

expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

#### *National Environmental Policy Act*

No environmental impact statement is required for this rule since agency decisions on proposed State AMLR plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4331 *et seq.*) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

#### *Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

#### *Regulatory Flexibility Act*

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

#### *Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

#### *Unfunded Mandates*

This rule will not impose an unfunded Mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

#### **List of Subjects in 30 CFR Part 950**

Abandoned mine reclamation programs, Intergovernmental relations, Surface mining, Underground mining.

Dated: October 7, 2005.

**Allen D. Klein,**

*Regional Director, Western Region.*

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**BILLING CODE 4310-05-P**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[R04-OAR-2005-GA-0005-200537; FRL-8003-4]**

#### **Approval and Promulgation of Implementation Plans; Georgia: Approval of Revisions to the State Implementation Plan**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing a correction to the State Implementation Plan (SIP) for the State of Georgia regarding the State's general "nuisance" rule. EPA has determined that this rule, Georgia Rule 391-3-1.02(2)(a)1, was erroneously incorporated into the SIP. EPA is proposing to remove this rule from the approved Georgia SIP because the rule is not related to the attainment and maintenance of the national ambient air quality standards (NAAQS).

**DATES:** Written comments must be received on or before December 29, 2005.

**ADDRESSES:** Submit your comments, identified by Regional Material in EDocket (RME) ID No. R04-OAR-2005-GA-0005, by one of the following methods:

1. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
2. Agency Web site: <http://docket.epa.gov/rmepub/> RME, EPA's electronic public docket and comment

system, is EPA's preferred method for receiving comments. Once in the system, select "quick search," then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

3. E-mail: [lakeman.sean@epa.gov](mailto:lakeman.sean@epa.gov).

4. Fax: (404) 562-9019.

5. Mail: "R04-OAR-2005-GA-0005", 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.

6. Hand Delivery or Courier. Deliver your comments to: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division 12th floor, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

*Instructions:* Direct your comments to RME ID No. R04-OAR-2005-GA-0005. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://docket.epa.gov/rmepub/>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov, or e-mail. The EPA RME Web site and the federal regulations.gov Web site are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of

encryption, and be free of any defects or viruses.

**Docket:** All documents in the electronic docket are listed in the RME index at <http://docket.epa.gov/rmepub/>. Although listed in the index, some information is not publicly available, i.e., 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 in RME 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:** Sean Lakeman, 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. The telephone number is (404) 562-9043. Mr. Lakeman can also be reached via electronic mail at [lakeman.sean@epa.gov](mailto:lakeman.sean@epa.gov).

**SUPPLEMENTARY INFORMATION:** The first significant amendments to the CAA occurred in 1970 and 1977. Following these amendments, a large number of SIPs were submitted to EPA to fulfill new federal requirements. In many cases, states and districts submitted their entire programs, including many elements not required pursuant to the Act. Due to resource constraints during this timeframe, EPA's review of these submittals focused primarily on the required technical, legal, and enforcement elements of the submittals. At the time, EPA did not perform a detailed review of the numerous provisions submitted to determine if each provision was related to the attainment and maintenance of the NAAQS. However, provisions approved as part of states' SIPs should generally be related to attainment and maintenance of the NAAQS, consistent with the authority in section 110 of the Act under which these plans are approved by EPA.

During the process of responding to a recent citizen petition of a title V

operating permit in Georgia, EPA determined that a provision of the State's rules, approved as part of the SIP on January 3, 1980, (45 FR 780), is not related to the attainment and maintenance of the NAAQS. This State rule, "Georgia Air Quality Control Rule 391-3-1-.02(2)(a)1," is a general nuisance provision. In addition, Georgia has never used this rule as part of a federal air quality standard attainment or maintenance plan. Georgia has also not relied on or attributed any emission reductions from this rule to any such plans (October 31, 2005, e-mail from Ron Methier, Georgia Environmental Protection Division, to Dick Schutt, U.S. Environmental Protection Agency). For these reasons, EPA's 1980 approval of this provision into the Georgia SIP was in error and EPA is, therefore, proposing to remove the provision from the approved SIP under the authority of section 110(k)(6) of the Act. Section 110(k)(6) provides: "Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification, or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and public."

#### Proposed Action

Since the State's "nuisance" provision is not directed at the attainment and maintenance of the NAAQS, EPA has found that its prior approval of this particular rule (into the SIP) was in error. Consequently, in order to correct this error, EPA is proposing to remove Georgia Rule 391-3-1-.02(2)(a)1 from the approved Georgia SIP pursuant to section 110(k)(6) of the Act and to codify this deletion by revising the appropriate paragraph under 40 CFR part 52, subpart L, § 52.570 (Identification of Plan).

#### Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely

proposes to remove an erroneously approved State rule from the SIP and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to remove an erroneously approved State rule from the SIP and does not impose any additional enforceable duty beyond that required by State law, it 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).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to remove an erroneously approved State rule from the SIP, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Environmental protection, Air pollution control, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

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

Dated: November 21, 2005.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

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