Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2010–0972" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register.**

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact Jim Wetherington at the telephone number or e-mail address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Basis and Purpose

The subject bridge is the S443 Swing Bridge across the Bayou Liberty at mile 2.0, in St. Tammany Parish. The vertical clearance is 7.59 feet (2.31m) above the 2% flowline, elevation 2.5 feet (0.76m) NAVD 1988.

Presently, under 33 CFR 117.469, the draw of the S433 Bridge, mile 2.0, at Slidell, shall open on signal, except that between 7 p.m. and 7 a.m., the draw shall open on signal if at least two hours notice is given.

The owner requests a test to allow the public to experience the new schedule and determine if the two hour advance notice is sufficient. The current regulation has been in effect since 2008; however, the bridge for which the regulation was in place (a pontoon bridge) no longer exists. With the completion of the new bridge (a swing bridge) in April 2010, there has been an average of less than one opening per month, which is down from an average of 70 per month in previous years. Currently the land traffic outpaces marine traffic but most all traffic is local and marine traffic is recreational. Vessels will be able to pass under the bridge during the deviation and therefore no alternate routes are recommended at this time.

This request is in conjunction with a Notice of Proposed Rulemaking to make the test deviation schedule changes permanent.

This deviation is effective from December 7, 2010 through January 6, 2011.

Vessel counts were collected and analyzed by the owner and reflect a marked reduction in the number of required openings since the completion of the new bridge and removal of the old one. The expected impact on navigation during the test period will be minimal based on the increase in vertical clearance. The test deviation will allow the bridge to remain unmanned during most of the day by requiring a two-hour notice for an opening of the draw.

Coordination will be through Public Notice and Local Notice to Mariners upon date of publication in the **Federal Register**.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period.

This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: October 26, 2010.

David M. Frank,

Bridge Administrator.

[FR Doc. 2010–29299 Filed 11–19–10; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2006–0649–201059; FRL–9229–5]

Approval and Promulgation of Implementation Plans; Georgia; Prevention of Significant Deterioration and Nonattainment New Source Review Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve portions of the revisions to the Georgia State Implementation Plan (SIP) submitted by the State of Georgia in three submittals dated October 31, 2006, March 5, 2007, and August 22, 2007. The revisions modify Georgia's Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) permitting rules in the SIP to address changes to the federal New Source Review (NSR) regulations, which were promulgated by EPA on December 31, 2002, and reconsidered with minor changes on November 7, 2003 (collectively, these two final actions are referred to as the "2002 NSR Reform Rules"). EPA proposed to approve these revisions on September 4, 2008; one comment letter was received. EPA's response to comments is included in this notice.

DATES: This rule will be effective December 22, 2010.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2006–0649. All documents in the docket are listed on the *http://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 *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning 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 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Kelly Fortin, Air Permits Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303. Telephone number: (404) 562–9117; e-mail address: *fortin.kelly@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, references

to "EPA," "we," "us," or "our," are intended to mean the U.S. Environmental Protection Agency. The supplementary information is arranged as follows:

I. What action is EPA taking?
II. What is the background for EPA's action?
III. Response to Comments
IV. Final Action
V. Statutory and Executive Order Reviews

I. What action is EPA taking?

EPA is now taking action, consistent with section 110(k)(3) of the Clean Air Act (CAA or Act), to approve portions of SIP submittals made by the State of Georgia, through the Georgia Environmental Protection Division (EPD), on October 31, 2006, March 5, 2007, and August 22, 2007. These SIP submittals consist of changes to the Georgia Rules for Air Quality Control, Chapter 391–3–1. Specifically, the October 31, 2006, revisions included changes to Rules 391–3–1–.02(7) "Prevention of Significant Deterioration of Air Quality" and 391–3–1–.03(8)(c) "Permit Requirements" related to NNSR. The March 5, 2007, submittal included changes to Rules 391–3–1–.02(7) "Prevention of Significant Deterioration of Air Quality," and 391–3–1–.03(13)(c) "Emission Reduction Credits." Finally, the August 22, 2007, submittal included changes to Rules 391–3–1–.02(7) "Prevention of Significant Deterioration of Air Quality," and 391–3–1–.03(8) "Permit Requirements."

EPA approved most of the non-NSR Reform portions of the submittals (rules 391–3–1–.01(llll), 391–3–1–.02(2)(jjj), 391–3–1–.02(6)(a)4, 391–3–1–.02(12), and 391–3–1–.03(6)(b)) in a previous action (74 FR 62249, November 27, 2009). EPA has not yet acted on rule 391–3–1–.02(2)(ooo). In addition, EPA is not acting on revisions to rules 391–3–1–.02(8)b, and 391–3–1–.03(9), because these rules are not part of the federally-approved SIP. EPA disapproved a portion of the March 5, 2007, submittal, subparagraph 391–3–1–.03(13)(c), related to "Emissions Reduction Credits," in a previous action (73 FR 79653, December 30, 2008).

II. What is the background for EPA's action?

On December 31, 2002 (67 FR 80186), EPA published final rule changes to 40 Code of Federal Regulations (CFR) parts 51 and 52, regarding the CAA's PSD and NNSR programs. On November 7, 2003 (68 FR 63021), EPA published a notice of final action on the reconsideration of the December 31, 2002, final rule changes. The December 31, 2002, and the November 7, 2003, final actions are collectively referred to as the "2002 NSR Reform Rules." For additional information on the 2002 NSR Reform Rules, see 67 FR 80186 (December 31, 2002). For information on the subsequent revisions to these rules, see *http://www.epa.gov/nsr.*

On October 31, 2006, March 5, 2007, and August 22, 2007, EPD submitted revisions to EPA for the purpose of including the revised State NSR permitting rules in the SIP. Copies of Georgia's revised NSR rules, as well as the State's Technical Support Document, can be obtained from the Docket, as discussed in the **ADDRESSES** section above.

On September 4, 2008 (73 FR 51606), EPA proposed to approve portions of the above-summarized SIP submittals as they pertain to Georgia's NSR program, with the exception of the revision to subparagraph 391–3–1–.03(13)(c), related to "Emissions Reduction Credits," which EPA proposed to disapprove.[1] In response to requests for an extension of the public comment period, EPA extended the public comment period on that proposal through November 6, 2008 (73 FR 58084). One comment letter was received and it contained adverse comments. EPA's response to this comment letter is below in section III, Response to Comments. EPA's analysis of the State's NSR reform SIP submittals is contained in the September 4, 2008, Notice of Proposed Rulemaking (NPR). The NPR, the comment letter, and additional information regarding this action may be obtained from the Docket, as discussed in the **ADDRESSES** section above.

III. Response to Comments

EPA received one comment letter from the National Resource Defense Council (NRDC) on the September 4, 2008, NPR; this letter included adverse comments. NRDC primarily commented on the requirements of the federal NSR rules, not Georgia's application of the federal requirements in its own rules. Notably, NRDC participated in litigation challenging EPA's 2002 promulgation of the NSR Reform Rules, where similar arguments were made by NRDC and dismissed by the DC Circuit Court. *New York* v. *EPA,* 413 F.3d 3 (DC Cir. 2005). NRDC's comments, including exhibits, do not raise any specific concerns with Georgia's rules, but rather, reiterate arguments made by NRDC to the DC Circuit regarding Sections 110(l) and 193 of the CAA.[2]

While NRDC's comments provide citations to five portions of the Georgia rules, the comments make no attempt to specifically explain or demonstrate how those identified provisions are inconsistent with either Section 110(l) or Section 193 of the CAA. Furthermore, NRDC provides no evidence supporting its allegations that approval of the specific provisions would result in a violation of the CAA or otherwise be "arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law." NRDC Comments at 2.

The NRDC comments include a list of 31 exhibits which the comment letter incorporates by reference into the comments. NRDC Comments at 1. The 31 exhibits appear to all be related to the DC Circuit Court case *New York* v. *EPA,* and were either submitted to that Court for review, or are relevant to that adjudication. To the extent that these exhibits were provided to the DC Circuit, those issues were previously resolved by the Court and/or already responded to by EPA in its responsive court papers. Any other documents included in the 31 exhibits that were not provided to the DC Circuit Court do not provide EPA with any comments specific to the Georgia rules at issue.

Despite the lack of Georgia-specific discussion in NRDC's letter, EPA has responded to the few comments that appear related to the September 4, 2008, NPR to approve portions of Georgia's SIP submittals pertaining to EPA's 2002 NSR Reform Rules.

Summary of Comments Regarding Section 110(l)—NRDC Comments at 1–6

NRDC stated that finalizing the EPA rulemaking proposal at issue here would violate section 110(l) of the Act. As support for its conclusion, NRDC asserted that "[t]he 2002 NSR Reform Rule provisions that were not vacated by the DC Circuit in *New York* v. *EPA* [citation omitted] allow previously-prohibited emissions-increases to occur." NRDC Comments at 3. Further, that "Georgia nevertheless made no

[1] EPA took final action to disapprove the revision to subparagraph 391–3–1–.03(13)(c), related to "Emissions Reduction Credits," in a previous action (73 FR 79653, December 30, 2008).

[2] NRDC notes that, "[t]he 2002 rule provisions considered by the DC Circuit in *New York* v. *EPA* were EPA regulations, not state ones. The court thus had no occasion to decide whether EPA could approve any state's versions of any of the 2002 rule provisions consistently with section 110(l) of the Act." NRDC Comments at 3. The Georgia rules at issue here track the federally approved rules, as upheld by the DC Circuit (which NRDC admits—NRDC Comments at 4) and NRDC supported all its comments with information related to the challenge of EPA's 2002 NSR Reform Rules. NRDC provided no Georgia-specific support for its comments.

'demonstration that the emissions that are allowed by its revised rule but are prohibited by the current SIP would not interfere with attainment or other applicable requirements.' " As a result, NRDC stated that, "it cannot be said of Georgia's plan that it 'will cause no degradation of air quality.' " NRDC Comments at 5. NRDC also stated that EPA has not made any findings that Georgia's rule will not cause degradation of air quality or interfere with any applicable requirements concerning attainment and reasonable further progress, or any other applicable requirements of the CAA. NRDC Comments at 5.

EPA Response to Section 110(l) Comments

EPA's 2002 NSR Reform Rules were upheld by the DC Circuit Court which reviewed them, with the exception of the pollution control project and clean unit provisions (and the remanded matters). The three significant changes in NSR Reform that were upheld by the DC Circuit were (1) Plantwide applicability limits (PALs), (2) the 2-in-10 baseline, and (3) the actual-to-projected actual emission test. The Supplemental Environmental Analysis of the Impact of the 2002 Final NSR Improvement Rules (November 21, 2002) (Supplemental Analysis) discussed each of these three changes individually, and addresses some of the issues raised by NRDC.

With regard to PALs, the Supplemental Analysis explained, "[t]he EPA expects that the adoption of PAL provisions will result in a net environmental benefit. Our experience to date is that the emissions caps found in PAL-type permits result in real emissions reductions, as well as other benefits." Supplemental Analysis at 6. EPA further explained that,

> Although it is impossible to predict how many and which sources will take PALs, and what actual reductions those sources will achieve for what pollutants, we believe that, on a nationwide basis, PALs are certain to lead to tens of thousands of tons of reductions of volatile organic compounds from source categories where frequent operational changes are made, where these changes are time-sensitive, and where there are opportunities for economical air pollution control measures. These reductions occur because of the incentives that the PAL creates to control existing and new units in order to provide room under the cap to make necessary operational changes over the life of the PAL.

Supplemental Analysis at 7. The Supplemental Analysis, and particularly Appendix B, provided additional details regarding EPA's analysis of PALs and anticipated associated emissions decreases.

With regard to the 2-in-10 baseline, EPA concluded that, "[t]he EPA believes that the environmental impact from the change in baseline EPA is now finalizing will not result in any significant change in benefits derived from the NSR program." Supplemental Analysis at 13. This is mainly because "the number of sources receiving different baselines likely represents a very small fraction of the overall NSR permit universe, excludes new sources and coal fired power plants, and because the baseline may shift in either direction, we conclude that any overall consequences would be negligible." Supplemental Analysis at 14. Additional information regarding the 2-in-10 baseline changes is available in the Supplemental Analysis, Appendix F.

With regard to the actual-to-projected actual test, EPA concluded, "we believe that the environmental impacts of the switch to the actual-to-projected actual test are likely to be environmentally beneficial. However, as with the change to the baseline, we believe the vast majority of sources, including new sources, new units, electric utility steam generating units, and units that actually increase emissions as a result of a change, will be unaffected by this change. Thus, the overall impacts of the NSR changes are likely to be environmentally beneficial, but only to a small extent." Supplemental Analysis at 14 (see also Supplemental Analysis Appendix G).

For more information on the 2002 NSR Reform Rules, and its supporting technical documents, see, *http://www.epa.gov/nsr/actions.html#2002* (last visited November 2, 2010).

Section 110(l) of the CAA states, in relevant part, that "[t]he Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress * * * or any other applicable requirement of this chapter." CAA, 42 U.S.C. 7410(l). In "Approval and Promulgation of Implementation Plans; New Source Review; State of Nevada, Clark County Department of Air Quality and Environmental Management," 69 FR 54006 (September 7, 2004), EPA stated that Section 110(l) does not preclude SIP relaxations. Rather, EPA stated that Section 110(l) only requires that the "relaxations not interfere with specified requirements of the Act including requirements for attainment and reasonable further progress," and that, therefore, a state can relax its SIP provisions if it is able to show that it can attain or maintain the National Ambient Air Quality Standards (NAAQS) and meet any applicable reasonable further progress goals or other specific requirements. 69 FR at 54011–12.

Georgia's Proposed NSR reform rules track the federal NSR Reform Rules, with enhancements, as described in Georgia's submittal. EPA evaluated Georgia's rules consistent with its evaluation of the federal rules, and determined that Georgia's rules were equivalent to or more stringent than the 2002 NSR Reform Rules. Overall, as summarized above, EPA expects that changes in air quality as a result of implementing Georgia's rules will be consistent with EPA's position on the federal NSR Reform Rules—that there will be somewhere between neutral and providing a modest contribution to reasonable further progress between the NSR Reform and pre-Reform provisions. EPA's analysis for the environmental impacts of the three components of the NSR Reform rules (discussed earlier) is informative of how Georgia's adoption of NSR Reform (based on the federal rules) will affect emissions. EPA has no reason to believe that the environmental impacts will be different from those discussed in the Supplemental Analysis for the NSR Reform rules, and thus, approval of Georgia's SIP revision would not be contrary to Section 110(l) of the CAA.

NRDC cites to five general portions of Georgia's rules as provisions that would violate Section 110(l). These provisions are: Administrative Code of Georgia (ACG) 391–3–1–.02(7)(a), (7)(b)15, and (7)(b)(21) (from Georgia's PSD rules); and 391–3–1–.03(8)(c) and (8)(g) (from Georgia's NNSR rules). NRDC Comments at 2. NRDC provides no evidence supporting its contention that these specific provisions violate Section 110(l). The first provision noted by NRDC, 391–3–1–.02(7)(a), represents general requirements regarding Georgia's PSD program, which do include some changes per the SIP revision at issue. Nonetheless, without further specificity, it is not clear why or how NRDC believes this provision is a violation of Section 110(l). In addition, NRDC has provided no Georgia-specific documentation that indicates that EPA's analysis and conclusions regarding the impact of NSR Reform, in the Supplemental Analysis, is not applicable to Georgia's rules, which are equivalent to or more stringent than the federal rules.

In evaluating Georgia's SIP submissions, EPA compared Georgia's rules with the existing federal rules and determined that Georgia's rules were

equivalent to or more stringent than the NSR reform (federal) rules. EPA also considered Georgia's approximately thirty enhancements to the federal NSR Reform provisions, including specific anti-backsliding provisions. This comparison was discussed in the proposal to approve Georgia's SIP revision. Georgia's anti-backsliding provisions are discussed in their SIP submittal and included in EPA's docket. EPA also considered Georgia's numerous responses to comments, included as part of the submittals, wherein Georgia discussed the two-year stakeholder process, as well as answered questions as to why it was including anti-backsliding provisions and discussed the NSR Reform changes in relation to their air quality program. Georgia determined that "the NAAQS, PSD increment, RFP demonstration and visibility will be protected if these SIP revisions are approved and implemented." See Technical Support for SIP Submittal dated August 4, 2007. Finally, EPA also considered the Supplemental Analysis in reviewing Georgia's submittal and NRDC's comments. EPA concluded that approval of Georgia's SIP revision would not be contrary to Section 110(l) of the CAA. Absent more explicit information demonstrating that Georgia's plan for implementation of a specific provision of its rules would interfere with any applicable requirement of the CAA and thus should be disapproved under Section 110(l), Georgia's Technical Support and the Supplemental Analysis support approval. As a result, there is no basis to determine that approval of Georgia's rules would violate Section 110(l).

Summary of Comments Regarding Section 193 of the CAA—NRDC Comments at 7–10

NRDC states that NSR is a "control requirement" and thus the requirements of Section 193 apply to the NSR rules at issue in the Georgia SIP revision. NRDC Comments at 7. NRDC further alleges that Georgia's revisions "ensure that emissions will not be reduced as much as under the pre-existing rules. In fact, the modifications allow emissions to increase in Georgia's nonattainment areas." NRDC Comments at 9. Finally, NRDC states that "because section 193 lies within part D," "if EPA approves Georgia's revised plan, that action will additionally exceed the agency's authority under section 110(k)(3) and violate section 100(l)." (Note, the last citation to 100(l) appears to be a typo and should read 110(l).) NRDC Comments at 10.

EPA Response to Section 193 Related Comments

The response to the Section 193 issues raised by NRDC involves many of the same elements of the response above, to the Section 110(l) comments, which is also incorporated by reference here.

Section 193 states, in relevant part, that "[n]o control requirement in effect, or required to be adopted by an order, settlement agreement, or plan in effect before November 15, 1990, in any area which is a nonattainment area for any air pollutant may be modified after November 15, 1990, in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant."

Assuming for purposes of this discussion that Section 193 does apply to the instant action, as was discussed earlier in this notice, EPA has previously determined and explained in the Supplemental Analysis, that implementation of the 2002 NSR Reform Rule provisions still in effect (that is, those not vacated by the DC Circuit) are expected to have at least a neutral environmental benefit. In addition, Georgia's rules include several differences from the federal rule that are likely to result in greater environmental protection. These provisions include, among others: (1) Adjusting the PAL limits downward upon renewal if average actual emissions are less than 80 percent of the PAL limit; (2) anti-backsliding provisions included in the major source baseline date to ensure that baseline dates established prior to the effective date of the rule changes remain in effect; (3) additional requirements related to the definition of projected actual emissions intended to result in more accurate estimates of emissions increases; (4) provisions that make the "demand growth" exclusion optional, and require additional recordkeeping to ensure the rules are implemented properly; (5) a requirement that baseline actual emissions not be based on a period for which there is inadequate information; (6) a requirement to adjust baseline actual emissions for new applicable requirements; (7) provisions that require submission of an application prior to construction for all major and minor sources; (8) requirements that the "reasonable possibility" recordkeeping reporting requirements are triggered whenever a minor source permit is required. Therefore, even if Section 193 did apply to this action, EPA does not agree with commenter's assertions that the SIP submissions approved in this action raise a Section 193 concern.

In addition, the core of NRDC's argument seems to revolve around the DC Circuit Court decision in *South Coast Air Quality Management District* v. *EPA,* 472 F.3d 882 (DC Cir. 2006) (finding that NSR associated with the 1-hour ozone standard included control requirements). At issue in *South Coast* was EPA's determination regarding the revocation of the entire 1-hour ozone program (and corresponding SIP elements), including all the 1-hour nonattainment NSR elements, and whether such elements would continue to be required as part of SIPs implementing the new (at that time) 8-hour ozone standard. The facts in the *South Coast* case are distinguishable from the instant matter where the Georgia SIP is merely being updated to include changes to the Federal NSR program. EPA is not removing the entirety of Georgia's NNSR program from the SIP as it pertains to a particular NAAQS. Rather, EPA is simply approving Georgia's SIP revision that implements rules equivalent to or more stringent than the federal rules; and as discussed earlier in this notice, EPA developed a Supplemental Analysis to support adoption of the federal rules. The Georgia SIP will continue to operate with the full suite of NSR related elements, including a comprehensive minor source program, and the restrictive 'de-minimus rule,' which requires sources to aggregate 5-year emissions increases and offset emissions increases greater than 25 tons.

IV. Final Action

EPA is taking final action to approve portions of three revisions to the Georgia SIP submitted by the State of Georgia on October 31, 2006, March 5, 2007, and August 22, 2007, which address changes to Georgia's PSD and NNSR programs.

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. 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 ensures that State law meets 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 Order 12866 (58 FR 51735, October 4, 1993);

• Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• 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).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not 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 January 21, 2011. 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, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: November 12, 2010.

Gwendolyn Keyes-Fleming,

Regional Administrator, Region 4.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 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(c) the table is amended by revising the entries for "391–3–1–.02(7)" and "391–3–1–.03" to read as follows:

§ 52.570 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED GEORGIA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
391–3–1–.02(7)	Prevention of Significant Deterioration of Air Quality (PSD).	7/25/2007	11/22/2010 [Insert citation of publication].	This rule contains NO_X as a precursor to ozone for PSD and NSR.
*	*	*	*	*
391–3–1–.03	Permits	7/25/2007	11/22/2010 [Insert citation of publication].	Changes specifically to (8)—Permit Requirements.
*	*	*	*	*

* * * * *

[FR Doc. 2010–29246 Filed 11–19–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2009–0557; FRL–9229–1]

Approval and Promulgation of State Implementation Plan Revisions; State of North Dakota; Interstate Transport of Pollution for the 1997 $PM_{2.5}$ and 8-Hour Ozone NAAQS: "Interference With Maintenance" Requirement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is partially approving the State Implementation Plan revisions submitted by the State of North Dakota on April 6, 2009. Specifically, EPA is approving the portions of the "Interstate Transport of Air Pollution" revisions addressing the "interference with maintenance" requirement of Clean Air Act (CAA) section 110(a)(2)(D)(i) for the 1997 $PM_{2.5}$ and 8-hour ozone National Ambient Air Quality Standards (NAAQS). The "interference with maintenance" requirement of section 110(a)(2)(D)(i) prohibits a state's emissions from interfering with maintenance of the NAAQS by any other state. This action is being taken under section 110 of the CAA.

DATES: *Effective Date:* This final rule is effective December 22, 2010.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2009–0557. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) 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 *http://www.regulations.gov,* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Domenico Mastrangelo, Air Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6416, *mastrangelo.domenico@epa.gov.*

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *SIP* mean or refer to State Implementation Plan.

(iv) The words *State* or *North Dakota* mean the State of North Dakota, unless the context indicates otherwise.

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I. Background

On July 18, 1997, EPA promulgated new standards for 8-hour ozone and fine particulate matter ($PM_{2.5}$). This action is being taken in response to the July 18, 1997 revision to the 8-hour ozone NAAQS, and $PM_{2.5}$ NAAQS. This action does not address the requirements for the 2006 24- hour $PM_{2.5}$ NAAQS, or the 2008 8-hour ozone NAAQS; those standards will be addressed in a later action.

Section 110(a)(1) of the CAA requires states to submit SIPs to address a new or revised NAAQS within 3 years after promulgation of such standards, or within such shorter period as EPA may prescribe. Section 110(a)(2) lists the elements that such new SIPs must address, as applicable, including section 110(a)(2)(D)(i) which pertains to interstate transport of certain emissions. Section 110(a)(2)(D)(i) of the CAA requires that a state's SIP must contain adequate provisions prohibiting any source or other type of emissions activity within the state from emitting any air pollutant in amounts which will: (1) Contribute significantly to nonattainment of the NAAQS in any other state; (2) interfere with maintenance of the NAAQS by any other state; (3) interfere with any other state's required measures to prevent significant deterioration of air quality; or (4) interfere with any other state's required measures to protect visibility.

On April 6, 2009 the State of North Dakota submitted a SIP addressing the section 110(a)(2)(D)(i) four requirements, noted above, for the 1997 8-hour ozone NAAQS and for the 1997 annual and 24-hour $PM_{2.5}$ NAAQS. The state based its submittal on EPA's 2006 Guidance discussed below. As noted earlier, in this rulemaking EPA is addressing the requirement that pertains to preventing sources in the State from emitting pollutants in amounts which will interfere with the maintenance of the 1997 ozone and $PM_{2.5}$ NAAQS by any other state.

On August 15, 2006, EPA issued its "Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards" (2006 Guidance) for SIP submissions that states should use to address the requirements of section 110(a)(2)(D)(i). EPA developed this guidance to make recommendations to states for making submissions to meet the requirements of section 110(a)(2)(D)(i) for the 1997 ozone NAAQS and 1997 $PM_{2.5}$ NAAQS.

In a **Federal Register** action dated September 17, 2010, EPA proposed approval of the North Dakota Interstate Transport SIP portions addressing the interference with maintenance requirement of section 110(a)(2)(D)(i). EPA concluded in its proposed action that the various factual and technical considerations supported a determination that emissions from North Dakota do not interfere with maintenance by any states with areas at risk for maintenance of the 1997 8-hour ozone NAAQS or for maintenance of the 1997 annual and 24-hour $PM_{2.5}$ NAAQS.

EPA did not receive comments that persuade the Agency that there is such interference with maintenance for the 1997 ozone or $PM_{2.5}$ NAAQS and thus in today's final action EPA is making a final regulatory determination that North Dakota's sources do not interfere with maintenance of the 1997 8-hour ozone NAAQS, and the 1997 $PM_{2.5}$ NAAQS in any other state.

II. Response to Comments

EPA received one letter dated October 18, 2010 with comments from the WildEarth Guardians (WG) environmental organization. The WG letter includes three separate comments identifiable under sections A., B., and C., and is accessible online at regulations.gov under Docket No. EPA–R08–OAR–2009–0057. Later in this section EPA responds to the significant