georgia's Rule 391-3-1-.03 - "Permits" paragraph (13)(a), which modifies eligibility to participate in the ERC Program for stationary sources in Barrow County by removing Barrow County from the list of counties with sources eligible to create and bank NO_x and VOC ERCs only for electric generating units that have the potential to emit NO_x and VOC emissions in amounts greater than 100 tons per year (tpy), and adding Barrow County to the list of counties with sources eligible to create and bank

NO_x and VOC ERCs for any stationary source that has the potential to emit NO_x and VOC emissions in amounts greater than 100 tpy. This change expands the universe of stationary sources in Barrow County that may voluntarily reduce NO_x and VOC emissions and then credit those reductions at an equal or reduced rate against future emissions of those pollutants – thus incentivizing overall emissions reductions. Accordingly, EPA is approving this change as SIP strengthening.

Under paragraph (13)(d), Georgia removes a provision that previously allowed ERCs created through the shutdown of individual process equipment to retain their value indefinitely. Like ERCs created through other methods, these ERCs will now retain their original value for ten years, at which point they will begin devaluing ten percent per year until they have reached 50 percent of their original value. EPA has concluded that the removal of this provision will strengthen Georgia's SIP because the change will decrease the value of these ERCs when they are used to offset emissions occurring more than ten years in the future, thus reducing overall emissions in areas where the Program is implemented. Accordingly, EPA is approving the revision to the Georgia SIP.

Under paragraph (13)(d), Georgia adds a new provision that allows owners to re-evaluate certificates of ERCs to determine if credits specified in the certificate have been discounted or revoked in accordance with the requirements of Rule 391-3-1-.03(13)(d)1. EPA is approving this provision as consistent with section 110(a) of the CAA.

Under paragraph (13)(h), Georgia revises the administrative fees for the ERC Program. EPA is approving this provision as consistent with section 110(a) of the CAA.

EPA has concluded that these changes will not interfere with any applicable requirement concerning attainment and reasonable progress, nor any other applicable requirement of the CAA. EPA is therefore approving these changes to the Georgia SIP.¹

On September 25, 2017 (82 FR 44543), EPA proposed to approve the above revisions to Georgia's SIP. The proposed rule accompanied a direct final rule published on the same day in the Federal Register. *See* 82 FR 44519. EPA received comments on the portion of the rulemaking regarding EPA's method of revision to the Georgia SIP table at 40 CFR 52.570(c). Accordingly, EPA withdrew the direct final action. *See* 82 FR 55511.

III. Response to Comment

As stated previously, EPA received comments on the direct final rule. The comments are located in the docket for this action, and a summary of the comments and EPA's response is provided below.

Comment: The Commenter does not challenge the substance of the State rule EPA has proposed to approve into Georgia's SIP. But the Commenter disagrees with EPA's method of revision to the Georgia SIP table at 40 CFR 52.570(c), arguing that EPA incorrectly updated the "State effective date" column to September 11, 2008, for Georgia Rule 391-3-1-03. The Commenter states that "the table is supposed to identify the regulations that have been approved by EPA into the SIP, not simply identify the state-effective date of the version of the regulations that EPA acted on most recently." According to the Commenter, EPA's revision of the state

¹ Other portions of the September 15, 2008, submission were previously approved, and therefore, are not before EPA for consideration in this action. *See* 77 FR 59554 (September 28, 2012) and 79 FR 36218 (June 26, 2014).

effective date creates an impression of approving a different version of Rule 391-3-1-.03 than has actually been incorporated into the SIP.

Response: EPA acknowledges that the September 25, 2017, rulemaking action's change to the Georgia SIP table entry for Rule 391-3-1-.03 may have created confusion. Accordingly, EPA has decided to revise the table to minimize confusion.

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-.03(13) - "Emission Reduction Credits," state effective September 11, 2008.² 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 information).

Therefore, these materials have been approved by EPA for inclusion in the SIP, has 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.³

² The most recent state effective date for the version of Georgia Rule 391-3-1-.03(13) that EPA has approved, including the version of Rule 391-3-1-.03(13)(a), (d), and (h) that are the subject of this final action, is August 1, 2013. As a result, the table at 40 CFR 51.570(c) will reflect the state effective for Rule 391-3-1-.03(13) as August 1, 2013, with the exception of subsection .03(13)(c) as noted in the Explanation column of the table. In addition, EPA is taking this opportunity to reformat the identification of the SIP-approved portions of Georgia Rule 391-3-1-.03 in the table for ease of reference.

³ See 62 FR 27968 (May 22, 1997).

V. Final Action

EPA is approving the aforementioned changes to the Georgia SIP emissions reduction credits rule and the administrative fees found in Georgia Rule 391-3-1-.03(13) submitted on September 15, 2008, 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);
- 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.

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: February 28, 2019.

Mary S. Walker
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 (c) is amended by:

- a. Adding an undesignated heading entitled “Permits” after the entry “391-3-1-.02(14)”;
- b. Revising the entry “391-3-1-.03”; and
- c. Adding entries for “391-3-1-.03(1)” through “391-3-1-.03(8)” and “391-3-1-.03(11)” through “391-3-1-.03(13)”.

The additions and revisions 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
**	**	*	*	*
Permits				
391-3-1-.03:				
391-3-1-.03(1)	Construction (SIP) Permit	8/17/1994	60 FR 45048, 8/30/1995	
391-3-1-.03(2)	Operating (SIP) Permit	12/26/2001	67 FR 45909, 7/11/2002	With the exception of paragraph (e).

391-3-1-.03(3)	Revocation, Suspension, Modification or Amendment of Permits	2/23/1979	44 FR 54047, 9/18/1979	
391-3-1-.03(4)	Permits Not Transferable	11/20/1975	41 FR 35184, 8/20/1976	
391-3-1-.03(5)	Permits Public Records	10/28/1992	61 FR 3819, 2/2/1996	
391-3-1-.03(6)	Exemptions	8/9/2012	78 FR 21065, 4/9/2013	
391-3-1-.03(7)	Combined Permits and Applications	2/23/1979	44 FR 54047, 9/18/1979	
391-3-1-.03(8)	Permit Requirements	8/1/2013	82 FR 47993, 10/16/2017	Paragraph (g) is the version that was state-effective 9/13/2011.
391-3-1-.03(11)	Permit by Rule	7/20/2005	75 FR 6309, 2/9/2010	
391-3-1-.03(12)	Generic Permit	8/17/1994	60 FR 45048, 8/30/1995	
391-3-1-.03(13)	Emission Reduction Credits	9/11/2008	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	Except subparagraph 391-3-1-.03(13)(f), which was approved into the SIP with a state-effective date of 7/18/2001, and subparagraphs (b), (c), (e), (g), and (i), which were approved into the SIP with a state-effective date of 2/16/2000.
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