Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from Executive Order 12866 review.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 8, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2), 42 U.S.C. 7607(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Small business assistance program.

Note: Incorporation by reference of the Implementation Plan for the State of Washington was approved by the Director of the Office of Federal Register on July 1, 1982.

Dated: February 1, 1995.

Chuck Clarke,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart WW—Washington

2. Section 52.2470 is amended by adding paragraph (c)(45) to read as follows:

§ 52.2470 Identification of plan.

* * * * *

(c) * * *

(45) On November 16, 1992 the Director of the Washington State Department of Ecology submitted ''State Implementation Plan for the Washington State Business Assistance Program,'' adopted November 13, 1992, as a revision to the Washington SIP.

(i) Incorporation by reference.

(A) November 13, 1992 letter from the Director of the Washington State Department of Ecology submitting ''State Implementation Plan for the Washington State Business Assistance Program'' to EPA.

(B) *State Implementation Plan for the Washington State Business Assistance Program*, including Appendix B, Revised Code of Washington (RCW) 70.94.035; Appendix D, Washington Administrative Code 173–400–180; Appendix E, RCW 70.94.181; and Appendix F, Business Assistance Program Guidelines (and exluding Appendices A, C, and G), dated November 1992, and adopted November 13, 1992.

* * * * *

[FR Doc. 95–5447 Filed 3–7–95; 8:45 am]

BILLING CODE 6560–50–F

---

40 CFR Part 52

[GA–15–1–6285a; GA–21–4–6514a: FRL–5153–3]

Approval and Promulgation of Implementation Plans Georgia: Approval of Part D New Source Review (NSR) Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On December 15, 1986, and November 13, 1992, the Georgia Department of Natural Resources, Environmental Protection Division (EPD) submitted to EPA amendments to Georgia Air Quality Control Rules for Definitions and Permits. Georgia's definitions rule was amended to incorporate and adopt by reference definitions in Federal rules for application in designated nonattainment areas. Georgia's permit rule was amended to add new paragraphs to meet the requirements of the Clean Air Act (Act) as amended in 1977 and 1990. The New Source Review (NSR) revisions of the Georgia submittal fully meet the NSR requirements of the amended Act. Therefore, EPA is approving the submitted revisions.

DATES: This final rule is effective on May 8, 1995 unless adverse or critical comments are received by April 7, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: Dick Schutt, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street NE, Atlanta, Georgia 30365.

Copies of the documents relevant to this final action are available for public inspection during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Region 4 Air Programs Branch, Environmental Protection Agency, 345 Courtland Street NE, Atlanta, Georgia 30365.

Air Protection Branch, Georgia Environmental Protection Division, Georgia Department of Natural Resources, 4244 International Parkway, Suite 120, Atlanta, Georgia 30354.

FOR FURTHER INFORMATION CONTACT: Please contact Dick Schutt of the EPA Region 4 Air Programs Branch at 404–347–3555, extension 4206, and at the above address.

SUPPLEMENTARY INFORMATION: On December 15, 1986, the Georgia Department of Natural Resources (DNR) submitted changes to Chapter 391–3–1 of their rules, Rules for Air Quality Control. Among the revisions were amendments to Georgia Air Quality Control Rules 391–3–1–.01, Definitions, and 391–3–1–.03, Permits. EPA proposed to approve these revisions in the June 3, 1988 **Federal Register** document (53 FR 20347).

In response to the 1990 Clean Air Act Amendments (CAAA), the DNR submitted on November 13, 1992, additional changes to the Air Quality rules. This submittal, along with the 1986 submittal, satisfies the new source review requirements for nonattainment areas in Georgia. Georgia Rule 391–3–1–.01, Definitions, was amended to incorporate and adopt by reference the definitions contained in 40 CFR 51.165(a)(1) (i)–(xix) for application in designated nonattainment areas. The definitions contained in the Federal rules include definitions for the following: stationary source, major stationary source, potential to emit, major modification, net emissions increase, emissions unit, secondary emissions, fugitive emissions, significant, allowable emissions, actual emissions, lowest achievable emission rate, federally enforceable, begin actual construction, commence, necessary

preconstruction approvals or permits, construction, and volatile organic compounds.

Georgia Rule 391–3–1–.03(8) provides for permitting of new and modified major sources. Paragraph 1 of Georgia Rule 391–3–1–.03(8)(c) was revised to conform to the statutory language in section 173(a)(1)(A) of the Act, concerning emission offsets. Paragraphs 2 and 3 were not changed and require a proposed source to comply with the lowest achievable emission rate and to demonstrate statewide compliance under the Act by the owner or operator of the proposed source. Paragraph 4 was revised to conform to the statutory language in section 173(a)(5) by requiring an analysis of alternatives to any proposed source. Paragraph 5 was not changed and requires a finding that the State Implementation Plan (SIP) is being carried out in accordance with the requirements of part D of Title I of the Act.

Georgia Rule 391–3–1–.03(8)(c), Permits, was amended in 1986 to add six new paragraphs (paragraphs 6 to 11) to meet the requirements of 40 CFR 51.165(a)(3)(i), (3)(ii)(C)–(D), (3)(ii)(F)–(G), and (4)(i)–(xxvii). The new paragraph of 391–3–1–.03(8)(c) specified as paragraph six (6) meets the requirements of 40 CFR 51.165(a)(3)(i). Paragraph six (6) is more stringent than the latter in stating that ''the offset baseline for determining credits for emission reductions at a source is the applicable emission limit in this Chapter or the actual emissions at the time the application to construct is filed, whichever is less.'' Regulation 40 CFR 51.165(a)(3)(i) simply states that ''the baseline for determining credit for emission reductions is the emissions limit under the applicable State Implementation Plan in effect at the time the application to construct is filed, except that the offset baseline shall be the actual emissions of the source from which the offset credit is obtained * * *. In addition, paragraph six (6) incorporates the stipulation that ''creditable reductions must occur within two years prior to the filing of the permit application and the time the newly permitted source emissions commence.''

Georgia Rule 391–3–1–.03(8)(c), paragraph seven (7) specifies that in order to be used for offset credits, a ''shutdown or curtailment of production'' occurring prior to the date of the new source application must occur ''less than one year prior to the date of permit application,'' and the new source must be a replacement for the shutdown in whole or in part. Paragraph seven (7) meets the requirements of 40 CFR 51.165(a)(3)(ii)(C).

Paragraph eight (8) of Georgia Rule 391–3–1–.03(8)(c) states, ''No emission offset credit may be allowed for replacing one VOC compound with another of less reactivity.'' This paragraph is more stringent than the corresponding Federal regulation, 40 CFR 51.165(a)(3)(ii)(D), which allows for certain exceptions.

Paragraph nine (9) of Georgia Rule 391–3–1–.03(8)(c) is identical to 40 CFR 51.165(a)(3)(ii)(F), except in an apparent typographical error, paragraph nine refers to 40 CFR Part 52, Appendix S, rather than 40 CFR Part 51, Appendix S. Because there is no Appendix S to Part 52, EPA believes that a typographical error occurred and interprets the paragraph to refer to 40 CFR Part 51, Appendix S. Paragraph ten (10), although worded differently, is identical in meaning to 40 CFR 51.165(a)(3)(ii)(G). Paragraph eleven (11) is identical in meaning to 40 CFR 51.165(a)(4)(i)–(xxvii), but stated in a different manner.

Georgia Rule 391–3–1–.03(8)(c) was amended in 1992 to add two new paragraphs to meet the NSR requirements of the amended Act. Paragraph 12 was added to meet the offset requirements and paragraph 13 was added to identify additional provisions for the ozone nonattainment areas. Paragraph 12 is nearly identical to the statutory language in section 173(c) of the Act. Paragraph 13 is nearly identical to the statutory language in section 182(c), especially section 182(c)(6–8, 10), of the Act.

The 1992 submittal also deleted Georgia Rule 391–3–1.03(8)(f). The requirement in this paragraph regarding de minimis levels was incorporated in the paragraph (8)(c).

The 1986 submittal adopted the definition of ''stationary source'' which was promulgated on June 25, 1982 (47 FR 27554), by EPA. This definition excludes all vessel emissions in determining if the source is major. On January 17, 1984, the Court of Appeals for the District of Columbia Circuit overturned and remanded to EPA for further consideration the vessel emission exemption portion of EPA's new source review regulations. EPA has not yet completed its reconsideration of how vessel emissions are to be treated. However, Georgia has submitted a written statement specifying that waterways (of the appropriate depth and width) to afford passage of ships and barges are not located within the Atlanta nonattainment area, the only such area in Georgia. Therefore, EPA is approving the amendments to Georgia Rules 391–3–1–.01 and 391–3–1–.03.

The proposal (June 3, 1988 (53 FR 20347)) referenced that Georgia lacked provisions for source responsibility (40 CFR 51.165(a)(5)(ii)). The Georgia Environmental Protection Division notified EPA on February 28, 1989, that they intend to apply Georgia Rule 391–3–1-.03(8)(c) to any source which becomes a major source or undergoes modification due to a change in operation and not covered in an enforceable permit. EPA believes that this satisfies the requirement of 40 CFR 51.165(a)(5)(ii).

On October 14, 1981, the EPA revised the NSR regulations in 40 CFR Part 51 to give states the option of adopting the ''plantwide'' definition of stationary source which provides that only physical or operational changes that result in a net increase in emissions at the entire plant require a NSR permit. For example, if a plant increased emissions from one piece of process equipment but reduced emissions by the same amount at another piece of process equipment, then there would be no net increase in emissions at the plant and therefore, no ''modification'' to the ''source.'' The plantwide definition is in contrast to the so-called ''dual'' definition [or definitional structure like that in the 1979 offset ruling (44 FR 3274), which has much the same effect as the dual definition]. Under the dual definition, the emissions from each physical or operational change are gauged without regard to reductions elsewhere at the plant.

In the October 1981 **Federal Register** document, EPA set forth its rationale for allowing use of the plantwide definition (46 FR 50766–50769). In EPA's view, allowing use of the plantwide definition was a reasonable accommodation of the conflicting goals of part D of the Act. The Act provided for reasonable further progress (RFP) and timely attainment of National Ambient Air Quality Standards (NAAQS), while also allowing for maximum state flexibility and economic growth. EPA recognized that the plantwide definition would bring fewer plant modifications into the nonattainment permitting process, but emphasized that this generally would not interfere with RFP and timely attainment primarily because the states, under the demands of part D, eventually would have adequate SIPs in place. For instance, EPA stated:

> Since demonstration of attainment and maintenance of the NAAQS continues to be required, deletion of the dual definition increases State flexibility without interfering with timely attainment of the ambient standards and so is consistent with Part D [46 FR 50767 col. 2].

EPA also indicated that under the plantwide definition, new equipment would still be subjected to any applicable new source performance standard and that wholly new plants, as well as any modifications that resulted in a significant net emissions increase, would still be subject to NSR. Thus, EPA saw no significant disadvantage in the plantwide definition from the environmental standpoint, but the advantages from the standpoints of state flexibility and economic growth. It regarded the plantwide definition as presenting, at the very worst, environmental risks that were manageable because of the independent impetus to create adequate part D plans.

As a result, EPA ruled that a state wishing to adopt a plantwide definition generally has complete discretion to do so, and it set only one restriction on that discretion. If a state had specifically projected emission reductions from its NSR program as a result of a dual or similar definition and had relied on those reductions in an attainment strategy that EPA later approved, then the state needed to revise its attainment strategy as necessary to accommodate reduced NSR permitting under the plantwide definition (46 FR 50767 Col. 2 and 50769 Col. 1).

In 1984, the Supreme Court upheld EPA's action as a reasonable accommodation of the conflicting purposes of part D of the Act, and hence, well within EPA's broad discretion. *Chevron, U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.*, 104 S. Ct. 2778 (1984). Specifically, the Court agreed that the plantwide definition is fully consistent with the Act's goal of maximizing state flexibility and allowing reasonable economic growth. Likewise, the Court recognized that EPA had advanced a reasonable explanation for its conclusion that the plantwide definition serves the Act's environmental objectives as well (*see* 104 S. Ct. at 2792). EPA today generally reaffirms the rationales stated in the 1981 rulemaking. Those rationales were left undisturbed by the Supreme Court decision.

The SIP revision EPA is approving in this action substitutes a plantwide definition for a dual definition in Georgia's existing NSR program. The one nonattainment area to which this program applies (the 13-county metropolitan Atlanta area for ozone) has a part D plan previously approved by EPA, but nevertheless is still experiencing violations of the ozone NAAQS. In response to a 1984 SIP call, Georgia submitted a SIP addressing the nonattainment situation on May 22, 1985. Due to major deficiencies in the submittal EPA proposed disapproval (52 FR 26435, July 14, 1987). An updated and revised SIP was later submitted October 1, 1987. The SIP addressed many problems noted in the earlier submittal, however, a few minor problems still existed after a detailed review by EPA. In a letter to the Georgia Environmental Protection Division dated November 9, 1989, EPA identified a few remaining minor Volatile Organic Compound (VOC) Reasonably Available Control Technology (RACT) issues that had to be resolved before EPA could approve the revision. Georgia resolved these issues and they have been approved by EPA in a **Federal Register** document dated October 13, 1992 (57 FR 46780). In fact Georgia has submitted several revisions required by the amended Act prior to the attainment of the NAAQS by 1999, the statutory attainment date for serious ozone nonattainment areas. Georgia has submitted revisions for VOC and NO_X Reasonable Available Control Technology, Stage II vapor recovery, clean fuel fleet regulations and 15% VOC reduction. These revisions will be acted on in subsequent actions. The State has shown that in obtaining EPA approval of its original part D SIP it did not rely on any emission reductions from the operation of its existing NSR program. Therefore, EPA approves the switch to a plantwide definition, in accordance with its 1981 action.

Georgia's plantwide definition of source is consistent with the NSR requirements for ozone nonattainment areas in the Clean Air Act Amendments of 1990. The Atlanta area is classified as a ''serious'' ozone nonattainment area. Therefore, the attainment date for Atlanta is now 1999 (see section 181(a)), and Georgia must meet an independent requirement to reduce VOC emissions by fifteen percent in the first six years after 1990 and three percent per year thereafter (see section 182 (b) and (c)(2)(B)). While Georgia must account for the impact of its plantwide definition of source in the attainment and reasonable further progress demonstrations it submits under the 1990 Amendments, it is clear that Congress anticipated States could use the plantwide definition of source when devising such plans.

The 1990 Amendments include provisions regulating the application of the plantwide definition of source, including a special rule for serious and severe ozone nonattainment areas for determining ''de minimis'' net increases in VOC emissions from source modifications (section 182(c)(6)). It is clear that Congress anticipates states will often continue to employ EPA's plantwide definition of source in ozone nonattainment areas (except in extreme areas, see section 182(e)(2)), provided the states can also meet the new reasonable further progress requirements in the Act. In addition, it is important to note that the 1990 Amendments' adoption of new future attainment deadlines for ozone has mooted concerns regarding the approvability of a plantwide source definition where a state has additional time to submit a revised SIP to provide for attainment by the revised deadline. As described above, Georgia has already begun to meet its obligations under the 1990 Amendments.

All of the amendments to Georgia Rules 391–3–1–.01 and 391–3–1–.03 are identical to or more stringent than corresponding federal regulations. Therefore, they will adequately protect the NAAQS and meet all requirements of the Act.

Public Comments

EPA received comments on the proposed approval of these SIP revisions from two sources. Both commenters questioned approval of the ''plantwide'' new source definition for nonattainment areas without an approved plan.

Response to Comments

As discussed earlier in this document, Georgia's submission, including the plantwide source definition, meets all applicable Federal regulations and policies. Further, the 1990 Amendments accommodate a plantwide definition of source and provide revised attainment deadlines. Finally, the State's previous attainment demonstration did not rely on NSR reductions from the dual source definition, and Georgia is making reasonable efforts to develop a complete and approvable ozone SIP in accordance with the 1990 Amendments. Therefore, EPA is approving this SIP revision.

Final Action

EPA is approving the aforementioned amendments to the Georgia rules submitted on December 15, 1986, and November 13, 1992.

EPA is publishing this action without prior proposal because the Agency views these as noncontroversial amendments and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revisions should adverse or critical comments be filed. This action will be effective on May 8, 1995 unless, by April 7, 1995 adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on May 8, 1995.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 8, 1995. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

The OMB has exempted these actions from review under Executive Order 12866.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action.

The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. Environmental Protection Agency et al,* 96 S.Ct. 2518 (1976); 42 U.S.C. 7410(a)(2) and 7410(k).

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: February 6, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart L—Georgia

2. Section 52.570 is amended by adding paragraph (c)(39) to read as follows:

§ 52.570 Identification of plan.

* * * * *

(c) * * *

(39) On December 15, 1986, and November 13, 1992, the Georgia Department of Natural Resources, Environmental Protection Division submitted regulations for Part D New Source Review.

(i) Incorporation by reference. Revisions to the following Rules of Georgia Department of Natural Resources, Environmental Protection Division, effective November 22, 1992:

(A) 391–3–1–.01 introductory paragraph

(B) 391–3–1–.03(8)(c)

(ii) Other material. Letter dated February 28, 1989, from the Georgia Department of Natural Resources, page 3 regarding change in operation of a source.

* * * * *

[FR Doc. 95–5441 Filed 3–7–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[AR–3–1–5727a; FRL–5155–8]

Clean Air Act Approval and Promulgation of Title V, Section 507, Small Business Stationary Source Technical and Environmental Compliance Assistance Program for Arkansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving the State Implementation Plan (SIP) revision submitted by the State of Arkansas for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program. The SIP revision was submitted by the State to satisfy the Federal mandate, found in the Clean Air Act (CAA), to ensure that small businesses have access to the technical assistance and regulatory information necessary to comply with the CAA. The rationale for the approval is set forth in this document; additional information is available at the address indicated in the **ADDRESSES** section.

DATES: This final rule will become effective on May 8, 1995, unless adverse or critical comments are received by April 7, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas Diggs, Chief (6T–AP), Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–AP), 1445 Ross Avenue, suite 700, Dallas, Texas 75202–2733.

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Arkansas Department of Pollution Control and Ecology, Division of Air Pollution Control, 8001 National Drive, Little Rock, Arkansas 72209.

FOR FURTHER INFORMATION CONTACT: Dr. John Crocker, Planning Section (6T–AP), Air Programs Branch, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7596.

SUPPLEMENTARY INFORMATION:

I. Background

Implementation of the provisions of the CAA, as amended in 1990, will require regulation of many small businesses so that areas may attain and maintain the National Ambient Air Quality Standards (NAAQS) and reduce the emissions of air toxics. Small businesses frequently lack the technical expertise and financial resources