

**PART 62—[AMENDED]**

■ 1. The authority citation for part 62 continues to read as follows:

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

**Subpart I—Delaware**

■ 2. Section 62.1975 is amended by revising the section heading, designating the existing paragraph as (a) and adding paragraph (b) to read as follows:

**§ 62.1975 Identification of plan—negative declaration.**

\* \* \* \* \*

(b) On June 17, 2010, the Delaware Department of Natural Resources and Environmental Control submitted a negative declaration and request for withdrawal of EPA's plan approval under paragraph (a) of this section.

**§ 62.1976 [Removed]**

■ 3. Section 62.1976 is removed.

■ 4. Section 62.1977 is revised to read as follows:

**§ 62.1977 Effective date.**

The effective date of the negative declaration and EPA withdrawal of the plan approval is January 31, 2011.

[FR Doc. 2010–30102 Filed 11–29–10; 8:45 am]

**BILLING CODE 6560–50–P**

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 81**

[EPA–R04–OAR–2010–0614–201055; FRL–9234–2]

**Approval and Promulgation of Implementation Plans; Extension of Attainment Date for the Atlanta, GA 1997 8-Hour Ozone Moderate Nonattainment Area**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to approve a request from the State of Georgia, through the Georgia Department of Natural Resources' Environmental Protection Division (EPD), to grant a one-year extension of the attainment date for the 1997 8-hour ozone national ambient air quality standards (NAAQS) for the Atlanta, Georgia Area (hereafter referred to as the "Atlanta Area"). This request was sent to EPA via letter from EPD on June 9, 2010. The Atlanta Area consists of Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry,

Newton, Paulding, Rockdale, Spalding, and Walton Counties in Georgia. In today's action, EPA is finalizing a determination that the State of Georgia has met the Clean Air Act (CAA or Act) requirements to obtain a one-year extension to its attainment date for the 1997 8-hour ozone NAAQS for the Atlanta Area. As a result, EPA is approving a one-year extension of the 1997 8-hour ozone moderate attainment date for the Atlanta Area. Specifically, EPA (through this final action) is extending the Atlanta Area's attainment date from June 15, 2010, to June 15, 2011.

**DATES:** *Effective Date:* This rule will be effective December 30, 2010.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2010–0614. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section 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:** Ms. Jane Spann or Ms. Sara Waterson, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number for Ms. Spann is (404) 562–9029. Ms. Spann can also be reached via electronic mail at [spann.jane@epa.gov](mailto:spann.jane@epa.gov). The telephone number for Ms. Waterson is (404) 562–9061. Ms. Waterson can also be reached via electronic mail at [waterson.sara@epa.gov](mailto:waterson.sara@epa.gov).

**SUPPLEMENTARY INFORMATION:**

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**I. Background**

Detailed background information and rationale for today's final action can be found in EPA's proposed rule entitled "Approval and Promulgation of Implementation Plans; Extension of Attainment Date for the Atlanta, GA 1997 8-Hour Ozone Moderate Nonattainment Area," 75 FR 56943 (September 17, 2010). The comment period for EPA's proposed action closed on October 18, 2010. EPA did not receive any comments, adverse or otherwise, on its proposed action to extend the attainment date for the Atlanta 1997 8-hour ozone area. This section includes a brief summary of the background information and rationale for EPA's approval of Georgia's one-year extension request.

Section 181(b)(2)(A) requires the Administrator, within six months of the attainment date, to determine whether an ozone nonattainment area attained the NAAQS. CAA section 181(b)(2)(A) states that, for areas classified as marginal, moderate, or serious, if the Administrator determines that the area did not attain the standard by its attainment date, the area must be reclassified to the next classification. However, in accordance with CAA Section 181(a)(5), EPA may grant up to 2 one-year extensions of the attainment date under specified conditions. Specifically, in relevant part, Section 181(a)(5) states:

"Upon application by any State, the Administrator may extend for one additional year (hereinafter referred to as the "Extension Year") the date specified in table 1 of paragraph (1) of this subsection if—

(A) the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan, and

(B) no more than 1 exceedance of the national ambient air quality standard level for ozone has occurred in the area in the year preceding the Extension Year.

With regard to the first element, "applicable implementation plan" is defined in Section 302(q) of the CAA as, the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under Section 110, or promulgated under Section 110(c), or promulgated or approved pursuant to regulations promulgated under Section 301(d) and which implements the relevant requirements of the CAA.

The language in section 181(a)(5)(B) reflects the form of the 1-hour ozone NAAQS, which is exceedance based and does not reflect the 1997 8-hour ozone NAAQS, which is concentration based. Because section 181(a)(5)(B) does not reflect the form of the 8-hour NAAQS and application would produce an absurd result, EPA interprets this provision in a manner consistent with Congressional intent but reflecting the form of the 1997 8-hour NAAQS. Therefore, EPA adopted an interpretation that under both section 172(a)(2)(C) and 181(a)(5), an area will be eligible for the first of the one-year extensions under the 8-hour NAAQS if, for the attainment year, the area's 4th highest daily 8-hour average is 0.084 ppm or less. The area will be eligible for the second extension if the area's 4th highest daily 8-hour value averaged over both the original attainment year and the first extension year is 0.084 ppm or less. No more than 2 one-year extensions may be issued for a single nonattainment area.

EPA interprets the CAA and implementing regulations to allow the granting of a one-year extension under the following minimum conditions: (1) The State requests a one-year extension; (2) all requirements and commitments in the EPA-approved SIP for the area have been complied with; and (3) the area has a 4th highest daily 8-hour average of 0.084 ppm or less for the attainment year (or an area's 4th highest daily 8-hour value averaged over both the original attainment year and the first extension year is 0.084 ppm or less, if a second one-year extension is requested). Because the Atlanta Area attainment date was June 15, 2010, the "attainment year" used for this purpose is the 2009 ozone season. The Georgia ozone season runs from March 1 to October 31 of any given year.

## II. Today's Action

EPA has determined that Georgia has met the CAA requirements to obtain a one-year extension of the attainment date for the 1997 8-hour ozone NAAQS for the Atlanta Area. As a result, EPA is taking final action to extend the Atlanta Area's attainment date from June 15, 2010, to June 15, 2011, for the 1997 8-hour ozone NAAQS. Specifically, EPA has determined that Georgia is in compliance with the requirements and commitments associated with the EPA-approved implementation plan, and that the 4th highest daily 8-hour ozone average concentration for 2009 for the Atlanta Area is below the 1997 8-hour ozone NAAQS as required by the CAA. EPA has reviewed the 1997 8-hour ozone NAAQS ambient air quality

monitoring data for the Atlanta Area, consistent with the requirements contained in 40 CFR part 50 and as recorded in the EPA Air Quality System database. On the basis of that review, EPA has concluded that for the attainment year, 2009, the Atlanta Area's 4th highest daily 8-hour average concentration was 0.077 ppm which is below the 8-hour ozone NAAQS of 0.084 ppm (effectively 0.084 ppm). This final action is based upon complete, quality assured, quality controlled, and certified ambient air monitoring data for 2009. As provided in 40 CFR 51.907, this final action extends, by one year, the deadline by which the Atlanta Area must attain the 1997 8-hour ozone NAAQS. It also extends the timeframe by which EPA must make an attainment determination for the area.

EPA notes that this final action only relates to the initial one-year extension. As described in Section 181(a)(5) of the CAA, areas may qualify for up to 2 one-year extensions. If requested at a future date, EPA will make a determination of the appropriateness of a second one-year extension for the Atlanta Area for the 1997 8-hour ozone NAAQS in a separate rulemaking.

## III. Final Action

EPA is taking final action to approve Georgia's June 9, 2010, request for EPA to grant a one-year extension (from June 15, 2010, to June 15, 2011) of the Atlanta Area attainment date for the 1997 8-hour ozone NAAQS. EPA has determined that Georgia has met the statutory requirements for such an extension.

## IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission or request from the states that comply with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing the state's request for an extension of the 1997 8-hour ozone NAAQS attainment date for the Atlanta Area, EPA's role is to approve state's request, provided that they meet the criteria of the CAA. Accordingly, this action merely approves a state's request for an extension of the 1997 8-hour ozone NAAQS attainment date as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this

action must be filed in the United States Court of Appeals for the appropriate circuit by January 31, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 81**

Environmental protection, Air pollution control.

Dated: November 17, 2010.

**Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

■ 40 CFR part 81 is amended as follows:

**PART 81—[AMENDED]**

■ 1. The authority citation for part 81 continues to read as follows:

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

■ 2. In § 81.311, the table entitled “Georgia—Ozone (8-Hour Standard)” is

**GEORGIA—OZONE (8-HOUR STANDARD)**

amended under “Atlanta, GA” by revising the entries for “Barrow County,” “Bartow County,” “Carroll County,” “Cherokee County,” “Clayton County,” “Cobb County,” “Coweta County,” “DeKalb County,” “Douglas County,” “Fayette County,” “Forsyth County,” “Fulton County,” “Gwinnett County,” “Hall County,” “Henry County,” “Newton County,” “Paulding County,” “Rockdale County,” “Spalding County,” and “Walton County” to read as follows:

**§ 81.311 Georgia.**

\* \* \* \* \*

Designated	Designation <sup>a</sup>		Category/classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
Atlanta, GA:				
Barrow County .....	This action is effective November 30, 2010 .....	Nonattainment .....	April 7, 2008 .....	Subpart 2/Moderate <sup>4</sup> .
Bartow County .....	This action is effective November 30, 2010 .....	Nonattainment .....	April 7, 2008 .....	Subpart 2/Moderate <sup>4</sup> .
Carroll County .....	This action is effective November 30, 2010 .....	Nonattainment .....	April 7, 2008 .....	Subpart 2/Moderate <sup>4</sup> .
Cherokee County .....	This action is effective November 30, 2010 .....	Nonattainment .....	April 7, 2008 .....	Subpart 2/Moderate <sup>4</sup> .
Clayton County .....	This action is effective November 30, 2010 .....	Nonattainment .....	April 7, 2008 .....	Subpart 2/Moderate <sup>4</sup> .
Cobb County .....	This action is effective November 30, 2010 .....	Nonattainment .....	April 7, 2008 .....	Subpart 2/Moderate <sup>4</sup> .
Coweta County .....	This action is effective November 30, 2010 .....	Nonattainment .....	April 7, 2008 .....	Subpart 2/Moderate <sup>4</sup> .
DeKalb County .....	This action is effective November 30, 2010 .....	Nonattainment .....	April 7, 2008 .....	Subpart 2/Moderate <sup>4</sup> .
Douglas County .....	This action is effective November 30, 2010 .....	Nonattainment .....	April 7, 2008 .....	Subpart 2/Moderate <sup>4</sup> .
Fayette County .....	This action is effective November 30, 2010 .....	Nonattainment .....	April 7, 2008 .....	Subpart 2/Moderate <sup>4</sup> .
Forsyth County .....	This action is effective November 30, 2010 .....	Nonattainment .....	April 7, 2008 .....	Subpart 2/Moderate <sup>4</sup> .
Fulton County .....	This action is effective November 30, 2010 .....	Nonattainment .....	April 7, 2008 .....	Subpart 2/Moderate <sup>4</sup> .
Gwinnett County .....	This action is effective November 30, 2010 .....	Nonattainment .....	April 7, 2008 .....	Subpart 2/Moderate <sup>4</sup> .
Hall County .....	This action is effective November 30, 2010 .....	Nonattainment .....	April 7, 2008 .....	Subpart 2/Moderate <sup>4</sup> .
Henry County .....	This action is effective November 30, 2010 .....	Nonattainment .....	April 7, 2008 .....	Subpart 2/Moderate <sup>4</sup> .
Newton County .....	This action is effective November 30, 2010 .....	Nonattainment .....	April 7, 2008 .....	Subpart 2/Moderate <sup>4</sup> .
Paulding County .....	This action is effective November 30, 2010 .....	Nonattainment .....	April 7, 2008 .....	Subpart 2/Moderate <sup>4</sup> .
Rockdale County .....	This action is effective November 30, 2010 .....	Nonattainment .....	April 7, 2008 .....	Subpart 2/Moderate <sup>4</sup> .
Spalding County .....	This action is effective November 30, 2010 .....	Nonattainment .....	April 7, 2008 .....	Subpart 2/Moderate <sup>4</sup> .
Walton County .....	This action is effective November 30, 2010 .....	Nonattainment .....	April 7, 2008 .....	Subpart 2/Moderate <sup>4</sup> .
* .....	* .....	* .....	* .....	* .....

<sup>a</sup> Includes Indian Country located in each county or area, except as otherwise specified.  
<sup>1</sup> This date is June 15, 2004, unless otherwise noted.  
<sup>2</sup> Effective April 15, 2008.  
<sup>3</sup> The boundary change is effective October 13, 2006.  
<sup>4</sup> Attainment date extended to June 15, 2011.

\* \* \* \* \*

[FR Doc. 2010-30104 Filed 11-29-10; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 261**

[EPA-R06-RCRA-2009-0312; SW FRL-9231-3]

**Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Removal of Direct Final Exclusion****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Removal of Direct Final Exclusion.**SUMMARY:** Because EPA received adverse comment, we are removing the direct final exclusion for Eastman Chemical Company—Texas Operations, published on September 24, 2010.**DATES:** Effective November 30, 2010.**FOR FURTHER INFORMATION CONTACT:** Michelle Peace, Environmental Protection Agency, Multimedia Planning and Permitting Division, RCRA Branch, Mail Code: 6PD-C, 1445 Ross Avenue, Dallas, TX 75202, by calling (214) 665-7430 or by e-mail at [peace.michelle@epa.gov](mailto:peace.michelle@epa.gov).**SUPPLEMENTARY INFORMATION:** Because EPA received adverse comment, we are removing the direct final exclusion for Eastman Chemical Company—Texas Operations, published on September 24, 2010, 75 FR 58315. We stated in that direct final rule that if we received adverse comment by October 25, 2010, the direct final rule would not take effect and we would publish a timely removal in the **Federal Register**. We subsequently received adverse comment on that direct final rule. We will address the comments submitted in a subsequent final action which will be based on the parallel proposed rule also published on September 24, 2010, 75 FR 58346. As stated in the direct final rule and the parallel proposed rule, we will not institute a second comment period on this action.**Lists of Subjects in 40 CFR Part 261**

Environmental Protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

**Authority:** Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: November 16, 2010.

**Bill Luthans,***Acting Director, Multimedia Planning and Permitting Division.*

■ 40 CFR part 261 is amended as follows:

**PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE**

■ 1. The authority citation for part 261 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

■ 2. In Tables 1, 2 and 3 of Appendix IX of part 261 remove the following facility's waste streams: for Facility: Eastman Chemical Company—Texas Operations, Address: Longview, TX; Waste Description: RKI bottom ash, RKI fly ash and RKI scrubber water blowdown.

[FR Doc. 2010-30109 Filed 11-29-10; 8:45 am]

BILLING CODE 6560-50-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Centers for Medicare & Medicaid Services****42 CFR Parts 433, 447, and 457**

[CMS-2361-F]

RIN 0938-AQ40

**Medicaid Program; Cost Limit for Providers Operated by Units of Government and Provisions To Ensure the Integrity of Federal-State Financial Partnership****AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.**ACTION:** Final rule; implementation of court orders.**SUMMARY:** This final rule amends Medicaid regulations to conform with the decision by the United States District Court for the District of Columbia on May 23, 2008 in *Alameda County Medical Center, et al. v. Michael O. Leavitt, Secretary, U.S. Department of Health and Human Services, et al.*, 559 F. Supp. 2d (2008) that vacated a final rule with comment period published in the **Federal Register** in May 29, 2007. This regulatory action takes ministerial steps to remove the vacated provisions from the Code of Federal Regulations and reinstate the prior regulatory language impacted by the May 29, 2007 final rule with comment period.**DATES:** *Effective Date:* This regulation is effective immediately on date of publication November 30, 2010.**FOR FURTHER INFORMATION CONTACT:** Rob Weaver, (410) 786-5914.**SUPPLEMENTARY INFORMATION:****I. Background****A. Introduction**

Title XIX of the Social Security Act (the Act) authorizes Federal grants to States for Medicaid programs that provide medical assistance to low-income families, the elderly and persons with disabilities. Each State administers the Medicaid program in accordance with an approved Medicaid State plan. States have considerable flexibility in designing their programs, but must comply with Federal requirements specified in the Medicaid statute, regulations, and program guidance. Sections 1902(a)(2), 1903(a), and 1905(b) of the Act set forth requirements that describe how the responsibility to fund the Medicaid program will be shared between the Federal and State governments. Section 1905(b) of the Act delineates a percentage referred to as the Federal medical assistance percentage (FMAP) that determines on a State-by-State basis the Federal and non-Federal share of program expenditures. Section 1903(a) of the Act requires Federal reimbursement to the State of the Federal share. Section 1902(a)(2) of the Act and implementing regulations at 42 CFR 433.50(a)(1) permit a State to delegate some responsibility for the non-Federal share of medical assistance expenditures to local units of government sources under some circumstances.

The U.S. Troop Readiness, Veterans Care, Katrina Recovery and Iraq Accountability Appropriations Act of 2007 prohibited the Secretary of Health and Human Services from finalizing or otherwise implement the provisions contained in a proposed rule published on January 18, 2007, titled "Medicaid Program; Cost Limit for Providers Operated by Units of Government and Provisions To Ensure the Integrity of Federal-State Financial Partnership" (72 FR 2236 through 2248).

**B. Final Rule With Comment Period Published May 29, 2007**

On May 29, 2007, the Department of Human and Human Services (DHHS) published a final rule with comment period titled, "Medicaid Program; Cost Limit for Providers Operated by Units of Government and Provisions To Ensure the Integrity of Federal-State Financial Partnership" in the **Federal Register** (72 FR 29747 through 29836).

That final rule eliminated, modified, or implemented regulatory requirements pertaining to the financial relationship