

**SYNOPSIS OF  
THE PROPOSED AMENDMENTS TO THE RULES OF THE  
DEPARTMENT OF NATURAL RESOURCES  
ENVIRONMENTAL PROTECTION DIVISION  
RELATING TO AIR QUALITY, CHAPTER 391-3-1**

**Rule 391-3-1-.02(7), “Prevention of Significant Deterioration of Air Quality,”** is being amended.

**Purpose:** This rule is being revised to incorporate Prevention of Significant Deterioration (PSD) provisions for fine particulate matter, as promulgated by U.S. EPA on May 16, 2008; the Greenhouse Gas Tailoring Rule, as promulgated by U.S. EPA on June 3, 2010; and various minor changes necessary to reflect revisions made by U.S., EPA and federal court decisions over the past several years. This rule is also being revised to include the effective date of the provisions of 40 CFR Part 52.21 where they are incorporated by reference.

**Main Features:** Amendment dates have been added to all provisions that incorporate portions of the federal rule into the Georgia rule by reference. Changes that incorporate the PSD provisions for fine particulate matter are included in subparagraph 391-3-1-.02(7)(a)2., “Definitions” and subparagraph 391-3-1-.02(7)(b)6., “Exemptions.” Changes that incorporate the Greenhouse Gas Tailoring Rule are included in subparagraph 391-3-1-.02(7)(a)2., “Definitions.” Due to the legal and political uncertainty regarding the Greenhouse Gas Tailoring Rule provisions, language has been included in the rule to make clear that regulation of greenhouse gases under the PSD permitting program in Georgia shall cease if it ceases at the federal level.

**Rule 391-3-1-.03(10), “Title V Operating Permits,”** is being amended.

**Purpose:** This rule is being revised to incorporate the Greenhouse Gas Tailoring Rule, as promulgated by U.S. EPA on June 3, 2010. This rule is also being revised to include effective dates of the provisions of 40 CFR Part 70 where they are incorporated by reference.

**Main Features:** Promulgation or amendment dates have been added to all provisions that incorporate the federal rule into the Georgia rule by reference. The revision to 391-3-1-.03(10)(a)4. incorporates the requirements of the Greenhouse Gas Tailoring Rule, which are located in 40 CFR Part 70.2. Due to the legal and political uncertainty regarding the Greenhouse Gas Tailoring Rule provisions, language has been included in the rule to make clear that regulation of greenhouse gases under the Title V permitting program in Georgia shall cease if it ceases at the federal level.

**STATEMENT OF RATIONALE**  
**Rules for Air Quality Control**

**Rule 391-3-1-.02(7) Prevention of Significant Deterioration of Air Quality**

The purpose of this revision is to reference the most recent version of 40 CFR Part 52.21 which includes revisions to Part 52.21(b) to incorporate the federal Greenhouse Gas Tailoring Rule and revisions to Part 52.21(b) and (i) to incorporate the federal Prevention of Significant Deterioration (PSD) provisions for fine particulate matter.

This revision is administrative in nature and is in no way any more restrictive than the federal requirements. Certain segments of the regulated industry will incur permitting requirements for greenhouse gases and fine particulate matter. The main element of this rule revision is the incorporation of the federal Greenhouse Gas Tailoring Rule emission thresholds for greenhouse gases. This rule revision is necessary due to actions taken by the federal government that triggered the requirements to regulate greenhouse gas emissions from stationary sources.

On December 15, 2009, U.S. EPA published in the Federal Register (74 FR 66496) their final action on two distinct findings regarding greenhouse gases under Section 202(a) of the Clean Air Act. In the "Endangerment Finding," U.S. EPA found that elevated concentrations of six greenhouse gases constitute air pollution endangering public health and welfare. In the "Cause or Contribute Finding," U.S. EPA found that four of these greenhouse gases that are emitted by new light-duty motor vehicles cause or contribute to this air pollution. According to U.S. EPA, these findings required them to adopt greenhouse gas emissions regulations for new light-duty motor vehicles.

On May 7, 2010, U.S. EPA published in the Federal Register (75 FR 25324) their final rule regulating greenhouse gas emissions from new light-duty motor vehicles. In a separate action, U.S. EPA stated that this standard takes effect on January 2, 2011. According to U.S. EPA, the national regulation of greenhouse gas emissions from light-duty vehicles makes greenhouse gases regulated air pollutants under the PSD and Title V permit programs. Therefore, greenhouse gases will become subject to regulation at stationary sources as of January 2, 2011.

Because U.S. EPA interpreted the Clean Air Act such that the Endangerment Finding required them to adopt greenhouse gas regulations on light-duty vehicles and because they interpreted the Clean Air Act such that the stationary source permitting requirements are automatically triggered as a matter of law once the light-duty vehicle rule takes effect, U.S. EPA did not calculate the cost to regulated industry or to the state permitting authorities as a result of those requirements being triggered when U.S. EPA finalized the light-duty vehicle rule. As discussed further below, U.S. EPA did calculate the amount of regulatory costs avoided as a result of the Greenhouse Gas Tailoring Rule. Therefore, this information can be used to approximate the total impact to the regulated industry and state permitting authorities as a result of the Endangerment Finding and the light-duty vehicle rule as well as the additional costs that remain upon the regulated industry and state permitting authorities after the Greenhouse Gas Tailoring Rule thresholds are implemented.

The Clean Air Act states that the applicability threshold for PSD permits is 100 or 250 (depending upon the source type) tons per year and that the applicability threshold for Title V permits is 100 tons per year. These thresholds work for traditional air pollutants such as sulfur dioxide or particulate matter. However, greenhouse gas emissions such as carbon dioxide are emitted in much higher quantities than sulfur dioxide or particulate matter. Therefore, according to U.S. EPA, about six million additional sources nationally would be subject to the Title V permitting program (currently there are about 15,000 sources under this program nationally) and about 20,000 additional sources nationally would be subject to the PSD permitting program (currently there are about 280 such projects annually in the nation) at a cost of about \$55 billion to the regulated industry and \$22 billion to state permitting authorities.

In order to avoid regulatory gridlock created by the submission of more applications than the regulatory agency could possibly handle, as well as the imposition of costly permitting requirements on very small sources, U.S. EPA adopted the Greenhouse Gas Tailoring Rule. This final rule was published in the Federal Register on June 3, 2010 (75 FR 31514). This rule raises the permitting thresholds for greenhouse gases by adopting a definition for the previously undefined term "subject to regulation" which states that greenhouse gas emissions are not "subject to regulation" below the thresholds in the rule.

The thresholds are phased in over time in two steps. In addition, U.S. EPA has committed to continue to evaluate the appropriateness of these thresholds and may go through rulemaking in the future, effective no earlier than 2013, to lower the thresholds closer to the statutory levels.

During Step 1, which would go from January 2, 2011, until July 1, 2011, sources subject to PSD "anyway" will be required to install Best Available Control Technology for greenhouse gases if the project increases emissions by 75,000 tons per year or more.

During Step 2, which would begin on July 1, 2011 and continue until U.S. EPA finalizes additional rulemaking revising these thresholds, new sources with greenhouse gases of 100,000 tons per year or more and existing sources that increase emissions by 75,000 tons per year or more would be subject to PSD. New Title V sources must submit applications within 1 year of becoming a major source. Therefore, the application deadline would be July 1, 2012, for 100,000 ton-per-year existing sources that are not currently Title V sources and one year after commencement of operation for new major Title V sources.

With the Tailoring rule thresholds in place, the combined impact of the PSD and Title V permitting requirements to state permitting authorities drops down to \$36 million nationally. This amount reflects a 42% increase in cost (direct costs only) over the current program. In addition to the direct administrative burdens calculated by U.S. EPA, permitting authorities will incur other burdens, including significant support and outreach activities by permitting and public affairs staff for the many newly regulated sources as well as increased compliance activity by state environmental agencies. The remaining impact to regulated industry was more difficult to calculate because U.S. EPA did not calculate it directly. However, U.S. EPA's estimated administrative costs to industry are approximately 2.5 times greater than the administrative costs to the state permitting authorities. Therefore, the additional cost to industry, with the Tailoring rule thresholds in place, are approximately \$90 million nationally (this does not include the cost of additional air pollution controls or additional compliance costs). As described above, the costs without the Tailoring rule on regulated industry and state permitting authorities are \$55 billion and \$22 billion, respectively.

U.S. EPA has stated that they will conduct additional rulemakings to evaluate the feasibility of lowering these thresholds further. However, EPA has stated that the earliest that these lower thresholds would be implemented is July 1, 2013, and in the absence of completed rulemaking the thresholds in Step 2 will remain in effect.

The U.S. EPA has put Georgia EPD, and other state permitting authorities, in a very difficult situation. The light-duty vehicle rule automatically triggered the regulation of greenhouse gases at stationary sources. Therefore, at this point, there are three basic paths that this situation could take.

1. If a state takes action to prohibit the regulation of greenhouse gases within the state, U.S. EPA will take over the permitting program for greenhouse gases from the state (and has already proposed to do so for about a dozen states). In the meantime, regulatory gridlock and uncertainty will likely occur. Once U.S. EPA begins to implement the permitting program, it will likely take much longer for U.S. EPA to process the permits than when the states were doing it.
2. If a state that has the authority to regulate greenhouse gases does not implement the Tailoring Rule thresholds, U.S. EPA will likely disapprove the portion of the State Implementation Plan (SIP) that allows greenhouse gases to be regulated below the Tailoring Rule thresholds. In the meantime, regulatory gridlock and uncertainty will likely occur. Once U.S. EPA takes final action on the SIP, there will still be uncertainty as to the regulated emission thresholds for greenhouse gases under state law.
3. If a state adopts the Tailoring Rule thresholds into its own rules and submits a SIP revision to U.S. EPA requesting approval as part of its federally-approved plan, then the negative results described above in possible path #1 and possible path #2 will not occur. The state, and regulated industry, will still experience significant costs to implement the requirements. However, the costs to regulated industry and the amount of regulatory uncertainty are less under this path than the other paths. Therefore, Georgia EPD has proposed pursuing this path to incorporate the Tailoring Rule thresholds into our rules and to submit a SIP revision to U.S. EPA requesting approval as part of our federally-approved plan.

In conclusion, the costs imposed by regulating greenhouse gases under this proposed rule change are no more than that of the federal rule. And, the provisions of the Greenhouse Gas Tailoring Rule will provide cost savings and increased regulatory certainty to the regulated industry compared to the expected costs and lack of regulatory certainty that would result from not adopting the federal Greenhouse Gas Tailoring Rule. No direct costs will be imposed on local governments or the general public.

Due to the legal and political uncertainty regarding the Greenhouse Gas Tailoring Rule provisions, language has been included in the rule to make clear that regulation of greenhouse gases under the PSD permitting program in Georgia shall cease if it ceases at the federal level.

**Rule 391-3-1-.03(10) Title V Operating Permits**

The purpose of this revision is to reference the most recent versions of the various sections of 40 CFR Part 70 which includes revisions to Part 70.2 to incorporate the federal Greenhouse Gas Tailoring Rule.

The background and cost information on this rule is included above in the section on the Prevention of Significant Deterioration of Air Quality proposed rule change.

In conclusion, the costs imposed by regulating greenhouse gases under this proposed rule change are no more than that of the federal rule. And, the provisions of the Greenhouse Gas Tailoring Rule will provide cost savings and increased regulatory certainty to the regulated industry compared to the expected costs and lack of regulatory certainty that would result from not adopting the federal Greenhouse Gas Tailoring Rule. No direct costs will be imposed on local governments or the general public.

Due to the legal and political uncertainty regarding the Greenhouse Gas Tailoring Rule provisions, language has been included in the rule to make clear that regulation of greenhouse gases under the Title V permitting program in Georgia shall cease if it ceases at the federal level.