



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R04-OAR-2020-0177; FRL- 10011-68-Region 4]**

**Air Plan Approval;**

**FL; GA; KY; MS; NC; SC: Definition of Chemical Process Plants Under State Prevention  
of Significant Deterioration Regulations**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve revisions to the State Implementation Plans (SIP) for Florida, Georgia, the Jefferson County portion of Kentucky, Mississippi, North Carolina, and South Carolina. The SIP revisions incorporate changes to the definition of chemical process plants under the States' Prevention of Significant Deterioration (PSD) regulations. Consistent with an EPA regulation completed in 2007, EPA is proposing to approve the rules for Florida, Georgia, the Jefferson County portion of Kentucky, Mississippi, North Carolina, and South Carolina that modify the definition of chemical process plant to exclude ethanol manufacturing facilities that produce ethanol by natural fermentation processes. This will clarify that the PSD major source applicability threshold in the SIPs for these ethanol plants is 250 tons per year (tpy) (rather than 100 tpy) and removes the requirement to include fugitive emissions when determining if the source is major for PSD. EPA is proposing to find that the changes to the state and local rules described herein are approvable because the Agency believes that they are consistent with EPA regulations governing state PSD programs and will not interfere with any applicable requirement concerning attainment and

reasonable further progress (as defined in section 171 of the Clean Air Act (CAA or Act)), or any other applicable requirement of the CAA.

**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-2020-0177 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 [HYPERLINK "http://www2.epa.gov/dockets/commenting-epa-dockets"](http://www2.epa.gov/dockets/commenting-epa-dockets) [www2.epa.gov/dockets/commenting-epa-dockets](http://www2.epa.gov/dockets/commenting-epa-dockets).

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## **SUPPLEMENTARY INFORMATION:**

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  - I. What is Being Addressed in this Notice?**

EPA is proposing to approve the following revisions to SIPs received by EPA from Florida, Georgia, Kentucky, Mississippi, North Carolina, and South Carolina: 1) a portion of a SIP revision provided to EPA through the Florida Department of Environmental Protection (FL DEP) via letter dated December 12, 2011; 2) a SIP revision provided to EPA through the Georgia Environmental Protection Division (GA EPD) via letter dated September 15, 2008;<sup>1</sup> 3) a SIP revision to the Jefferson County portion of the Kentucky SIP that was provided to EPA through the Kentucky Division for Air Quality (KDAQ) via a letter dated July 1, 2009;<sup>2</sup> 4) a SIP

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<sup>1</sup> EPA received the submittal on September 29, 2008.

<sup>2</sup> In 2003, the City of Louisville and Jefferson County governments merged and the “Jefferson County Air Pollution Control District” was renamed the “Louisville Metro Air Pollution Control District.” *See* The History of Air

revision provided to EPA through the Mississippi Department of Environmental Quality (MDEQ) via letter dated November 28, 2007; 5) a SIP revision provided to EPA through the North Carolina Department of Environmental Quality (NC DEQ)<sup>3</sup> via letter dated June 20, 2008;<sup>4</sup> and 6) a portion of a SIP revision provided to EPA through the South Carolina Department of Health and Environmental Control (SC DHEC) via letter dated April 14, 2009, as updated in a portion of SIP revision provided to EPA via letter dated April 10, 2014. These revisions conform the State rules to changes to EPA regulations reflected in EPA’s final rule entitled “Prevention of Significant Deterioration, Nonattainment New Source Review, and Title V: Treatment of Certain Ethanol Production Facilities Under the “Major Emitting Facility” Definition” (hereinafter referred to as the “2007 Ethanol Rule”) as published in the Federal Register on May 1, 2007. *See* 72 FR 24060.

The 2007 Ethanol Rule amends the PSD definition of “major stationary source” to exclude certain ethanol facilities from the “chemical process plant” source category and clarifies that the PSD major source applicability threshold for certain ethanol plants is 250 tpy (rather than 100 tpy). The 2007 Ethanol Rule also removed the requirement to include fugitive emissions when determining if the source is major for PSD and Title V permitting. On October 21, 2019, EPA responded to a petition for reconsideration of the 2007 Ethanol Rule, and EPA denied the petition with respect to the revisions of the PSD Regulations reflected in that rule (as described in more detail below). EPA is now proposing to approve these SIP revisions that are

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Pollution Control in Louisville, available at <https://louisvilleky.gov/government/air-pollution-control-district/history-air-pollution-control-louisville>. However, each of the regulations in the Jefferson County portion of the Kentucky SIP still has the subheading “Air Pollution Control District of Jefferson County.” Thus, to be consistent with the terminology used in the SIP, EPA refers throughout this notice to regulations contained in the Jefferson County portion of the Kentucky SIP as the “Jefferson County” regulations.

<sup>3</sup> At the time of the 2008 submittal, the NC DEQ was the North Carolina Department of Environment and Natural Resources. Throughout this proposed rulemaking, EPA will refer to the State Agency as NC DEQ.

<sup>4</sup> EPA received the submission on June 25, 2008.

based on a part of the 2007 Ethanol Rule.

## **II. Background**

### **A. PSD Permitting Thresholds for Chemical Processing Plants**

Under the CAA, there are two potential thresholds for determining whether a source is a major emitting facility that is potentially subject to the construction permitting requirements under the PSD program; one threshold is 100 tpy per pollutant, and the other is 250 tpy per pollutant. Section 169(1) of the CAA lists twenty-eight source categories that qualify as major emitting facilities if their emissions exceed the 100 tpy threshold. If the source does not fall within one of twenty-eight source categories listed in section 169, then the 250 tpy threshold is applicable.

One of the source categories in the list of twenty-eight source categories to which the 100 tpy threshold applies is chemical process plants. Since the Standard Industrial Classification (SIC) code for chemical process plants includes facilities primarily engaged in manufacturing ethanol fuel, EPA and States had previously considered such facilities to be subject to the 100 tpy thresholds.

As a result of this classification, pursuant to EPA regulations interpreting CAA section 302(j), chemical process plants were also required to include fugitive emissions for determining the potential emissions of such sources. Thus, prior to promulgation of the 2007 Ethanol Rule, the classification of fuel and industrial ethanol facilities as chemical process plants had the effect of requiring these plants to include fugitive emissions of criteria pollutants when determining whether their emissions exceed the applicability thresholds for the PSD and nonattainment new source review (NA NSR) permit programs.

### **B. Ethanol Rule**

On May 1, 2007, EPA published in the Federal Register the 2007 Ethanol Rule (72 FR 24060). This final rule amended EPA's PSD and NA NSR regulations to exclude ethanol manufacturing facilities that produce ethanol by natural fermentation processes from the "chemical process plants" category under the regulatory definition of "major stationary source."

This change to EPA's NSR regulations affected the threshold used to determine PSD applicability for these ethanol production facilities, clarifying that such facilities were subject to the 250 tpy major source threshold. The 2007 Ethanol Rule also included changes to other provisions which established that ethanol facilities need not count fugitive emissions when determining whether such a source is "major" under the Federal PSD, NA NSR, and Title V permitting programs.

### **C. Petitions for Review and Reconsideration of the 2007 Ethanol Rule**

On July 2, 2007, the National Resources Defense Council (NRDC) petitioned the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) to review the 2007 Ethanol Rule. On that same day, EPA received a petition for administrative reconsideration and request for stay of the 2007 Ethanol Rule from NRDC. On March 27, 2008, EPA denied NRDC's 2007 administrative petition for reconsideration.

On March 2, 2009, EPA received a second petition for reconsideration and request for stay from NRDC. In 2009, NRDC also filed a petition for judicial review challenging EPA's March 27, 2008, denial of NRDC's 2007 administrative petition in the D.C. Circuit. This challenge was consolidated with NRDC's challenge to the 2007 Ethanol Rule. In August of 2009, the D.C. Circuit granted a joint motion to hold the case in abeyance, and the case has remained in abeyance.

On October 21, 2019, EPA partially granted and partially denied NRDC's 2009

administrative petition for reconsideration. Specifically, EPA granted the request for reconsideration with regard to NRDC's claim that the 2007 Ethanol Rule did not appropriately address the CAA section 193 anti-backsliding requirements for nonattainment areas. EPA denied the remainder of the requests for reconsideration on the grounds that NRDC failed to establish that reconsideration was warranted under CAA section 307(d)(7)(B).

### **III. What SIP Revisions are Being Proposed by EPA?**

As mentioned above, EPA is proposing to approve revisions to SIPs dated: Florida on December 12, 2011; Georgia on September 15, 2008; Kentucky, corresponding to the Jefferson County portion of the Kentucky SIP, on July 1, 2009; Mississippi on November 28, 2007; North Carolina on June 20, 2008; and South Carolina on April 14, 2009, and April 10, 2014. These revisions adopt language that is the same or consistent with that contained in EPA's 2007 Ethanol Rule. EPA is not acting on any changes with respect to NA NSR. The State regulations that EPA is proposing to approve exclude ethanol production facilities that produce ethanol by natural fermentation from the "chemical process plants" category. The revisions thus clarify that an ethanol facility is subject to a PSD major source threshold of 250 tpy and that such sources need not count fugitive emissions to determine potential emissions that are compared to this threshold. The revisions proposed for approval in this action do not affect NA NSR. More detail on the SIP revisions that EPA is proposing to approve is provided below. Each subsection below begins by identifying the rules as modified by each state or local government to include the ethanol exemption in its PSD program.

#### **A. Florida**

Florida rule 62-210.200, *Definitions*, Florida Administrative Code (F.A.C.) at 62-210.200(189) "Major Stationary Source": "Any of the following stationary sources of air

pollutants which emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant: Chemical process plants (the term “chemical process plants” shall not include ethanol production facilities that produce ethanol by natural fermentation included in North American Industry Classification System (NAICS) codes 325193 or 312140)...” Florida rule 62-210.200(214) “North American Industry Classification System” or “NAICS”: “A federal system of classifying business establishments according to similarity in the process used to produce goods or services, as described in the 2007 NAICS definition file (available free of cost at <http://www.census.gov/eos/www/naics/> or available in CD ROM or book form at a cost from the US Department of Commerce at 1-800-553-6847), hereby adopted and incorporated by reference (<https://www.flrules.org/Gateway/reference.asp?No=Ref-00705>).” Additionally, Chapter 62-212.400, *Prevention of Significant Deterioration*, at (3)(b): “The requirements of subsections 62-212.400(4) through (12), F.A.C., shall not apply to a major stationary source or major modification if the source of modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to one of the following categories... 20. Chemical process plants (the term “chemical process plants” shall not include ethanol production facilities that produce ethanol by natural fermentation included in North American Industry Classification System (NAICS) codes 325193 or 312140)...”

Chapter 62-210 of the F.A.C., which contains Florida’s definitions regulation, generally applies to stationary sources in Florida. These definitions are referenced throughout Florida’s rules, including in Chapter 62-212, which governs preconstruction review, including PSD. Chapter 62-212 of the F.A.C., which contains Florida’s PSD regulation, applies to new or

modified “major stationary sources,” as that term is defined in 62-210.200. As identified above, Florida revised 62-210.200 to exclude ethanol production facilities from the “chemical process plants” major stationary source category such that ethanol facilities emitting less than 250 tpy of a regulated air pollutant are not subject to PSD.<sup>5</sup> Additionally, Florida incorporated a definition for NAICS as part of this rulemaking. Furthermore, Florida’s PSD regulation at 62-212.400(3)(b)20. says that emissions from these same facilities are not considered in determining whether the facility is subject to PSD. The state effective date of Florida’s revision to the definition of “chemical process plants” in Rule 62-210.200 and the change to applicability procedures in Rule 62-212.400 is December 12, 2011.

B. Georgia

Official Compilation of Rules and Regulations of the State of Georgia (Ga. Comp. R. & Regs.) 391-3-1-.02(7), *Prevention of Significant Deterioration of Air Quality*, (a)2.(iii): “The definition of major stationary source contained in 40 CFR Part 52.21(b)(1) is hereby incorporated by reference except as follows...” Additionally, (b)6.: “Review of major stationary sources and major modifications - source applicability and general exemptions: 40 CFR Part

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<sup>5</sup> Florida’s definition of “major stationary source” at 62-210.200 is also cross-referenced in the portion of its SIP-approved NA NSR regulation, 62-212.500, *Preconstruction Review in Nonattainment Areas*, that sets the fugitive emissions exclusion for determining rule applicability. See Rule 62-212.500(2)(b). If the definition of “chemical process plants” within the term of “major stationary source” were updated to exclude these ethanol producing facilities for the purposes of NA NSR, then fugitive emissions would not need to be considered in determining whether the source is major. All sources in nonattainment areas are major at 100 tpy, and certain classifications of nonattainment areas for ozone and PM<sub>2.5</sub> establish lower thresholds for major source applicability. See 40 CFR 51.165(b)(iv)(A). However, Florida’s December 12, 2011, submittal did not seek to revise, nor ask EPA to revise, the State’s SIP-approved NA NSR program. Therefore, EPA is not approving the revision to the definition of “chemical process plant” within the term “major stationary source” to apply to the NA NSR program. Accordingly, if EPA finalizes this action, the ethanol production facility exclusion within the definition of “major stationary source” at 62-210.200 will not apply in the SIP for the purposes of determining applicability in Rule 62-212.500, and EPA will note this in the list of SIP-approved Florida regulations at 40 CFR 52.520(c). There are currently no nonattainment areas in Florida.

52.21 (i), as amended, is hereby incorporated and adopted by reference with the following exception...”

This regulation incorporates by reference portions of 40 CFR 52.21, including most portions of the federal definition of “major stationary source” and most portions of EPA’s applicability procedures as revised and amended on July 1, 2007, which include the 2007 Ethanol Rule provisions. This revision aligns paragraph (a)2.(iii) with the incorporation by reference of provisions in 40 CFR 52.21 at paragraph (a)1.

The term “major stationary source” is defined in 40 CFR 52.21(b)(1)(i)(a) as “[a]ny of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant: ...Chemical process plants (which does not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140).” Additionally, 40 CFR 52.21(b)(1)(iii) excludes fugitive emissions from ethanol production facilities from the “chemical process plants” category such that fugitive emissions are not considered in determining whether the facility is subject to PSD.

Because Georgia’s incorporation by reference of 40 CFR 52.21 includes the ethanol exclusion, ethanol facilities emitting less than 250 tpy of a regulated air pollutant are not subject to PSD, and fugitive emissions from ethanol facilities are not considered in determining whether the facility is subject to PSD.

C. Jefferson County Portion of the Kentucky SIP

Jefferson County Regulation 2.05, *Prevention of Significant Deterioration of Air Quality*. This regulation incorporates by reference 40 CFR 52.21, as revised and amended on July 1, 2008, with exceptions.

The term “major stationary source” is defined in 40 CFR 52.21(b)(1)(i)(a) as “[a]ny of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant: ...Chemical process plants (which does not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140).” Additionally, 40 CFR 52.21(b)(1)(iii) excludes fugitive emissions from ethanol production facilities from the “chemical process plants” category such that fugitive emissions are not considered in determining whether the facility is subject to PSD.

Because Jefferson County’s incorporation by reference of 40 CFR 52.21 includes the ethanol exclusion, ethanol facilities emitting less than 250 tpy of a regulated air pollutant are not subject to PSD, and fugitive emissions from ethanol facilities are not considered in determining whether the facility is subject to PSD.

D. Mississippi

11 Mississippi Administrative Code (MAC) Part 2, Chapter 5, *Regulations for the Prevention of Significant Deterioration of Air Quality*. This regulation incorporates by reference 40 CFR 52.21, as revised and amended on June 15, 2007, with exceptions.

The term “major stationary source” is defined in 40 CFR 52.21(b)(1)(i)(a) as “[a]ny of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant: ...Chemical process plants (which does not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140).” Additionally, 40 CFR 52.21(b)(1)(iii) excludes fugitive emissions from ethanol production facilities from the “chemical process plants” category such that fugitive emissions are not considered in determining whether the facility is subject to PSD.

Because Mississippi's incorporation by reference of 40 CFR 52.21 includes the ethanol exclusion, ethanol facilities emitting less than 250 tpy of a regulated air pollutant are not subject to PSD, and fugitive emissions from ethanol facilities are not considered in determining whether the facility is subject to PSD.

E. North Carolina

15 North Carolina Administrative Code (NCAC) 02D .0530, *Prevention of Significant Deterioration*. This regulation incorporates by reference 40 CFR 52.21, as revised and amended on June 13, 2007, with exceptions.

The term "major stationary source" is defined in 40 CFR 52.21(b)(1)(i)(a) as "[a]ny of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant: ...Chemical process plants (which does not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140)." Additionally, 40 CFR 52.21(b)(1)(iii) excludes fugitive emissions from ethanol production facilities from the "chemical process plants" category such that fugitive emissions are not considered in determining whether the facility is subject to PSD.

Because North Carolina's incorporation by reference of 40 CFR 52.21 includes the ethanol exclusion, ethanol facilities emitting less than 250 tpy of a regulated air pollutant are not subject to PSD, and fugitive emissions from ethanol facilities are not considered in determining whether the facility is subject to PSD.

F. South Carolina

South Carolina Code of Regulations Annotated (S.C. Code Ann. Regs.), Rule 61-62.5, Standard No. 7, *Prevention of Significant Deterioration*, at 61-62.5, Standard No. 7(b)(32) "Major stationary source" at (i)(a): "Any of the following stationary sources of air pollutants

which emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant: ...chemical process plants (which does not include ethanol production facilities that produce ethanol by natural fermentation included in North American Industrial Classification System (NAICS) codes 325193 or 312140)...” Additionally, another part of the definition at Standard No. 7(b)(32)(iii): “The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this regulation whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources: ... (t) Chemical process plants – The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in North American Industrial Classification System (NAICS) codes 325193 or 312140...”

SC DHEC’s Rule 61-62.5, Standard No. 7, applies to new or modified “major stationary sources.” As identified above, Standard No. 7 was revised to exclude ethanol production facilities from the “chemical process plants” major stationary source category such that ethanol facilities emitting less than 250 tpy of a regulated air pollutant are not subject to PSD. Furthermore, South Carolina’s PSD regulation at 61-62.5, Standard No. 7(b)(32)(iii) was revised to say that fugitive emissions at these same facilities are not considered in determining whether the facility is subject to PSD. The state effective date of SC DHEC’s revision to the definition of “major stationary source” at 61-62.5, Standard No. 7(b)(32)(i) and (iii) was initially April 24, 2009, as transmitted in the April 14, 2009, SIP revision.

Subsequently, South Carolina made additional changes to Standard No. 7 regarding these provisions. Specifically, South Carolina made a minor change to spell out the term “North American Industrial Classification System” the first time it appears in Regulation No. 7 at Regulation No. 7(b)(32)(i)(a). The State published its proposed changes in the *South Carolina*

*State Register* on August 23, 2013, and held a public hearing on December 12, 2013. South Carolina adopted the amended rule on December 27, 2013, at which point it became state effective. On April 10, 2014, South Carolina submitted a request to EPA Region 4 to revise the South Carolina SIP with these additional changes made to South Carolina's PSD program.

#### **IV. Have the Requirements for Approval of a SIP Revision Been Met?**

All of the aforementioned regulations are consistent with EPA's PSD program requirements in 40 CFR 51.166, as amended in the 2007 Ethanol Rule. Further, all submissions have met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102.

FL DEP published a Notice of Proposed Rule on September 16, 2011, in the *Florida Administrative Weekly*, with a public hearing offered on October 13, 2011, if requested within 21 days of the published Notice. FL DEP received no request for a public hearing and therefore did not hold an official hearing. FL DEP received no comments from on its proposed revisions and therefore did not change the rules based on public input.

GA EPD issued a Notice of Public Hearing and Proposed Revisions on May 4, 2008. A public hearing was then held on June 3, 2008. No comments were received on the proposed revision, and GA EPD therefore did not make changes to the rule based on public input.

Louisville Metro Air Pollution Control District (LMAPCD) noticed proposed changes in newspapers published on February 20, 2009, and held a public hearing on May 20, 2009. Two sets of comments were received on the draft revisions, and LMAPCD responded to the comments received and noted that it made no substantive changes in response to the comments.

MDEQ published its notice of public hearing and proposed changes via newspapers on June 15, 2007, June 22, 2007, and June 29, 2007, and held a public hearing on July 17, 2007.

MDEQ did not receive any comments on its proposed changes and therefore did not make any changes to its rules based on public input.

NC DEQ published a notice of proposed amendments in newspapers by October 7, 2007, and in the *North Carolina Register* on October 15, 2007, and a public hearing was held on November 7, 2007. NC DEQ received one set of public comments on the proposed rule and made changes to the rule based on those comments. No substantive comments were received on the adoption of regulations consistent with the 2007 Ethanol Rule.

SC DHEC issued a notice of proposed rulemaking in the *State Register* on January 23, 2009, for the April 14, 2009, submittal, and held a public hearing on April 9, 2009. In addition, for the April 10, 2014, submittal, SC DHEC issued a notice of proposed rulemaking on August 23, 2013, in the *State Register* and held a public hearing on December 12, 2013. SC DHEC received no comments on either of its proposed revisions, and therefore made no changes based on public input.

The SIP submissions also satisfy the completeness criteria of 40 CFR part 51, appendix V. In addition, these revisions meet the substantive SIP requirements of the CAA, including section 110 and implementing regulations. A Technical Support Document (TSD) for each state or local revision, available as part of the docket to this proposed rulemaking, contains an analysis of the potential impact of the SIP revisions on air quality and whether approval of the SIP revisions will interfere with attainment or maintenance of the national ambient air quality standards (or standards) or any other CAA requirement. Existing ethanol plants, where a state has any, are listed with information from their permits, including applicable requirements, current PSD status, and applicable federal rules that control emissions in lieu of PSD. The

existing ethanol plants, where a state has any, are mapped along with the ambient air monitors to demonstrate the relationship between ethanol production and air quality.

Emissions from ethanol plants are compared to other emissions data categories for four major pollutants revealing that for the major pollutants associated with ethanol production, ethanol plants make up less than 1 percent of the total anthropogenic emissions of that pollutant in all six states. EPA graphed air quality trends in each state, since the date of promulgation of the 2007 Ethanol Rule, for all criteria pollutants associated with ethanol production. The air quality trends reveal that while ethanol production increased in certain areas, air quality improved for generally every pollutant monitored in each of the states.

EPA also describes requirements for each state or local government's minor source NSR program because the facilities that would be below the 250 tpy PSD major source threshold under this rulemaking will still need to obtain minor source construction permits.<sup>6</sup> EPA further analyzes the impact of increasing the threshold to 250 tpy on ozone and particulate matter (PM) precursors in each state. The analysis for ozone and secondary PM demonstrates that sources of this size will not cause any interference with attainment or maintenance of the standard in these states.

Based on EPA's analysis in each TSD, EPA proposes to conclude that approval of this action will not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171 of the CAA), or any other applicable requirement of the CAA as required under CAA section 110(l).

## **V. What Action is EPA Proposing to Take?**

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<sup>6</sup> With the exception of facilities with a potential to emit between 100-250 tpy in several counties adjacent to the Atlanta, Georgia ozone nonattainment area for the 2015 8-hour ozone NAAQS, which are subject to Georgia's NA NSR program. See the TSD for Georgia in the docket for this proposed rulemaking for more information.

EPA is proposing to approve revisions to the Florida SIP, Georgia SIP, Jefferson County portion of the Kentucky SIP, Mississippi SIP, North Carolina SIP, and South Carolina SIP. EPA plans to take final action after consideration of any comments received on this proposed rulemaking.

The revisions to state rules that EPA is proposing to approve change the definition of “major stationary source” under each state or local PSD regulations. These proposed changes make clear that the PSD applicability threshold for certain ethanol plants is 250 tpy and remove the requirement to include fugitive emissions when determining if an ethanol plant is major for PSD. EPA proposes to determine that these revisions are consistent with EPA’s PSD regulations and that approval of these revisions is consistent with the requirements of CAA section 110(l) and will not adversely impact air quality. EPA’s analysis is available in the individual State TSDs that are part of the docket for this proposed rulemaking. This proposed action will ensure consistency between the State and federally approved rules and ensure Federal enforceability of the State’s revised air program rules.

## **VI. 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 the following regulations: Florida Rule 62-210.200, F.A.C., “Definitions,” state effective March 28, 2012;<sup>7,8</sup> Florida Rule 62-212.400, “Prevention of

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<sup>7</sup> Except for the purposes of determining applicability in Rule 62-212.500, “Preconstruction Review for Nonattainment Areas.” See footnote 5 for additional information.

<sup>8</sup> The effective date of the change to Florida Rule 62-210.200 made in Florida’s December 12, 2011, SIP revision is December 4, 2011. However, for purposes of the state effective date included at 40 CFR 52.520(c), that change to Florida’s rule is captured and superseded by Florida’s update in a February 27, 2013, SIP revision, state effective on March 28, 2012, which EPA previously approved on October 6, 2017. See 82 FR 46682.

Significant Deterioration,” state effective March 28, 2012;<sup>9</sup> Georgia Rule 391-3-1-.02(7), “Prevention of Significant Deterioration of Air Quality (PSD),” state effective July 20, 2017;<sup>10</sup> Jefferson County Regulation 2.05, “Prevention of Significant Deterioration of Air Quality,” version 13, state effective January 17, 2018<sup>11</sup> for the Jefferson County portion of the Kentucky SIP; Mississippi Rule 11 MAC Part 2, Rule 5.2, “Adoption of Federal Rules by Reference,” state effective May 28, 2016;<sup>12</sup> North Carolina Rule 02D .0530, “Prevention of Significant Deterioration,” state effective September 1, 2017;<sup>13</sup> and South Carolina Rule 61-62.5, Standard No. 7, “Prevention of Significant Deterioration,” state effective August 25, 2017.<sup>14</sup> EPA has made, and will continue to make, these materials generally available through

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<sup>9</sup> The effective date of the change to Florida Rule 62-212.400 made in Florida’s December 12, 2011, SIP revision is December 4, 2011. However, for purposes of the state effective date included at 40 CFR 52.520(c), that change to Florida’s rule is captured and superseded by Florida’s update in a February 27, 2013, SIP revision, state effective on March 28, 2012, which EPA previously approved on September 19, 2012. *See* 77 FR 58027.

<sup>10</sup> The effective date of the change to Georgia Rule 391-3-1-.02(7) made in Georgia’s September 15, 2008, SIP revision is September 11, 2008. 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, 2017, SIP revision, state effective on July 20, 2017, which EPA previously approved on December 4, 2018. *See* 83 FR 62466.

<sup>11</sup> The effective date of the change to Jefferson County Regulation 2.05 made in Kentucky’s July 1, 2009, SIP revision is June 20, 2009. However, for purposes of the state effective date included at 40 CFR 52.920(c), that change to Jefferson County’s rule is captured and superseded by Kentucky’s update in a March 15, 2018, SIP revision, state effective on January 17, 2018, which EPA previously approved on April 10, 2019. *See* 84 FR 14268.

<sup>12</sup> The effective date of the change to Mississippi Rule APC-S-5, “Regulations for the Prevention of Significant Deterioration of Air Quality” made in Mississippi’s November 28, 2007, SIP revision is August 23, 2007. However, for purposes of the state effective date included at 40 CFR 52.1270(c), that change to Mississippi’s rule is captured and superseded by Mississippi’s update in a June 7, 2016, SIP revision, state effective on May 28, 2016, which EPA previously approved on August 8, 2017. *See* 82 FR 37015. Furthermore, Mississippi has recodified previous Rule APC-S-5 as 11 MAC Part 2, Rule 5, with the relevant part from the November 28, 2007, SIP revision now included in Rule 5.2.

<sup>13</sup> The effective date of the change to North Carolina Rule 02D .0530 made in North Carolina’s June 20, 2008, SIP revision is May 1, 2008. However, for purposes of the state effective date included at 40 CFR 52.1770(c), that change to North Carolina’s rule is captured and superseded by North Carolina’s update in a October 17, 2017, SIP revision, state effective on September 1, 2017, which EPA previously approved on September 11, 2018. *See* 82 FR 45827.

<sup>14</sup> The effective date of the change to South Carolina Rule 61-62.1, Standard No. 7 made in South Carolina’s April 10, 2014, SIP revision is December 27, 2013. However, for purposes of the state effective date included at 40 CFR 52.2120(c), that change to South Carolina’s rule is captured and superseded by South Carolina’s update in a September 5, 2017, SIP revision, state effective on August 25, 2017, which EPA previously approved on February 13, 2019. *See* 84 FR 3705.

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).

## **VII. 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. These proposed actions merely propose to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, these proposed actions:

- Are not significant regulatory actions 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);
- Are not Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory actions because SIP approvals are exempted under Executive Order 12866;
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are 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.*);
- Do 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);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are 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
- Do 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).

For Florida, Georgia, the Jefferson County portion of Kentucky, Mississippi, and North Carolina, the SIPs are 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 proposed 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.

For South Carolina, because 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, this action for the State of South Carolina does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Therefore, this proposed action will not impose substantial direct costs on Tribal governments or preempt Tribal law. The Catawba Indian Nation Reservation is located within the boundary of York County, South Carolina. Pursuant to the Catawba Indian Claims Settlement Act, S.C. Code

Ann. 27-16-120 (Settlement Act), “all state and local environmental laws and regulations apply to the Catawba Indian Nation and Reservation and are fully enforceable by all relevant state and local agencies and authorities.” The Catawba Indian Nation also retains authority to impose regulations applying higher environmental standards to the Reservation than those imposed by state law or local governing bodies, in accordance with the Settlement Act.

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

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and Recordkeeping requirements, Volatile organic compounds.

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

Date: June 26, 2020.

Mary Walker,

Regional Administrator,

Region 4.

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