



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2020-0072; FRL-10009-55-Region 4]

### Air Plan Approval; GA: Emission Reduction Credits

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Georgia through a letter dated October 18, 2019, updating Georgia's rule titled *Emission Reduction Credits* which establishes a program for sources in specified counties to apply for credits for voluntary emissions reductions. EPA has evaluated Georgia's submittal and preliminarily determined that it meets the applicable requirements of the Clean Air Act (CAA or Act) and EPA 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. EPA-R04-OAR-2020-0072 at [www.regulations.gov](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 [www2.epa.gov/dockets/commenting-epa-dockets](http://www2.epa.gov/dockets/commenting-epa-dockets).

**FOR FURTHER INFORMATION CONTACT:** Pearlene Williams, 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. Ms. Williams can be reached via telephone at (404) 562-9144 or via electronic mail at [williams.pearlene@epa.gov](mailto:williams.pearlene@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

EPA is proposing to approve a revision to the Georgia SIP submitted through a letter dated October 18, 2019,<sup>1</sup> modifying Rule 391-3-1-.03(13), *Emission Reduction Credits*,<sup>2</sup> in the State's air permitting rules. This submittal revises the counties in which sources may create emission reduction credits (ERCs). This change aligns Georgia's ERC program with the current status of counties designated nonattainment or contributing to a nonattainment area.

Georgia's SIP-approved ERC program is codified at Rule 391-3-1-.03(13). 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 its terms, the ERC program only applies in counties in a nonattainment area, or counties determined by the Director of Georgia's

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<sup>1</sup> EPA notes the Agency received the submittal on October 24, 2019.

<sup>2</sup> EPA notes that the Agency received several submittals revising the Georgia SIP transmitted with the same October 18, 2019, cover letter. EPA will be considering action for these other SIP revisions in separate rulemakings.

Environmental Protection Division (GA EPD) to contribute to ambient air quality in the nonattainment area. 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 program does not allow for any increase in emissions of oxides of nitrogen (NO<sub>x</sub>) or volatile organic compounds (VOC) in the area to which it is applicable.

The current SIP-approved Rule 391-3-1-.03(13), at subparagraph (a)1., allows sources within 13 counties that have the potential to emit (PTE) 25 tons per year (tpy) of either NO<sub>x</sub> or VOCs to participate in the ERC program. These counties correspond to the prior nonattainment area for the 1979 1-hour ozone National Ambient Air Quality Standard (NAAQS). Georgia Rule 391-3-1-.03(13)(a)2. provides that sources within seven counties that have the potential to emit 100 tpy of either NO<sub>x</sub> or VOCs may participate in the program. These seven counties were included in the nonattainment area for the 1997 8-hour ozone NAAQS. Finally, Georgia Rule 391-3-1-.03(13)(a)3. provides that electrical generating units (EGU) within 25 counties that have the potential to emit 100 tons per year of either NO<sub>x</sub> or VOCs may participate in the ERC program. These counties were determined by the Director of GA EPD to contribute to ozone ambient air concentrations in nonattainment areas.

EPA redesignated all nonattainment counties in Georgia to attainment for the 1979 1-hour ozone NAAQS on June 15, 2005,<sup>3</sup> and has since revoked the 1-hour ozone NAAQS.<sup>4</sup> EPA redesignated all nonattainment counties in Georgia to attainment for the 1997 8-hour ozone

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<sup>3</sup> See 70 FR 34660 (June 15, 2005).

<sup>4</sup> The 1-hour Ozone NAAQS was revoked in the Atlanta Metro Area effective June 15, 2005. See 70 FR 44470 (August 3, 2005).

NAAQS on June 23, 2011. *See* 76 FR 36873. Additionally, EPA redesignated all nonattainment counties in Georgia to attainment for the 2008 8-hour ozone NAAQS on June 2, 2017. *See* 82 FR 25523. On June 4, 2018, EPA designated seven counties surrounding Atlanta as nonattainment and classified them 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.

This area is the only nonattainment area in the State.

Georgia’s October 18, 2019 SIP submittal revises the counties listed in Rule 391-3-1-.03(13)(a) to ensure that only sources in counties currently designated nonattainment—and counties contributing to the ambient air quality in the nonattainment area—may participate in the ERC program. The details of the submittal and EPA’s rationale for proposing to approve the changes are discussed below.

## **II. EPA’s Analysis of State’s Submittal**

The first revision to Georgia’s ERC rule removes subparagraph 391-3-1-.03(13)(a)1., which lists 13 counties containing stationary sources with the potential to emit more than 25 tpy of NO<sub>x</sub> or VOCs, and that are eligible to create and bank NO<sub>x</sub> and VOC ERCs. This list corresponds to the previous Atlanta 1-hour ozone nonattainment area, which has since been redesignated to attainment.<sup>6</sup> Because these counties have since been redesignated to attainment for the 1979 1-hour ozone NAAQS, Georgia seeks to remove subparagraph (13)(a)1. from the SIP.

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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> This area was formerly subject to the Nonattainment New Source Review (NNSR) requirements for “severe” ozone nonattainment areas, which apply to sources with a potential to emit (PTE) of 25 tpy or greater for NO<sub>x</sub> and VOCs.

Next, GA EPD revises the counties listed at subparagraph (a)2. to add the 13 counties removed from subparagraph (a)1. Sources in counties listed in this subparagraph that emit greater than 100 tpy of NO<sub>x</sub> or VOCs may participate in the ERC program. Of these 13 added counties, six are part of the Atlanta 2015 8-hour Ozone Area. The remaining seven counties are part of the maintenance area for the 2008 8-hour ozone NAAQS. Georgia's SIP-approved rules require these counties to comply with requirements applicable to nonattainment areas. *See* Georgia Rule 391-3-1-.03(8)(c)(14). Because these 13 counties either are in a nonattainment area or must otherwise comply with GA EPD's nonattainment area requirements, EPA believes they are appropriately included in the State's ERC program at subparagraph (a)2.

Finally, subparagraph (13)(a)2. is further modified to remove the five counties that were previously part of the maintenance area for the 1997 8-hour ozone NAAQS and are not part of the maintenance area for the 2008 8-hour ozone NAAQS (i.e., Barrow, Carroll, Hall, Spalding, and Rockdale counties). GA EPD adds these five counties to the list of counties determined to contribute to ambient levels of ozone within the nonattainment area at subparagraph (a)3. *See* Georgia Rules 391-3-1-.03(8)(c)15. and 391-3-1-.03(8)(e)1. The effect of this change is that EGUs with a PTE greater than 100 tpy of NO<sub>x</sub> or VOCs in these counties are eligible to create and bank NO<sub>x</sub> and VOC ERCs.

In sum, these revisions clarify eligibility for sources in certain counties to bank and create ERCs. These changes also make paragraph 391-3-1-.03(13)(a) consistent with current provisions under the State's Nonattainment New Source Review (NNSR) permitting program.<sup>7</sup> EPA also notes that the ERC program is a flexibility tool used by States and affected sources to

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<sup>7</sup> *See* 85 FR 2646 (January 16, 2020)

comply with otherwise applicable requirements and is not expected to impact emissions in the State. Therefore, EPA is preliminarily concluding that these changes are consistent with the CAA and applicable EPA regulations.<sup>8</sup>

### **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(13), titled “Emission Reduction Credits,” effective September 26, 2019, to clarify which sources in which areas of the State are eligible to create and bank emission reduction credits. EPA has made, and will continue to make, the State Implementation Plan 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 Georgia SIP revision with changes to Regulation 391-3-1-.03(13), *Emission Reduction Credits*, submitted October 18, 2019, to clarify which sources in which areas are eligible to create, bank, transfer, or use ERCs of NO<sub>x</sub> and VOCs, corresponding to the counties that are either currently in nonattainment or contributing to the current nonattainment area. EPA has preliminarily concluded that the SIP revision is consistent with the CAA and EPA’s federal regulations.

### **V. Statutory and Executive Order Reviews**

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<sup>8</sup> EPA has also preliminarily concluded that these changes are consistent with applicable guidance on emissions trading, including EPA’s “Emissions Trading Policy Statement; General Principles for Creation, Banking and Use of Emission Reduction Credits.” 51 FR 43814 (Dec. 4, 1986).

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 proposed 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, Nitrogen dioxide, Ozone, Volatile organic compounds.

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

Dated: May 12, 2020.

Mary Walker,  
Regional Administrator,  
Region 4.

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