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.

Approval and Promulgation of Air Quality Implementation Plans; Utah; Maintenance Plan for the 1997 8-Hour Ozone Standard for Salt Lake County and Davis County, page 33 of 33

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorportion by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: December 13, 2012.

James B. Martin,

Regional Administrator, Region 8.

[FR Doc. 2012–31562 Filed 12–31–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2012–0622; FRL–9767–2]

Approval and Promulgation of Implementation Plans; Georgia: New Source Review—Prevention of Significant Deterioration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve portions of a revision to the Georgia State Implementation Plan (SIP) submitted by the State of Georgia, through the Georgia Department of Natural Resources' Environmental Protection Division (EPD), on July 26, 2012. The SIP submission includes changes to Georgia's New Source Review (NSR), Prevention of Significant Deterioration (PSD) program to incorporate by reference (IBR) federal PSD requirements regarding fine particulate matter ($PM_{2.5}$) increments, significant impact levels (SILs), significant monitoring concentration (SMC) and the deferral of, until July 21, 2014, PSD applicability to biogenic carbon dioxide (CO_2) emissions from bioenergy and other biogenic stationary sources. EPA is proposing to approve portions of Georgia's SIP submittal because the Agency has preliminarily determined that it is consistent with section 110 of the Clean Air Act (CAA or Act) and EPA regulations regarding NSR permitting.

DATES: Comments must be received on or before February 1, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2012–0622 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: R4-RDS@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* EPA–R04–OAR–2012–0622, 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.
5. *Hand Delivery or Courier:* Ms. Lynorae Benjamin, Chief, 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. 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 Docket ID No. ''EPA–R04–OAR–2012–0622.'' EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* 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 through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, 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 email comment directly to EPA without going through *www.regulations.gov,* your email 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. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. 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 *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: 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; email address: *bradley.twunjala@epa.gov.* For information regarding NSR, contact Ms. Yolanda Adams, Air Permits Section, at the same address above. Ms. Adams' telephone number is (404) 562–9241; email address: *adams.yolanda@epa.gov.* For information regarding the $PM_{2.5}$ national ambient air quality standards (NAAQS), contact Mr. Joel Huey, Regulatory Development Section, at the same address above. Mr. Huey's

telephone number is (404) 562–9104; email address: *huey.joel@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. What action is EPA proposing?

On July 26, 2012, EPD submitted a SIP revision to EPA for approval into the Georgia SIP to IBR [1] federal NSR PSD permitting requirements at Georgia's Air Quality Control Rule 391–3–1–.02(7)—*Prevention of Significant Deterioration of Air Quality.* These rule changes were provided to comply with federal NSR permitting regulations and include provisions related to the implementation of the $PM_{2.5}$ NAAQS for the PSD program as promulgated in the rule entitled ''Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC), Final Rule,'' 75 FR 64864 (October 20, 2010) (hereafter referred to as ''$PM_{2.5}$ PSD Increment-SILs-SMC Rule'') and the deferral until July 21, 2014, of the application of PSD permitting requirement to biogenic CO_2 emissions from bioenergy and other biogenic stationary sources as promulgated in the rule entitled, ''Deferral for CO_2 Emissions From Bioenergy and Other Biogenic Sources Under the Prevention of Significant Deterioration (PSD) and Title V Programs,'' Final Rule, 76 FR 43490 (July 20, 2011) (hereafter referred to as CO_2 Biomass Deferral Rule). Additionally, the July 26, 2012, SIP revision (1) IBR into Georgia SIP EPA's interim rulemaking entitled ''Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR): Reconsideration of Inclusion of Fugitive Emissions; Interim Rule; Stay and Revisions,'' 76 FR 17548 (March 30, 2011) (hereafter referred to as the ''Fugitive Emissions Interim Rule''); (2) requests that EPA remove from the SIP the exclusion language at Rule 391–3–1–.02(7) regarding the coarse particle pollution (PM_{10}) surrogate and grandfathering provision promulgated in the ''Implementation of the New Source Review Program for Particulate Matter Less Than 2.5 Micrometers,'' 73 FR 28321, May 16, 2008 (hereafter referred to as ''NSR $PM_{2.5}$ Rule''); (3) amends the definitions Rule 391–3–1–.01(nnn)—*Definitions* regarding testing and monitoring of air pollutants; and (4) revises Rule 391–3–1–.03(6)—*Exemptions* by adding a new exemption for cumulative small modifications at an existing quarry where the quarry is not a major source and the associated emissions increase is less than 10 tons per year of particulate matter and PM_{10}.

The two elements of EPD's July 26, 2012, SIP submittal that EPA is not proposing to approve in this action are: (1) incorporation of the SIL thresholds and provisions promulgated in EPA's $PM_{2.5}$ PSD Increment-SILs-SMC Rule (for reasons explained later in this notice); and (2) revisions to Rules 391–3–1–.02(2)(c)—*Incinerators,* 391–3–1–.02(www)—*Sewage Sludge Incineration,* 391–3–1–.02(8)(b)—*New Source Performance Standards* and 391–3–1–.02(9)(b)—*Emissions Standards for Hazardous Air Pollutants,* as these regulations are not part of Georgia's federally approved SIP.

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

Today's proposed action to revise the Georgia SIP relates to PSD provisions promulgated in EPA's $PM_{2.5}$ PSD Increment-SILs-SMC Rule and CO_2 Biomass Deferral Rule. Additionally, the July 26, 2012, SIP revision addresses EPA's repeal of the grandfathering provision as promulgated in the Rule entitled ''Implementation of the New Source Review Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$); Final Rule to Repeal Grandfather Provision'' (76 FR 28646, May 18, 2011) and the extension of the stay in the Fugitive Emissions Interim Rule. More details regarding these rules are found in the respective final rulemakings and are summarized below. For more information on the NSR Program and the $PM_{2.5}$ NAAQS please refer to the $PM_{2.5}$ PSD Increment-SILs-SMC Rule and the NSR $PM_{2.5}$ Rule.

A. $PM_{2.5}$ PSD Increment-SILs-SMC-Rule

On October 20, 2010, EPA finalized the $PM_{2.5}$ PSD Increment-SILs-SMC Rule to provide additional regulatory requirements under the PSD program regarding the implementation of the $PM_{2.5}$ NAAQS for NSR. Specifically, the rule establishes: (1) $PM_{2.5}$ increments pursuant to section 166(a) of the CAA to prevent significant deterioration of air quality in areas meeting the NAAQS; (2) SILs used as a screening tool (by a major source subject to PSD) to evaluate the impact a proposed major source or modification may have on the NAAQS or PSD increment; and (3) a SMC (also a screening tool) used by a major source subject to PSD to determine if a source must submit to the permitting authority one year of pre-construction air quality monitoring data prior to constructing or modifying a facility. As part of the response to comments on the October 20, 2010, final rulemaking, EPA explained that the Agency agrees that the SILs and SMCs used as *de minimis* [2] thresholds for the various pollutants are useful tools that enable permitting authorities and PSD applicants to screen out ''insignificant'' activities; however, these values are not required by the Act as part of an approvable SIP program. EPA believes that most states are likely to adopt the SILs and SMCs because of the useful purpose they serve regardless of EPA's position that the values are not mandatory. Alternatively, states may develop more stringent values if they desire to do so. In any case, states are not under any statutory deadline for revising their PSD programs to add these screening tools. *See* 75 FR 64864, 64900.

Georgia's July 26, 2012, SIP revision IBR the NSR changes promulgated in the $PM_{2.5}$ PSD Increment-SILs-SMC Rule to be consistent with the federal NSR regulations and to appropriately implement the State's NSR program for the $PM_{2.5}$ NAAQS. More detail on the $PM_{2.5}$ PSD Increment-SILs-SMC Rule can be found in EPA's October 20, 2010, final rule and is summarized below. *See* 75 FR 64864. For the reasons explained below, EPA is not proposing to take action to approve the SILs (promulgated in the $PM_{2.5}$ PSD Increment-SILs-SMC Rule) into the Georgia SIP in this rulemaking. EPA's authority to implement the SILs and SMC for PSD purposes has been challenged by the Sierra Club. *Sierra Club* v. *EPA,* Case No 10–1413 (D.C. Circuit Court).[3] More details regarding Georgia's changes to its PSD regulations are also summarized below in Section III.

1. What are PSD increments?

As established in part C of title I of the CAA, EPA's PSD program protects public health from adverse effects of air pollution by ensuring that construction of new or modified sources in attainment or unclassifiable areas does not lead to significant deterioration of

[1] Throughout this document IBR means incorporate or incorporates by reference.

[2] The *de minimis* principle is grounded in the decision described by the court case *Alabama Power Co.* v. *Costle,* 636 F.2d 323, 360 (DC Cir. 1980). In this case, reviewing EPA's 1978 PSD regulations, the court recognized that ''there is likely a basis for an implication of *de minimis* authority to provide exemption when the burdens of regulation yield a gain of trivial or no value.'' 636 F.2d at 360.

[3] On April 6, 2012, EPA filed a brief with the D.C. Circuit Court defending the Agency's authority to implement SILs and SMC for PSD purposes.

air quality while simultaneously ensuring that economic growth will occur in a manner consistent with preservation of clean air resources. Under section 165(a)(3) of the CAA, a PSD permit applicant must demonstrate that emissions from the proposed construction and operation of a facility ''will not cause, or contribute to, air pollution in excess of any maximum allowable increase or allowable concentration for any pollutant.'' In other words, when a source applies for a permit to emit a regulated pollutant in an area that meets the NAAQS, the state and EPA must determine if emissions of the regulated pollutant from the source will cause significant deterioration in air quality. Significant deterioration occurs when the amount of the new pollution exceeds the applicable PSD increment, which is the ''maximum allowable increase'' of an air pollutant allowed to occur above the applicable baseline concentration [4] for that pollutant. PSD increments prevent air quality in clean areas from deteriorating to the level set by the NAAQS. Therefore, an increment is the mechanism used to estimate ''significant deterioration'' of air quality for a pollutant in an area.

For PSD baseline purposes, a baseline area for a particular pollutant emitted from a source includes the attainment or unclassifiable area in which the source is located as well as any other attainment or unclassifiable area in which the source's emissions of that pollutant are projected (by air quality modeling) to result in an ambient pollutant increase of at least 1 microgram per meter cubed ($\mu g/m^3$) (annual average). *See* 40 CFR 52.21(b)(15)(i). Under EPA's existing regulations, the establishment of a baseline area for any PSD increment results from the submission of the first complete PSD permit application and is based on the location of the proposed source and its emissions impact on the area. Once the baseline area is established, subsequent PSD sources locating in that area need to consider that a portion of the available increment may have already been consumed by previous emissions increases. In general, the submittal date of the first complete PSD permit application in a particular area is the operative ''baseline date'' after which new sources must evaluate increment consumption.[5] On or before the date of the first complete PSD application, emissions generally are considered to be part of the baseline concentration, except for certain emissions from major stationary sources. Most emissions increases that occur after the baseline date will be counted toward the amount of increment consumed. Similarly, emissions decreases after the baseline date restore or expand the amount of increment that is available. *See* 75 FR 64864. As described in the $PM_{2.5}$ PSD Increment-SILs-SMC Rule, and pursuant to the authority under section 166(a) of the CAA, EPA promulgated numerical increments for $PM_{2.5}$ as a new pollutant [6] for which NAAQS were established after August 7, 1977,[7] and derived 24-hour and annual $PM_{2.5}$ increments for the three area classifications (Class I, II and III) using the ''contingent safe harbor'' approach. *See* 75 FR 64864 at 64869 and ambient air increment table at 40 CFR 51.166(c)(1) and 52.21(c).

In addition to PSD increments for the $PM_{2.5}$ NAAQS, the $PM_{2.5}$ PSD Increment-SILs-SMC Rule amended the definition at 40 CFR 51.166 and 52.21 for ''*major source baseline date*'' and ''*minor source baseline date*'' (including trigger dates) to establish the $PM_{2.5}$ NAAQS specific dates associated with the implementation of $PM_{2.5}$ PSD increments. *See* 75 FR 64864. In accordance with section 166(b) of the CAA, EPA required the states to submit revised implementation plans to EPA for approval (to adopt the $PM_{2.5}$ PSD increments) within 21 months from promulgation of the final rule (by July 20, 2012). Regardless of when a state submits its revised SIP, the emissions from major sources subject to PSD for $PM_{2.5}$ for which construction commenced after October 20, 2010 (major source baseline date), consume $PM_{2.5}$ increment and should be included in the increment analyses occurring after the minor source baseline date is established for an area under the state's revised PSD program. *See* 75 FR 64864. As discussed in detail in Section III, Georgia's July 26, 2012, SIP revision IBR the $PM_{2.5}$ PSD increment permitting requirements promulgated in the $PM_{2.5}$ PSD Increment-SILs-SMC Rule.

2. What are significant monitoring concentrations?

Under the CAA and EPA regulations, an applicant for a PSD permit is required to gather preconstruction monitoring data in certain circumstances. CAA Section 165(a)(7) calls for ''such monitoring as may be necessary to determine the effect which emissions from any such facility may have, or is having, on air quality in any areas which may be affected by emissions from such source.'' In addition, CAA section 165(e) requires an analysis of the air quality in areas affected by a proposed major facility or major modification and calls for gathering one year of monitoring data unless the reviewing authority determines that a complete and adequate analysis may be accomplished in a shorter period. These requirements are codified in EPA's PSD regulations at 40 CFR 51.166(m) and 40 CFR 52.21(m). In accordance with EPA's Guideline for Air Quality Modeling (40 CFR part 51, appendix W), the preconstruction monitoring data are primarily used to determine background concentrations in modeling conducted to demonstrate that the proposed source or modification will not cause or contribute to a violation of the NAAQS. *See* 40 CFR part 51, appendix W, section 9.2. SMCs are numerical values that represent thresholds of insignificant (i.e., *de minimis*), monitored (ambient) impacts on pollutant concentrations. In EPA's $PM_{2.5}$ PSD Increment-SILs-SMC Rule, EPA established a SMC of 4 $\mu g/m^3$ for $PM_{2.5}$.

Using the SMC as a screening tool, sources may be able to demonstrate that the modeled air quality impact of emissions from the new source or modification, or the existing air quality level in the area where the source would construct, is less than the SMC (i.e., *de minimis*), and as such, may be allowed to forego the preconstruction monitoring requirement for a particular pollutant at the discretion of the reviewing authority. *See* 40 CFR 51.166(i)(5) and 52.21(i)(5). SMCs are not minimum required elements of an approvable SIP under the CAA. This *de minimis* value is widely considered to be a useful component for implementing the PSD program, but is not absolutely necessary for the states to implement PSD programs. States can satisfy the statutory requirements for a PSD program by requiring each PSD

[4] Section 169(4) of the CAA provides that the baseline concentration of a pollutant for a particular baseline area is generally the air quality at the time of the first application for a PSD permit in the area.

[5] Baseline dates are pollutant specific. That is, a complete PSD application establishes the baseline date only for those regulated NSR pollutants that are projected to be emitted in significant amounts (as defined in the regulations) by the applicant's new source or modification. Thus, an area may have different baseline dates for different pollutants.

[6] EPA generally characterized the $PM_{2.5}$ NAAQS as a NAAQS for a new indicator of PM. EPA did not replace the PM_{10} NAAQS with the NAAQS for $PM_{2.5}$ when the $PM_{2.5}$ NAAQS were promulgated in 1997. EPA rather retained the annual and 24-hour NAAQS for $PM_{2.5}$ as if $PM_{2.5}$ was a new pollutant even though EPA had already developed air quality criteria for PM generally. *See* 75 FR 64864 (October 20, 2010).

[7] EPA interprets 166(a) to authorize EPA to promulgate pollutant-specific PSD regulations meeting the requirements of section 166(c) and 166(d) for any pollutant for which EPA promulgates a NAAQS after 1977.

applicant to submit air quality monitoring data for $PM_{2.5}$ without using *de minimis* thresholds to exempt certain sources from such requirements. *See* 75 FR 64864. The $PM_{2.5}$ SMC became effective under the federal PSD program on December 20, 2010. States with EPA-approved PSD programs that adopt the SMC for $PM_{2.5,}$ however, may use the SMC, once it is part of an approved SIP, to determine when it may be appropriate to exempt a particular major stationary source or major modification from the monitoring requirements under its state PSD program. Georgia's July 26, 2012, revision IBR the SMC provision into the Georgia SIP.

Recently, the Sierra Club filed suit challenging EPA's authority to implement the $PM_{2.5}$ SILs [8] as well as the SMC for PSD purposes as promulgated in the October 20, 2010, rule. *Sierra Club* v. *EPA,* Case No 10–1413, D.C. Circuit Court. Specifically regarding the SMC, Sierra Club claims that the use of SMC to exempt a source from submitting a year's worth of monitoring data is inconsistent with the CAA. EPA responded to Sierra Club's claims in a brief dated April 6, 2012, which describes the Agency's authority to develop and promulgate SMCs.[9] A copy of EPA's April 6, 2012, brief can be found in the docket for today's rulemaking at *www.regulations.gov* using docket ID: EPA–R04–OAR–2012–0622.

B. CO_2 Biomass Deferral

1. The GHG Tailoring Rule

On June 3, 2010 (effective August 2, 2010), EPA promulgated a final rulemaking, entitled ''Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule'' (hereafter referred to as the GHG Tailoring Rule), for the purpose of relieving overwhelming permitting burdens from the regulation of greenhouse gases (GHG) that would, in the absence of the rule, fall on permitting authorities and sources. *See* 75 FR 31514. EPA accomplished this by tailoring the applicability criteria that determine which GHG emission sources become subject to the PSD program of the CAA. In particular, EPA established in the GHG Tailoring Rule a phase-in approach for PSD applicability and estblished the first two steps of the phase-in for the largest GHG emitters.[10] On January 13, 2011, EPD submitted a SIP revision to EPA to IBR into the Georgia SIP (at 391–3–1–.02(7)), the version of 40 CFR 52.21 as of June 3, 2010, which included the GHG Tailoring Rule thresholds.[11] EPA took final action to approve Georgia's SIP revision on September 8, 2011. *See* 76 FR 55572. Please refer to the GHG Tailoring Rule for specific details on the PSD thresholds.

2. EPA's CO_2 Biomass Deferral Rule

In the July 20, 2011, final rulemaking, EPA deferred until July 21, 2014, the consideration of CO_2 emissions from bioenergy and other biogenic sources (hereafter referred to as ''biogenic CO_2 emissions'') when determining whether a stationary source meets the PSD and title V applicability thresholds, including those for the application of best available control technology (BACT).[12] *See* 76 FR 43490. Thus, under the federal PSD rules, stationary sources that combust biomass (or otherwise emit biogenic CO_2 emissions) and construct or modify during the deferral period will not be subject to the application of PSD to the biogenic CO_2 emissions resulting from those actions. The deferral applies only to biogenic CO_2 emissions and does not affect non-GHG pollutants or other GHGs (e.g., methane and nitrous oxide) emitted from the combustion of biomass fuel. Also, the deferral only pertains to regulation of biogenic CO_2 emissions under the PSD and title V programs and does not pertain to any other EPA programs such as the GHG Reporting Program.

Biogenic CO_2 emissions are defined as emissions of CO_2 from a stationary source directly resulting from the combustion or decomposition of biologically-based materials other than fossil fuels and mineral sources of carbon. Examples of ''biogenic CO_2 emissions'' include, but are not limited to:

- CO_2 generated from the biological decomposition of waste in landfills, wastewater treatment, or manure management processes;
- CO_2 from the combustion of biogas collected from biological decomposition of waste in landfills, wastewater treatment, or manure management processes;
- CO_2 from fermentation during ethanol production or other industrial fermentation processes;
- CO_2 from combustion of the biological fraction of municipal solid waste or biosolids;
- CO_2 from combustion of the biological fraction of tire-derived fuel; and
- CO_2 derived from combustion of biological material, including all types of wood and wood waste, forest residue, and agricultural material.

The deferral is intended to be a temporary measure, in effect for no more than three years, to allow the Agency time to conduct detailed examination of the science and technical issues related to accounting for biogenic CO_2 emissions, and determine what, if any, treatment of biogenic CO_2 emissions should be in the PSD and title V programs. The biomass deferral rule is not EPA's final determination on the treatment of biogenic CO_2 emissions in those programs. The Agency plans to complete its science and technical review and any follow-up rulemakings within the three-year deferral period and further believes that three years is ample time to complete these tasks. It is possible that the subsequent rulemaking, depending on the nature of EPA's determinations, would supersede the biomass deferral rulemaking and become effective in fewer than three years. In that event, Georgia may revise its SIP accordingly.

EPA's final biomass deferral rule is an interim deferral for biogenic CO_2 emissions only and does not relieve sources of the obligation to meet the PSD and title V permitting requirements for other pollutant emissions that are otherwise applicable to the source during the deferral period or that may be applicable to the source at a future date pending the results of EPA's study and subsequent rulemaking action. This means, for example, that if the deferral is applicable to biogenic CO_2 emissions from a particular source during the three-year effective period and the study and future rulemaking do not provide for a permanent exemption from PSD and title V permitting requirements for the biogenic CO_2 emissions from a source with particular characteristics, then the deferral would end for that type of source and its biogenic CO_2 emissions would have to be

[8] As mentioned earlier, due to litigation by the Sierra Club, EPA is not proposing to take action on the SILs portion of the Georgia's July 26, 2012, SIP revision at this time but will take action once the court case regarding SILs implementation is resolved.

[9] Additional information on this issue can also be found in an April 25, 2012, comment letter from EPA Region 6 to the Louisiana Department of Environmental Quality regarding the SILs-SMC litigation. A copy of this letter can be found in the docket for today's rulemaking at *www.regulations.gov* using docket ID: EPA–R04–OAR–2012–0622.

[10] Please refer to the July 12, 2012 rulemaking finalizing GHG Tailoring Rule Step 3. *See* 77 FR 41051.

[11] Georgia's submittal also revised the State's title V operating permit provisions (which are not included in the federally approved SIP) to incorporate the GHG Tailoring Rule provisions. As such, EPA did not taking final action to approve Georgia's update to its title V.

[12] As with the Tailoring Rule, the Biomass Deferral addresses both PSD and title V requirements. However, EPA is only taking action on Georgia's PSD program as part of this action.

appropriately considered in any applicability determinations that the source may need to conduct for future stationary source permitting purposes, consistent with that subsequent rulemaking and the final GHG Tailoring Rule (*e.g.,* a major source determination for title V purposes or a major modification determination for PSD purposes). EPA also wishes to clarify that the agency does not require that a PSD permit issued during the deferral period be amended or that any PSD requirements in a PSD permit existing at the time the deferral took effect, such as BACT limitations, be revised or removed from an effective PSD permit for any reason related to the deferral or when the deferral period expires.

Under 40 CFR 52.21(w), any PSD permit shall remain in effect, unless and until it expires or it is rescinded, under the limited conditions specified in that provision. Thus, a PSD permit that is issued to a source while the deferral was effective need not be reopened or amended if the source is no longer eligible to exclude its biogenic CO_2 emissions from PSD applicability after the deferral expires. However, if such a source undertakes a modification that could potentially require a PSD permit and the source is not eligible to continue excluding its biogenic CO_2 emissions after the deferral expires, the source will need to consider its biogenic CO_2 emissions in assessing whether it needs a PSD permit to authorize the modification.

Any future actions to modify, shorten, or make permanent the deferral for biogenic sources are beyond the scope of the biomass deferral action and this proposed approval of the deferral into the Georgia SIP, and will be addressed through subsequent rulemaking. The results of EPA's review of the science related to net atmospheric impacts of biogenic CO_2 and the framework to properly account for such emissions in title V and PSD permitting programs based on the study are prospective and unknown. Thus, EPA is unable to predict which biogenic CO_2 sources, if any, currently subject to the deferral as incorporated into the Georgia SIP would be subject to any permanent exemptions or which currently deferred sources would be potentially required to account for their emissions in the future rulemaking EPA has committed to undertake for such purposes in three or fewer years. Only in that rulemaking can EPA address the question of extending the deferral or putting in place requirements that would have the equivalent effect on sources covered by the biomass deferral. Once that rulemaking has occurred, Georgia may address related revisions to its SIP.

III. What is EPA's analysis of Georgia's SIP revision?

Georgia currently has a SIP-approved NSR program for new and modified stationary sources. EPD's PSD preconstruction rules are found at Georgia Air Quality Control Rule 391–3–1–.02(7)—*Prevention of Significant Deterioration of Air Quality* and apply to major stationary sources or modifications constructed in areas designated attainment areas or unclassifiable/attainment areas as required under part C of title I of the CAA with respect to the NAAQS. Georgia's Rule 391–3–1–.02(7) IBR the federal NSR PSD regulations at 40 CFR 52.21 into the Georgia SIP. In effect, EPD's July 26, 2012, SIP revision revises Rule 391–3–1–.02(7) by updating the State's IBR date to July 20, 2011, which includes the federal PSD permitting updates promulgated in the $PM_{2.5}$ PSD Increment-SILs-SMC Rule, the CO_2 Biomass Deferral Rule and the extension of the stay in the Fugitive Emissions Interim Rule. Additionally, the July 26, 2012, SIP submission revises Rule 391–3–1–.02(7) by removing language to address EPA's repeal of the PM_{10} surrogate and grandfathering provisions and clarifies at subparagraph (a)(1) of 391–3–1–.01 that all dates associated with IBR of the federal PSD rules (at 40 CFR 52.21) refer to the date of publication of those rules in the **Federal Register**. In addition to changes to Rule 391–3–1–.02(7), the July 26, 2012, SIP revision also (1) amends Georgia's definitions at 391–3–1–.01 by revising subparagraph (nnnn) to reference the February 1, 2012, update to Georgia's ''Procedures for Testing and Monitoring Sources of Air Pollutants,'' and; (2) modifies Rule 391–3–1–.03(6) by adding a new exemption from SIP permitting requirements (at subparagraph (i)(4)) for small modifications to an existing quarry that is not a major source, where the combined emissions increases, including any contemporaneous emission decreases from all nonexempt modified activities, are less than 10 tons per year of particulate matter and PM_{10}. The new quarry exemption may not be used to avoid any emission limitations or standards of the Rules for Air Quality Control Chapter 391–3–1–.02 (e.g., PSD requirements), lower the potential to emit below ''major source'' thresholds, or avoid any ''applicable requirement'' as defined in 40 CFR Part 70.2. *See* Georgia Rule 391–3–1–.03(6).

These changes to Georgia's rules became state effective on August 9, 2012. EPA is proposing to approve changes to Georgia's Rule 391–3–1–.02(7), to update the State's existing SIP-approved PSD program to be consistent with federal NSR regulations (at 40 CFR 52.21) and the CAA. In addition, EPA is proposing to approve Georgia's requested changes to Rules 391–3–1–.01 and .0. 3. More details on EPA's analysis and proposed approval of the portions of Georgia's July 26, 2012, SIP submittal addressing PSD provisions promulgated in the $PM_{2.5}$ PSD Increment-SILs-SMC Rule, the CO_2 Deferral Rule, the Fugitive Emissions Interim Rule and the NSR $PM_{2.5}$ Rule (grandfathering provision) are discussed below.

A. Rule 391–3–1–.02(7) SIP Revision

1. $PM_{2.5}$ PSD Increment-SILs-SMC Rule

EPD's July 26, 2012, SIP revision IBR the following provisions into the Georgia SIP at regulation 391–3–1–.02(7) as promulgated in the October 20, 2010, $PM_{2.5}$ PSD Increment-SILs-SMC Rule: (1) PSD increments for $PM_{2.5}$ annual and 24-hour NAAQS pursuant to section 166(a) of the CAA; (2) SILs used as a screening tool (used by a major source subject to PSD) to evaluate the impact a proposed major source or modification may have on the NAAQS or PSD increment; and (3) SMC to determine the level of data gathering required of a major source in support of its PSD permit application for $PM_{2.5}$ emissions.

Specifically, Georgia's July 26, 2012, SIP revision IBR into the Georgia SIP (at 391–3–1–.02(7)) the $PM_{2.5}$ PSD increments as amended in the tables at 40 CFR 52.21(c) and (p)(5) (for Class I Variances) the amendments to the terms ''major source baseline date'' (as amended at 40 CFR 52.21(b)(14)(i)(c)); ''minor source baseline date'' (including establishment of the ''trigger date'') (40 CFR 52.21(b)(14)(ii)(c)); and the definition of ''baseline area'' (as amended at 40 CFR 52.21(b)(15)(i) and (ii)). These changes provide for the implementation of the $PM_{2.5}$ PSD increments for the $PM_{2.5}$ NAAQS in the State's PSD program. In today's action, EPA is proposing to approve Georgia's July 26, 2012, SIP revision to address $PM_{2.5}$ PSD increments.

Regarding the SILs and SMC established in the October 20, 2010, $PM_{2.5}$ PSD Increment-SILs-SMC Rule, the Sierra Club has challenged EPA's authority to implement SILs and SMC. In a brief filed in the DC Circuit on April 6, 2012, EPA described the Agency's authority under the CAA to promulgate and implement the SMCs and SILs *de minimis* thresholds. With respect to the SMC, Georgia's July 26, 2012, SIP revision IBR the SMC of 4 $\mu g/m^3$ for

$PM_{2.5}$ NAAQS at 391–3–1–.02(7). Georgia's July 26, 2012, SIP revision is consistent with EPA's current promulgated provisions in the October 20, 2010, $PM_{2.5}$ PSD Increment-SILs-SMC Rule. EPA is proposing to approve this promulgated threshold into the Georgia SIP as EPA believes the SMC is a valid exercise of the Agency's *de minimis* authority. However, EPA notes that future court action may require subsequent rule revisions and SIP revisions from the State of Georgia.

The July 26, 2012, SIP revision submitted by Georgia to IBR the new PSD requirements for $PM_{2.5}$ pursuant to the $PM_{2.5}$ PSD Increment-SILs-SMC Rule also includes the new regulatory text at 40 CFR 52.21(k)(2), concerning the implementation of SILs for $PM_{2.5}$. EPA stated in the preamble to the October 20, 2010, final rule that we do not consider the SILs to be a mandatory SIP element, but regard them as discretionary on the part of a regulating authority for use in the PSD permitting process. Nevertheless, the $PM_{2.5}$ SILs are currently the subject of litigation before the U.S. Court of Appeals. *Sierra Club* v. *EPA,* Case No 10–1413 (DC Circuit). In response to that litigation, EPA has requested that the court remand and vacate the regulatory text in EPA's PSD regulations at paragraph (k)(2) so that EPA can make necessary rulemaking revisions to that text. In light of EPA's request for remand and vacatur and the acknowledgement of the need to revise the regulatory text presently contained at paragraph (k)(2) of sections 51.166 and 52.21, EPA does not believe that it is appropriate at this time to approve that portion of Georgia's SIP revision that contains the affected regulatory text in the State's PSD regulations, at 391–3–1–0.2(7). Instead, EPA is taking no action at this time with regard to that specific provision contained in the SIP revision. EPA will take action on the SILs portion of Georgia's July 26, 2012, SIP revision in a separate rulemaking once the issue regarding the court case has been resolved.

2. CO_2 Biomass Deferral

In the July 20, 2011, CO_2 Biomass Deferral Rule, similar to the approach with the GHG Tailoring Rule, EPA incorporated the biomass deferral into the Federal PSD program by amending the definition of ''subject to regulation'' under 40 CFR 51.166 and 52.21, respectively. Georgia's July 26, 2012, SIP revision IBR into the Georgia SIP 40 CFR 52.21 as of July 20, 2011, which includes the CO_2 Biomass Deferral revision to the definition of ''subject to regulation'' deferring, until July 21, 2014, PSD applicability to biogenic carbon dioxide (CO_2) emissions from bioenergy and other biogenic stationary sources. EPA is proposing to approve Georgia's IBR of the CO_2 Biomass Deferral Rule.

3. Fugitive Emissions Interim Rule

Georgia's July 26, 2012, SIP revision also IBR the extension of the stay of the Fugitive Emissions Rule into the Georgia PSD program at 391–3–1–.02(7). On December 19, 2008, EPA issued a final rule revising the requirements of the NSR permitting program regarding the treatment of fugitive emissions. *See* 73 FR 77882. The final rule required fugitive emissions to be included in determining whether a physical or operational change results in a major modification only for sources in industries that have been designated through rulemaking under section 302(j) [13] of the CAA. As a result of EPA granting the Natural Resource Defense Council's petition for reconsideration on the original Fugitive Emissions Rule [14] on March 31, 2010, EPA stayed the Fugitive Emissions Rule (73 FR 77882) for 18 months to October 3, 2011. The stay allowed the Agency time to propose, take comment and issue a final action regarding the inclusion of fugitive emissions in NSR applicability determinations. On March 30, 2011 (76 FR 17548), EPA proposed an interim rule which superseded the March 31, 2010, stay and clarified and extended 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 affirming the interim rule as final. The final rule will remain in effect until EPA completes its reconsideration. EPA is proposing to approve Georgia's IBR of the interim rulemaking extending the stay of the Fugitives Emissions Rule into its SIP at Rule 391–3–1–.02(7).

4. $PM_{2.5}$ Grandfathering Provision

In the NSR $PM_{2.5}$ Rule, EPA finalized regulations to establish the framework for implementing preconstruction permit review for the $PM_{2.5}$ NAAQS in both attainment and nonattainment areas including the grandfather provision which allowed PSD applicants that submitted their complete permit application prior to the July 15, 2008 effective date of the NSR $PM_{2.5}$ Rule to continue to rely on the 1997 $p.m._{10}$ Surrogate Policy rather than amend their application to demonstrate compliance directly with the new $PM_{2.5}$ requirements. *See* 73 FR 28321. On January 13, 2011, Georgia submitted a SIP revision to IBR into the Georgia SIP the version of 40 CFR 52.21 as of June 3, 2010 which included language that excluded the grandfathering exemption (at 40 CFR 52.21(i)(1)(xi)) from the state's PSD regulations (at Rule 391–3–1–.02(7)(b)(6)(i)) ensuring that sources were not subject to the grandfathering provision. EPA approved Georgia's January 13, 2011, SIP revision on September 8, 2011(76 FR 55572).

On May 18, 2011, EPA took final action to repeal the $PM_{2.5}$ grandfathering provision at 40 CFR 52.21(i)(1)(xi). *See* 76 FR 28646. Georgia's July 26, 2012, SIP submittal incorporates into the Georgia SIP the version of 40 CFR 52.21 as of July 20, 2011, which includes the May 18, 2011, repeal of the grandfather provision. Thus, the language previously approved into Georgia's SIP at Rule 391–3–1–.02(7)(b)(6)(i) that excludes the grandfathering provision is no longer necessary. Georgia's July 26, 2012, SIP submittal removes the unnecessary language pertaining to the grandfather provision from Rule 391–3–1–.02(7)(b)(6)(i).[15] EPA is proposing to approve this portion of Georgia's July 26, 2012, SIP submittal.

IV. Proposed Action

EPA is proposing to approve portions of Georgia's July 26, 2012, SIP revision adopting federal regulations amended in the October 20, 2010, $PM_{2.5}$ PSD Increment-SILs-SMC rule, the June 3, 2010, CO_2 Biomass Deferral Rule; the March 30, 2011, Fugitive Emissions Interim Rule, the additional amendments regarding $PM_{2.5}$ Grandfathering Provision, and the definition and exemption revisions into the Georgia SIP. EPA is not however proposing to approve in this rulemaking Georgia's SIP revisions regarding the SIL thresholds and provisions and Rule 391–3–1–.02(c)—*Incinerators,* 391–3–1–.02(www)—*Sewage Sludge Incineration,* 391–3–1–.02(8)(b)—*New Source Performance Standards* and 391–3–1–

[13] Pursuant to CAA section 302(j), examples of these industry sectors include oil refineries, Portland cement plants, and iron and steel mills.

[14] On April 24, 2009, EPA agreed to reconsider the approach to handling fugitive emissions and granted a 3-month administrative stay of the Fugitive Emissions Rule. The administrative stay of the Fugitive Emissions Rule became effective on September 30, 2009. EPA put an additional three-month stay in place from December 31, 2009, until March 31, 2010.

[15] Georgia's previous incorporation by reference of 40 CFR 52.21 at 391–3–1–.02(7) was as of June 3, 2010, which did not include the May 18, 2011, repeal of the PM_{10} Surrogate Policy; therefore the grandfathering exclusion language at 391–3–1–.02(7)(b)(6)(i) was necessary at that time. The June 3, 2010, IBR date was approved into the Georgia SIP on September 8, 2011.

.02(9)(b)—*Emissions Standards for Hazardous Air Pollutants.* EPA has made the preliminary determination that this SIP revision, with regard to the aforementioned proposed actions, is approvable because it is consistent with section 110 of the CAA and EPA regulations regarding NSR permitting.

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 proposed 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 proposed 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 F43255, 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 proposed 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.

List of Subjects in 40 CFR Part 52

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

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

Dated: December 18, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2012–31538 Filed 12–31–12; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–R09–OAR–2012–0936; FRL–9767–4]

Designation of Areas for Air Quality Planning Purposes; California; Morongo Band of Mission Indians

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to correct an error in a previous rulemaking that revised the boundaries between nonattainment areas in Southern California established under the Clean Air Act for the purposes of addressing the revoked national ambient air quality standard for one-hour ozone. EPA is also proposing to revise the boundaries of certain Southern California air quality planning areas to designate the Indian country of the Morongo Band of Mission Indians, California (Morongo Reservation) as a separate air quality planning area for the one-hour and 1997 eight-hour ozone standards.

DATES: Written comments must be received on or before February 1, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2012–0936, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: israels.ken@epa.gov.*
3. *Fax:* 415–947–3579.
4. *Mail or deliver:* Ken Israels (Mailcode AIR–8), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through the *http://www.regulations.gov* or email; *http://www.regulations.gov* is an anonymous access system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. 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.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed directly below.

FOR FURTHER INFORMATION CONTACT: Ken Israels, Grants and Program Integration Office (AIR–8), U.S. Environmental Protection Agency, Region IX, (415) 947–4102, *israels.ken@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, the terms ''we,'' ''us,'' ''our,'' and ''Agency'' refer to EPA.

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