(Authority 38 U.S.C. 501, 1720, 1742)

[FR Doc. 2011–22920 Filed 9–7–11; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2010–0816–201106; FRL–9458–1]

Approval and Promulgation of Implementation Plans; Georgia: Prevention of Significant Deterioration; Greenhouse Gas Tailoring Rule and Fine Particulate Matter Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve portions of a revision to the State Implementation Plan (SIP), submitted by the State of Georgia, through the Georgia Department of Natural Resources' Environmental Protection Division (EPD), to EPA on September 30, 2010, for parallel processing. Georgia submitted the final version of this SIP revision on January 13, 2011. The portions of the SIP revision approved by this action incorporate two updates to Georgia's air quality regulations under Georgia's New Source Review (NSR) Prevention of Significant Deterioration (PSD) program. First, the SIP revision establishes appropriate emission thresholds for determining which new stationary sources and modification projects become subject to Georgia's PSD permitting requirements for its greenhouse gas (GHG) emissions. Second, the SIP revision incorporates provisions for implementing the PSD program for the fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS). EPA is approving Georgia's January 13, 2011, SIP revision because the Agency has made the determination that this SIP revision is in accordance with the Clean Air Act (CAA or Act) and EPA regulations, including those relating to PSD permitting for GHGs and the $PM_{2.5}$ NAAQS. Additionally, EPA is responding to adverse comments received on EPA's November 29, 2010, proposed approval of Georgia's September 30, 2010, draft SIP revision.

DATES: *Effective Date:* This rule will be effective October 11, 2011.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2010–0816. 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, *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 for further information. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the Georgia SIP, contact Ms. Twunjala Bradley, 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. Ms. Bradley's telephone number is (404) 562–9352; *e-mail address: bradley.twunjala@epa.gov.* For information regarding the Tailoring Rule and the NSR $PM_{2.5}$ Rule, contact Ms. Heather Abrams, Air Permits Section, at the same address above. Ms. Abrams' telephone number is (404) 562–9185; *e-mail address: abrams.heather@epa.gov.* For information regarding the $PM_{2.5}$ NAAQS, contact Mr. Joel Huey, Regulatory Development Section, at the same address above. Mr. Huey's telephone number is (404) 562–9104; *e-mail address: huey.joel@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. What is the background for this action?

EPA has recently undertaken a series of actions pertaining to the regulation of GHGs that, although for the most part distinct from one another, establish the overall framework for today's final action on the Georgia SIP. Four of these actions include, as they are commonly called, the ''Endangerment Finding'' and ''Cause or Contribute Finding,'' which EPA issued in a single final action,[1] the ''Johnson Memo Reconsideration,'' [2] the ''Light-Duty Vehicle Rule,'' [3] and the ''Tailoring Rule.'' [4] Taken together and in conjunction with the CAA, these actions established regulatory requirements for GHGs emitted from new motor vehicles and new motor vehicle engines; determined that such regulations, when they took effect on January 2, 2011, subjected GHGs emitted from stationary sources to PSD requirements; and limited the applicability of PSD requirements to GHG sources on a phased-in basis.

With regard to the $PM_{2.5}$ NAAQS, EPA finalized a rule on May 16, 2008, including changes to the NSR program (hereafter referred to as the ''2008 NSR $PM_{2.5}$ Rule''). *See* 73 FR 28321. The 2008 NSR $PM_{2.5}$ Rule revised the NSR program requirements to establish the framework for implementing preconstruction permit review for the $PM_{2.5}$ NAAQS in both attainment and nonattainment areas. States were required to provide SIP submissions to address the requirements for the 2008 NSR $PM_{2.5}$ Rule by May 16, 2011.

On September 30, 2010,[5] in response to the Tailoring Rule, earlier GHG-related EPA rules and the 2008 NSR $PM_{2.5}$ Rule, EPD submitted a draft revision to EPA for approval into the Georgia SIP to: (1) Establish appropriate emission thresholds for determining which new or modified stationary sources become subject to Georgia's PSD permitting requirements for GHG emissions; and (2) incorporate provisions for implementing the PSD program for the $PM_{2.5}$ NAAQS. Subsequently, on November 29, 2010, EPA published a proposed rulemaking to approve portions of Georgia's September 30, 2010, SIP revision under parallel processing. *See* 75 FR 73017. Specifically, EPA proposed to approve

[1] ''Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act.'' 74 FR 66496 (December 15, 2009).

[2] ''Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs.'' 75 FR 17004 (April 2, 2010).

[3] ''Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule.'' 75 FR 25324 (May 7, 2010).

[4] ''Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule.'' 75 FR 31514 (June 3, 2010).

[5] With respect to the $PM_{2.5}$ NAAQS, Georgia's January 13, 2011, SIP revision only addresses PSD requirements. Regarding the nonattainment NSR provisions for the $PM_{2.5}$ NAAQS, EPA is awaiting final SIP submittal from Georgia for the nonattainment NSR $PM_{2.5}$ provisions.

the portions of Georgia's September 30, 2010, draft SIP revision that incorporate by reference the thresholds for GHG permitting applicability at 40 CFR 52.21 (as amended June 3, 2010, and effective August 2, 2010), into Georgia's SIP (391–3–1–.02(7)—*Prevention of Significant Deterioration of Air Quality*),[6] and that incorporate the federal requirements related to the 2008 NSR $PM_{2.5}$ Rule. Detailed background information and EPA's rationale for the proposed approval are provided in EPA's November 29, 2010, **Federal Register** notice.

EPA's November 29, 2010, proposed approval was contingent upon Georgia providing a final SIP revision that was substantively the same as the revision proposed for approval by EPA in the November 29, 2010, proposed rulemaking. *See* 75 FR 73017. Georgia provided its final SIP revision on January 13, 2011. There were no differences between Georgia's September 30, 2010, draft SIP revision, and the January 13, 2011, final SIP revision.

On December 30, 2010, EPA published a final rule narrowing its previous approval of PSD programs as applicable to GHG-emitting sources in SIPs for 24 states, including Georgia.[7] *See* 75 FR 82536 (PSD Narrowing Rule). Specifically, in the PSD Narrowing Rule, EPA withdrew its previous approval of Georgia's SIP to the extent it applied PSD to GHG-emitting sources below the thresholds in the Tailoring Rule. The effect of the PSD Narrowing Rule on the approved Georgia SIP was to establish that new and modified sources are subject to PSD permitting requirements for their GHG emissions only if they emit GHGs at or above the Tailoring Rule's emission thresholds. As result of today's action approving Georgia's incorporation of the appropriate GHG permitting thresholds into its SIP, paragraph (b) in 40 CFR 52.572, as included in EPA's Narrowing Rule, is no longer necessary. Thus, today's action also amends 40 CFR 52.572 to remove this unnecessary regulatory language.

In addition to changes to address PSD permitting requirements for GHGs and $PM_{2.5}$ discussed above, Georgia's January 13, 2011, SIP revision incorporated by reference provisions in 40 CFR 52.21 that: (1) Exclude facilities that produce ethanol through a natural fermentation process from the definition of ''chemical process plants'' in the major NSR source permitting program as provided by the Ethanol Rule (72 FR 24060, May 1, 2007), and (2) implement EPA's Fugitive Emissions Rule (73 FR 77882, December 19, 2008).[8] The SIP revision also includes a provision (at 391–3–1–.02(7)(a)(iv)) that would automatically rescind portions of Georgia's SIP in the wake of certain court decisions or other events (the automatic rescission clause). At this time, EPA is not taking final action to approve these three additional provisions into the Georgia SIP.

II. What is EPA's response to comments received on this action?

EPA received two sets of adverse comments on the November 29, 2010, proposed rulemaking to approve revisions to Georgia's SIP. One set of comments, provided by the Air Permitting Forum, raised concerns regarding the SIP revisions relating to PSD permitting for GHGs. The other set of comments, provided by Oglethorpe Power Corporation, expressed concern over EPA not proposing action on the automatic rescission clause contained in Georgia's September 30, 2010, draft SIP revision. A full set of the comments provided by both Oglethorpe Power Corporation and Air Permitting Forum (hereinafter referred to as the ''Commenter'') is provided in the docket for today's final action. The comments can be accessed at *http://www.regulations.gov* using Docket ID No.: EPA–R04–OAR–2010–0816. A summary of the adverse comments and EPA's responses are provided below.

Generally, the adverse comments fall into four categories. First, one Commenter states that PSD requirements cannot be triggered by GHGs. Second, a Commenter expresses concerns regarding a footnote in the November 29, 2010, proposal describing EPA's previously announced intention to narrow its prior approval of some SIPs to ensure that sources with GHG emissions that are less than the Tailoring Rule's thresholds will not be obligated under federal law to obtain PSD permits prior to a SIP revision incorporating those thresholds. The Commenter states that the planned SIP approval narrowing action ''is illegal.'' Third, a Commenter states that EPA has failed to meet applicable statutory and executive order review requirements. Lastly, both Commenters express concern over EPA not proposing action in the November 29, 2010, rulemaking on the automatic rescission clause (labeled the ''severability provision'' by one Commenter, and the ''sunsetting clause'' by the other Commenter) included in Georgia's September 30, 2010, draft SIP revision. EPA's response to these four categories of comments is provided below.

Comment 1: The Commenter asserts that PSD requirements cannot be triggered by GHGs. In its letter, the Commenter reiterates EPA's statement that without the Tailoring Rule thresholds, PSD will apply as of January 2, 2011, to all stationary sources that emit or have the potential to emit, depending on the source category, either 100 or 250 tons of GHGs per year. The Commenter also reiterates EPA's statement that beginning January 2, 2011, a source owner proposing to construct any new major source that emits at or higher than the GHG applicability levels, or to modify any existing major source in a way that would increase GHG emissions, would need to obtain a PSD permit that addresses these emissions before construction could begin. In raising concerns with the two aforementioned statements, the Commenter states: ''No area in the State of Georgia has been designated attainment or unclassifiable for greenhouse gases (GHGs), as there is no national ambient air quality standard (NAAQS) for GHGs. Therefore, GHGs cannot trigger PSD permitting.'' The Commenter notes that it made this argument in detail in comments submitted to EPA on the Tailoring Rule and other related GHG rulemakings. The Commenter attached those previously submitted comments to its comments on the proposed rulemaking related to today's action. Finally, the Commenter states that ''EPA should immediately provide notice that it is now interpreting the Act not to require that GHGs trigger PSD and allow Georgia to

[6] Georgia's submittal also includes revised title V operating permit provisions, which are not included in the SIP. As such, EPA is not taking final action to approve Georgia's update to its title V regulations in this rulemaking.

[7] ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans.'' 75 FR 82536 (December 30, 2010).

[8] On March 31, 2010, EPA stayed the Fugitive Emissions Rule (73 FR 77882) for 18 months to October 3, 2011, to allow the Agency time to propose, take comment and issue a final action regarding the inclusion of fugitive emissions in NSR applicability determinations. The March 31, 2010, stay was established as a result of EPA granting Natural Resource Defense Council's petition for reconsideration on the original Fugitive Emissions Rule. *See* 73 FR 77882. On March 30, 2011 (76 FR 17548), EPA proposed an interim rule that superseded the March 31, 2010, stay to clarify and extend the stay of the Fugitive Emission Rule until EPA completes its reconsideration. The interim rule simply reverts the CFR text back to the language that existed prior to the Fugitive Emissions Rule changes in the December 19, 2008 rulemaking. EPA plans to issue a final rule approving the interim rule. Until the interim rule is final, the Fugitive Emission Rule is still currently stayed through October 3, 2011.

rescind that portion of its rules that would allow GHGs to trigger PSD.''

Response 1: EPA established the requirement that PSD applies to all pollutants newly subject to regulation, including non-NAAQS pollutants such as GHGs, in earlier national rulemakings concerning the PSD program, and EPA has not re-opened that issue in today's rulemaking. In an August 7, 1980, rulemaking at 45 FR 52676, 45 FR 52710–52712, and 45 FR 52735, EPA stated that a ''major stationary source'' was one which emitted ''any air pollutant subject to regulation under the Act'' at or above the specified numerical thresholds; and defined a ''major modification,'' in general, as a physical or operational change that increased emissions of ''any pollutant subject to regulation under the Act'' by more than an amount that EPA variously termed as de minimis or significant. In addition, EPA's 2002 NSR Reform rules added to the PSD regulations the new definition of ''regulated NSR pollutant'' (currently codified at 40 CFR 52.21(b)(50) and 40 CFR 51.166(a)(49)) and noted that EPA added this term based on a request from a commenter to ''clarify which pollutants are covered under the PSD program.'' Further, EPA explained that in addition to criteria pollutants for which a NAAQS has been established, ''[t]he PSD program applies automatically to newly regulated NSR pollutants, which would include final promulgation of an NSPS [new source performance standard] applicable to a previously unregulated pollutant.'' *See* 67 FR 80186, 80240 and 80264 (December 31, 2002). Among other things, the definition of ''regulated NSR pollutant'' includes ''[a]ny pollutant that otherwise is subject to regulation under the Act.'' *See* 40 CFR 52.21(b)(50)(d)(iv); 40 CFR 51.166(a)(49)(iv).

EPA disagrees with the Commenter's underlying premise that PSD requirements were not triggered for GHGs when GHGs became subject to regulation on January 2, 2011. This has been well established and discussed in connection with prior EPA actions, including, most recently, the Johnson Reconsideration and the Tailoring Rule. In addition, EPA's November 29, 2010, proposed rulemaking provides the general basis for the Agency's rationale that GHGs, while not a NAAQS pollutant, can trigger PSD permitting requirements. The November 29, 2010, action also refers the reader to the preamble of the Tailoring Rule for further information on this rationale. In that rulemaking, EPA addressed at length the comment that PSD can be triggered only by pollutants subject to the NAAQS, and concluded such an interpretation of the Act would contravene Congress' unambiguous intent. *See* 75 FR 31560–31562. Further discussion of EPA's rationale for concluding that PSD requirements are triggered by non-NAAQS pollutants such as GHGs appears in the Tailoring Rule Response-to-Comments document (''Prevention of Significant Deterioration and Title V GHG Tailoring Rule: EPA's Response to Public Comments''), pp. 34–41; and in EPA's response to motions for a stay filed in the litigation concerning those rules (''EPA's Response to Motions for Stay,'' *Coalition for Responsible Regulation* v. *EPA,* D.C. Cir. No. 09–1322 (and consolidated cases)), at pp. 47–59, and are incorporated by reference here. These documents have been placed in the docket for today's action and can be accessed at *http://www.regulations.gov* using Docket ID No. EPA–R04–OAR–2010–0816.

Comment 2: The Commenter expresses concerns regarding a footnote in which EPA describes its previously announced intention to narrow its prior approval of some SIPs. In the footnote, EPA explained that such narrowing would ensure that sources with GHG emissions that are less than the Tailoring Rule's thresholds are not obligated under federal law to obtain PSD permits during any gap between the effective date of GHG-permitting requirements (January 2, 2011) and the date that a SIP is revised to incorporate the Tailoring Rule thresholds. The Commenter asserts that EPA's narrowing of its prior SIP approvals ''is illegal.'' Further, the Commenter states that ''EPA has not proposed to narrow Georgia's SIP approval here and any such proposal must be explicit and address the action specifically made with respect to Georgia. EPA cannot sidestep these important procedural requirements.''

Response 2: While EPA does not agree with the Commenter's assertion that the narrowing approach discussed in EPA's Tailoring Rule is illegal, the narrowing approach was not the subject of EPA's November 29, 2010, proposed rulemaking to approve Georgia's September 30, 2010, SIP revision. Rather, the narrowing approach was the subject of a separate rulemaking, which was considered and finalized in the PSD Narrowing Rule in an action separate from today's rulemaking. *See* 75 FR 82536 (December 30, 2010). In today's final action, EPA is acting to approve a SIP revision submitted by Georgia, and is not otherwise narrowing its approval of previously approved provisions in the Georgia SIP. Accordingly, the legality of the narrowing approach is not at issue in today's rulemaking.

Comment 3: The Commenter states that EPA has failed to meet applicable statutory and executive order review requirements. Specifically, the Commenter refers to the statutory and executive orders for the Paperwork Reduction Act, the Regulatory Flexibility Act (RFA), Unfunded Mandates Reform Act, and Executive Order 13132 (Federalism). Additionally, the Commenter mentions that EPA has never analyzed the costs and benefits associated with triggering PSD for stationary sources in Georgia, much less nationwide.

Response 3: EPA disagrees with the Commenter's statement that EPA has failed to meet applicable statutory and executive order review requirements. As stated in EPA's proposed approval of Georgia's September 30, 2010, draft SIP revision, today's action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. Accordingly, EPA approval, in and of itself, does not impose any new information collection burden, as defined in 5 CFR 1320.3(b) and (c), that would require additional review under the Paperwork Reduction Act. In addition, because today's action simply approves existing state law, it will not have a significant economic impact on a substantial number of small entities beyond the impact of existing state law requirements. Thus, a regulatory flexibility analysis is not required under the RFA. Accordingly, this rule is appropriately certified under section 605(b) of the RFA. Moreover, as this action approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandates or significantly or uniquely affect small governments, such that it would be subject to the Unfunded Mandates Reform Act. Finally, this action does not have federalism implications that would make Executive Order 13132 applicable because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA.

In sum, today's rule is a routine approval of a SIP revision, approving state law, and does not impose any requirements beyond those imposed by state law. To the extent these comments are directed more generally to the application of the statutory and executive order reviews to the required regulation of GHGs under PSD

programs, EPA provided an extensive response to similar comments in promulgating the Tailoring Rule. EPA refers the Commenter to the sections in the Tailoring Rule entitled *''VII. Comments on Statutory and Executive Order Reviews,''* 75 FR 31601–31603, and *''VI. What are the economic impacts of the final rule?''* 75 FR 31595–31601. EPA also notes that today's action does not in-and-of itself trigger the regulation of GHGs. To the contrary, by helping to clarify that higher PSD applicability thresholds for GHGs apply than would otherwise be in effect under the Act, this rulemaking, as well as EPA's Tailoring Rule, is part of the effort to provide relief to smaller GHG-emitting sources that would otherwise be subject to PSD permitting requirements for their GHG emissions.

Comment 4: The Commenters object to EPA not proposing to take action (in the November 29, 2010, proposed rulemaking) on the automatic rescission clause included in Georgia's September 30, 2010, draft SIP revision. One Commenter states: ''EPA refuses to take action on this provision, proposing neither approval nor disapproval of the severability provision in the Georgia SIP.'' This Commenter further states that, at a minimum, EPA is required, pursuant to section 110(k)(2) of the CAA, to take action within 12 months after the State's submission of a complete SIP revision. The other Commenter asserts that EPA cannot take action on any portion of the Georgia SIP revision without taking action on the automatic rescission clause because, in the Commenter's opinion, the rescission clause is not ''separable.'' The Commenter goes on to state that EPA is changing the intended scope of the State's regulations. Further, the Commenter states: ''EPA's failure to 'act' on this provision would have the effect of codifying a provision more stringent than what Georgia submitted to EPA because it would effectively make the tailoring thresholds permanent until EPA revises the SIP in the future. EPA must follow Section 110(k)(3) and its own guidance, and approve the submitted provisions as a whole.''

Response 4: Contrary to the comments described above, EPA is not refusing to take action on the automatic rescission clause. Rather, EPA is in the process of evaluating the approvability of the automatic rescission clause included in Georgia's January 13, 2011, final SIP revision, and will continue to work with the State to resolve outstanding concerns and reach a final decision. As noted by one Commenter, section 110(k)(3) of the Act provides EPA with 12 months to act on a SIP revision once the State's submission is complete, and that time period has not yet expired with respect to Georgia's automatic rescission clause.

One Commenter cites the Seventh Circuit finding in *Bethlehem Steel* v. *Gorsuch,* 742 F.2d 1028 (7th Cir. 1984) that EPA may not act separately on a portion of a SIP revision submittal that is not separable from the rest, and the commenter defines ''separable'' as meaning that approving only a portion of the SIP revision ''should not result in the approved portions of the SIP submission being more stringent than the State would have anticipated.'' However, in an e-mail dated May 10, 2011, Georgia agreed to allow EPA to take action on the majority of this SIP revision now, and reserve action on the automatic rescission clause for a later date. The May 10, 2011, e-mail to EPA Region 4 Air Planning Branch, Regulatory Development Section Chief Lynorae Benjamin from Georgia EPD Air Protection Branch Chief James Capp states: ''Georgia would like you to move forward with final approval for the GHG Rule and not wait on the resolution for the rescission clause. However, we would like to continue working with you on obtaining approval of the rescission clause.'' *See* Docket ID No. EPA–R04–OAR–2010–0816. Given Georgia's agreement to EPA's proposed course of action, EPA is not acting in a way that makes its approval more stringent than the state would anticipate and the 7th Circuit's analysis in *Bethlehem Steel* is not implicated. Moreover, regardless of whether EPA eventually approves the automatic rescission clause into Georgia's SIP, if the federal GHG regulations are eliminated for some reason, Georgia will be able to revise its SIP accordingly using the SIP revision procedures set forth in section 110 of the CAA. EPA notes that it has not yet decided on the approvability of the rescission clause that the State submitted with its January 13, 2011 SIP revision, but will continue to work with the State in consideration of a final course of action.

III. What is the effect of this final action?

Final approval of Georgia's January 13, 2011, SIP revision will incorporate the GHG emission thresholds for PSD applicability set forth in EPA's Tailoring Rule (75 FR 31514, June 3, 2010) and adopted as state law, confirming that smaller GHG sources emitting less than these thresholds will not be subject to PSD permitting requirements under the approved Georgia SIP. Pursuant to section 110 of the CAA, EPA is approving the changes made in Georgia's January 13, 2011, SIP revision into Georgia's SIP, with the exception of certain provisions noted above.

Georgia's January 13, 2011, revision updates its existing incorporation by reference of the federal NSR program to include the relevant federal Tailoring Rule provisions set forth at 40 CFR 52.21 into the Georgia SIP at 391–3–1–.02(7)—*Prevention of Significant Deterioration of Air Quality*.[9] EPA has determined that the portions of Georgia's January 13, 2011, SIP revision, approved by today's action are consistent with EPA's regulations, including the Tailoring Rule. Furthermore, EPA has determined that these portions of the January 13, 2011, revision to Georgia's SIP are consistent with section 110 of the CAA. *See, e.g.,* Tailoring Rule, at 75 FR 31561.

Additionally, Georgia's January 13, 2011, SIP revision incorporates by reference the provisions at 40 CFR 52.21 as amended by the promulgation of the NSR $PM_{2.5}$ Rule for PSD.[10] EPA has determined that these portions of Georgia's January 13, 2011, SIP revision approved by today's action are consistent with EPA's regulations, including the NSR $PM_{2.5}$ Rule for PSD, and with section 110 of the CAA.

IV. Final Action

EPA is taking final action to approve, with certain exceptions, Georgia's January 13, 2011, SIP revision, which updates Georgia's air quality regulations, 391–3–1–.02(7)—*Prevention of Significant Deterioration of Air Quality,* to reflect changes in federal requirements. Specifically, Georgia's January 13, 2011, SIP revision incorporates appropriate emissions thresholds for determining PSD applicability with respect to new or modified GHG-emitting sources in accordance with EPA's Tailoring Rule, and incorporates those thresholds in the form in which they are stated in state law. In addition, the SIP revision incorporates provisions for implementing the PSD program for the $PM_{2.5}$ NAAQS. EPA determined that the portions of the January 13, 2011, SIP revision addressed by today's action are approvable because they are in

[9] Georgia's submittal also relates to title V provisions, which are not included in the SIP. As such, EPA is not taking action to approve Georgia's update to its title V regulations in this rulemaking.

[10] Georgia's January 13, 2011, SIP revision excludes adoption of the relevant grandfathering provision at 40 CFR 52.21(i)(1)(ix). On May 18, 2011, (76 FR 28646) EPA took final action to repeal the $PM_{2.5}$ grandfathering provision at 40 CFR 52.21(i)(1)(xi) which ends the use of the 1997 PM_{10} Surrogate Policy for PSD permits under the federal PSD program at 40 CFR 52.

accordance with the CAA and EPA regulations.

As result of EPA's approval of Georgia's changes to its air quality regulations to incorporate the appropriate thresholds for GHG permitting applicability into Georgia's SIP, paragraph (b) in 40 CFR 52.572, as included in EPA's PSD Narrowing Rule, is no longer necessary. In this final action, EPA is amending 40 CFR 52.572 to remove this unnecessary regulatory language.

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. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive 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 November 7, 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* CAA section 307(b)(2). For purposes of judicial review, each of the SIP revisions approved by today's action are severable from one another.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: August 16, 2011.

A. Stanley Meiburg,

Acting 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. Section 52.570 (c) is amended by revising the entry for ''391–3–1–.02(7)'' 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

EPA APPROVED GEORGIA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	* * *
391–3–1–.02(7) ..	Prevention of Significant Deterioration of Air Quality (PSD).	12/29/2010	9/8/2011, [Insert citation of publication].	Georgia's PSD Rule 391–3–1–.02(7) incorporates by reference the regulations found at 40 CFR 52.21 as of June 3, 2010, with changes. This EPA action is approving the incorporation by reference with the exception of the following provisions: (1) the provisions amended in the Ethanol Rule (72 FR 24060) which exclude facilities that produce ethanol through a natural fermentation process from the definition of ''chemical process plants'' in the major NSR source permitting program found at 40 CFR 52.21(b)(1)(i)(*a*) and (b)(1(iii)(*f*); and 2) the administrative regulations amended in the Fugitive Emissions Rule (73 FR 77882). Additionally, this EPA action is not approving the ''automatic rescission clause'' provision at 391–3–1–.02(7)(a)2.(iv). This rule contains NO_X as a precursor to ozone for PSD and NSR.
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■ 3. Section 52.572 is revised to read as follows:

§ 52.572 Approval Status.

With the exceptions set forth in this subpart, the Administrator approves Georgia's plans for the attainment and maintenance of the national standards under section 110 of the Clean Air Act. Furthermore, the Administrator finds the plans satisfy all requirements of Part D, Title I, of the Clean Air Act as amended in 1977.

[FR Doc. 2011–22666 Filed 9–7–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–HQ–OAR–2011–0747; FRL–9460–4]

Findings of Failure To Submit a Complete State Implementation Plan for Section 110(a) Pertaining to the 2006 Fine Particulate Matter ($PM_{2.5}$) NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is making a finding that certain states, the District of Columbia, and the Commonwealth of Puerto Rico have not submitted a complete State Implementation Plan (SIP) that addresses basic program elements of the Clean Air Act (CAA or Act) necessary to implement, maintain, and enforce the 2006 24-hour Fine Particulate Matter ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS). The EPA refers to these SIP submissions as ''infrastructure'' SIPs, because they address basic structural requirements specified in section 110(a)(1) and (2) that states must establish that they meet following the promulgation of a new or revised NAAQS. Specifically, the EPA is evaluating whether these states, the District of Columbia, and the Commonwealth of Puerto Rico made complete infrastructure SIP submissions to address the applicable requirements of section 110(a)(2)(A) through (M) necessary to implement the 2006 $PM_{2.5}$ NAAQS, with the exception of section 110(a)(2)(I), portions of section 110(a)(2)(C) pertaining to nonattainment area requirements and section 110(a)(2)(D)(i)(I). By this action, the EPA is identifying those states, the District of Columbia, and the Commonwealth of Puerto Rico that have failed to make a complete submission for some or all of these specific requirements. The finding of failure to submit for some or all of these specific elements establishes a 24-month deadline for the EPA to promulgate a Federal Implementation Plan (FIP) to address each state's outstanding infrastructure SIP elements unless, prior to that time, the state submits, and the EPA approves, a submission that meets the required elements, or unless the state is already subject to an existing FIP that addresses the SIP deficiency.

DATES: The effective date of this rule is October 11, 2011.

FOR FURTHER INFORMATION CONTACT: David Sanders, Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail Code C539–01, Research Triangle Park, NC 27709; telephone (919) 541–3356; fax number (919) 541–0824; email address: *sanders.dave@epa.gov.*

SUPPLEMENTARY INFORMATION: Section 553 of the Administrative Procedures Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. The EPA has determined that there is good cause for making this rule final without prior proposal and opportunity for comment because no significant EPA judgment is involved in making a finding of failure to submit SIPs, or elements of SIPs, required by the CAA, where states have made no submissions, or incomplete submissions, to meet the requirement by the statutory date. Thus, notice and public procedure are unnecessary. The EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

For questions related to a specific state, the District of Columbia, and the Commonwealth of Puerto Rico, please contact the appropriate regional office below.

Regional offices	States
Region II—Raymond Werner, Chief, Air Programs Branch, EPA Region II, 290 Broadway, 25th Floor, New York, NY 10007–1866.	Puerto Rico.