

Education, 400 Maryland Avenue SW, Washington, DC 20202–6244; or

(3) If it emails the hearing request, send it to *Impact.Aid@ed.gov*.

Note to paragraph (a): The Secretary encourages applicants requesting an IAP hearing to email their requests. Because of enhanced security procedures, building access for non-official staff may be limited. Applicants should be prepared to mail or email their hearing requests if they or their courier is unable to obtain access to the building.

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■ 17. Revise § 222.154 to read as follows:

§ 222.154 How must written submissions under this subpart be filed?

(a) All written submissions under this part must be filed by hand-delivery, mail, email, or the electronic filing system maintained by the Office of Hearings and Appeals.

(b) If agreed upon by the parties, a party may serve a document upon the other party by email or the electronic filing system maintained by the Office of Hearings and Appeals.

(c) The filing date for a written submission under this subpart is the date the document is

- (1) Hand-delivered; or
- (2) Mailed; or
- (3) Emailed; or

(4) Filed with the electronic filing system maintained by the Office of Hearings and Appeals.

(d) A party filing by email is responsible for confirming that a complete and legible copy of the document was timely received by the administrative law judge.

■ 18. Section 222.155 is revised to read as follows:

§ 222.155 When and where is an administrative hearing held?

Administrative hearings under this subpart are held at the offices of the Department in Washington, DC, at a time fixed by the administrative law judge, unless the administrative law judge selects another place based upon the convenience of the parties. Administrative hearings may also be held by telephone or video conference at the discretion of the administrative law judge.

■ 19. Amend § 222.165 by revising paragraphs (c) and (f) to read as follows:

§ 222.165 What procedures does the Secretary follow after making a determination under section 7009?

* * * * *

(c) *Time and place of hearing.* The hearing is held at a time and place fixed by the Secretary or the Secretary's

delegate (with due regard to the mutual convenience of the parties).

Administrative hearings may also be held by telephone or video conference at the discretion of the administrative law judge.

* * * * *

(f) *Filing requirements.* (1) Any written submission under this section must be filed by hand-delivery, mail, email, or the electronic filing system maintained by the Office of Hearings and Appeals.

(2) If agreed upon by the parties, service of a document may be made upon the other party by mail, email or the electronic filing system maintained by the Office of Hearings and Appeals.

(3) The filing date for a written submission under this section is the date the document is

- (i) Hand-delivered; or
- (ii) Mailed; or
- (iii) Emailed; or
- (iv) Filed with the electronic filing

system maintained by the Office of Hearings and firming that a complete and legible copy of the document was received by the Department.

(4) A party filing by email is responsible for confirming that a complete and legible copy of the document was received by the Department.

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[FR Doc. 2026–20687 Filed 10–7–26; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2024–0626; FRL–12934–02–R4]

Air Plan Approval; GA; Removal of Nonattainment Area New Source Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA or Agency) is approving a State Implementation Plan (SIP) revision submitted by the State of Georgia through the Georgia Environmental Protection Division (EPD) on June 27, 2024. The revision removes permitting requirements related to nonattainment, including nonattainment new source review (NNSR), from Georgia's SIP as obsolete, removes certain provisions related to the use of emission reduction credits (ERCs), and makes other changes based

upon the lack of any areas designated as nonattainment for the National Ambient Air Quality Standards (NAAQS) in Georgia. The EPA is approving these changes pursuant to the Clean Air Act (CAA or Act).

DATES: This rule is effective November 9, 2026.

ADDRESSES: The EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2024–0626. All documents in the docket are listed on the *regulations.gov* website. Although listed in the index, some information may not be 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 *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The 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 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Nelsha Athauda, Multi-Air Pollutant Coordination Section, Air Planning and Implementation Branch, Air and Radiation Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9360. Ms. Athauda can also be reached via electronic mail at *athauda.nelsha@epa.gov*.

SUPPLEMENTARY INFORMATION: The EPA uses multiple abbreviations and terms in this final rule. While this list may not be exhaustive, for ease of reading and for reference purposes, the EPA defines the following terms and acronyms here:

CAA Clean Air Act
 CFR Code of Federal Regulations
 DC District of Columbia
 EGU Electrical Generating Units
 EPA Environmental Protection Agency
 EPD Georgia Environmental Protection Division
 ERCs Emission Reduction Credits
 FR Federal Register
 NAAQS National Ambient Air Quality Standards
 NNSR Nonattainment New Source Review
 NPRM Notice of Proposed Rulemaking
 NO_x Nitrogen Oxides

PSD Prevention of Significant Deterioration
 RACT Reasonably Available Control
 Technology
 SIP State Implementation Plan
 SELC Southern Environmental Law Center
 U.S.C. United States Code
 VOC Volatile Organic Compound

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I. Executive Summary

In this final rule, the EPA is approving changes to the Georgia SIP submitted by Georgia EPD on June 27, 2024.¹ The revision amends Rule 391–3–1–.02(1), *General Requirement*, to incorporate a non-substantive formatting change; Rule 391–3–1–.02(2)(nnn), *NO_x Emissions from Large Stationary Gas Turbines*, to update applicability by removing outdated provisions that no longer apply to any sources in the State, to clarify applicability by removing cross-references to rules removed from the Georgia SIP, and to make other clarifying changes; Rule 391–3–1–.03(6), *Exemptions*, at subsection (j), *Construction Permit Exemption for Pollution Control Projects*, to remove a cross-reference to NNSR requirements at Rule 391–3–1–.03(8)(c); Rule 391–3–1–.03(8), *Permit Requirements*, to remove permitting requirements related to nonattainment and to make other, minor changes; and Rule 391–3–1–.03(13), *Emission Reduction Credits*, to remove wording that allows for or refers to use of ERCs and to make other minor updates.² The EPA is finalizing approval of these revisions as they will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable CAA requirement.³

¹ The June 27, 2024, submittal also contains changes to Rules 391–3–1–.02(6)(a), *Specific Monitoring and Reporting Requirements for Particular Sources*, and 391–3–1–.03(11)(b)(7), *Coating and/or Gluing Operations*. On July 9, 2025, EPD provided the EPA with a clarification letter confirming that Georgia does not intend to submit the language “or enforceable as a practical matter limiting the source to below Part 70 or Part 63 major source thresholds” in Georgia Rule 391–3–1–.03(11)(b)(7)(i) as part of the June 27, 2024, SIP revision. This letter is included in the docket for this rulemaking; however, the EPA will address the changes to these two rules in a separate rulemaking.

² Georgia also transmitted changes to Rule 391–3–1–.03(1) in the June 27, 2024, submittal. The language EPD removed from its State-effective version of Rule 391–3–1–.03(1) is not approved into the SIP. Thus, as discussed in the September 2, 2025, NPRM, the EPA is not acting on any change to this provision.

³ See CAA section 110(l).

Through a notice of proposed rulemaking (NPRM) published on September 2, 2025,⁴ the EPA proposed to approve the above-described changes to the SIP. The details of Georgia’s submission, as well as the EPA’s rationale for approving the changes, are described in more detail in the September 2, 2025, NPRM. Comments on the NPRM were due on or before September 23, 2025. The EPA received one anonymous comment in support of this action and one set of adverse comments from the Southern Environmental Law Center (SELC). These comments are available in the docket for this action.

II. Response to Comments

In response to the NPRM, the EPA received an adverse comment from SELC dated September 23, 2025. Summaries of SELC’s significant comments, along with the EPA’s responses to these comments, are provided below.

Comment 1: SELC states that Atlanta was in compliance with the 2015 ozone NAAQS when EPD submitted its SIP revision. However, because the 2024 design values for both the Fulton and Henry County air quality monitors exceeded the 2015 ozone NAAQS after submission of the SIP revision, SELC argues that the NNSR provisions are just as important and applicable now as they were before the Atlanta’s redesignation in 2022. SELC therefore contends that approving the SIP revision to remove the NNSR provisions is ill-advised and unlawful.

Response 1: Effective November 16, 2022, the EPA redesignated the Atlanta 2015 8-hour ozone area (hereinafter referred to as the “Atlanta Area” or “Area”) from nonattainment to attainment.⁵ As a result of this redesignation, there are no longer any areas within Georgia that are designated as nonattainment for any NAAQS. In the EPA’s action redesignating the Atlanta Area to attainment, the EPA also approved Georgia’s maintenance plan for the 2015 ozone NAAQS.⁶

The EPA disagrees with SELC’s assertion that Georgia is required to

continue to implement NNSR in the Atlanta Area as a result of the exceedances. Instead, the CAA requires Georgia to implement contingency measures pursuant to its maintenance plan approved by the EPA at the time that the EPA redesignated the Area to attainment.⁷

As required by CAA section 175A(d), the maintenance plan contains contingency measures necessary to assure that the State will promptly correct any violation of the standard which occurs after the redesignation of the Area.⁸ Georgia’s maintenance plan includes a two-tiered triggering mechanism to determine when a contingency measure is needed and a process to develop and implement appropriate control measures within specified timeframes. A Tier 1 trigger applies where a violation of the 2015 8-hour ozone standard has not occurred, but where the State finds monitored ozone concentrations indicating that a violation may be imminent. A Tier II trigger applies when any quality assured ozone design value is equal to or greater than 0.071 ppm at a monitor in the Atlanta Area (*i.e.*, a violation of the 2015 ozone NAAQS) or the periodic emission inventory updates reveal excessive or unanticipated growth greater than 10 percent in NO_x or VOC emissions. Once a Tier II trigger is activated, EPD will conduct a comprehensive analysis based on quality-assured ambient data and, within 24 months of the trigger, will implement at least one contingency measure.

There are two major NSR permitting programs under the CAA—the NNSR program and the Prevention of Significant Deterioration (PSD) program. The CAA requires SIPs to contain NNSR permitting regulations only for areas officially designated or redesignated as nonattainment.⁹ Only the PSD program

⁷ Congress also gave the EPA the option, but not a mandate, to redesignate such areas back to nonattainment in CAA section 107(d)(3).

⁸ See Section 3.2 of the 2022 Maintenance Plan.

⁹ See CAA section 172(c)(5) (each state with a nonattainment area must have a SIP that “shall require permits for the construction and operation of new or modified major stationary sources anywhere in the nonattainment area, in accordance with section 7503 [(CAA section 173) of this title]”; CAA section 173 (setting forth NNSR requirements); 40 CFR 51.165(a)(2)(i) (“Each plan shall adopt a preconstruction review program to satisfy the requirements of sections 172(c)(5) and 173 of the Act for any area designated nonattainment for any national ambient air quality standard under subpart C of 40 CFR part 81.”); and 40 CFR 51.1314 (“For each nonattainment area [for the 2015 ozone NAAQS], the state shall submit a nonattainment NSR plan or plan revision for a specific ozone NAAQS no later than 36 months after the effective date of the area’s designation of nonattainment or redesignation to nonattainment for that ozone NAAQS.”).

⁴ See 90 FR 42343.

⁵ See 87 FR 62733 (October 17, 2022). The Atlanta Area consists of the following counties: Bartow, Clayton, Cobb, DeKalb, Fulton, Gwinnett, and Henry. The 2015 8-hour ozone NAAQS is set at 0.070 ppm based on an annual fourth-highest daily maximum 8-hour average concentration averaged over three years.

⁶ A copy of the Final Submittal for Georgia’s Redesignation Request and Maintenance Plan for the Atlanta Ozone Nonattainment Area for the 2015 8-Hour Ozone NAAQS (February 25, 2022) (2022 Maintenance Plan) is included in the docket for this action. See *id.*

is required in areas designated or redesignated as attainment or unclassifiable.¹⁰ Because there are no nonattainment areas in Georgia, the State is no longer required to include NNSR regulations in its SIP. Furthermore, it is not necessary for Georgia to include NNSR as a contingency measure in its maintenance plan because NNSR is not a “measure” under CAA section 175A(d).^{11 12} See Response 3, below, for further discussion of CAA section 175A(d). For these reasons and those discussed in the responses below, removing NNSR from the Georgia SIP is neither ill-advised nor unlawful.

Comment 2: SELC asserts that a well-supported non-interference finding under CAA section 110(l) must be provided prior to removing Georgia’s NNSR rules from its SIP because the Atlanta Area has already fallen out of attainment with the 2015 ozone NAAQS. According to SELC, the EPA and EPD concluded that this SIP revision will not increase air pollution without an air quality analysis or any other kind of analytical support and instead merely asserted that Georgia’s PSD program provides an adequate backstop and that other rules (e.g., Reasonably Available Control Technology (RACT) requirements) established while NNSR was in place

will not be modified or removed. SELC asserts that neither the PSD program nor RACT requirements are an adequate substitute for NNSR due to the Atlanta Area’s recent exceedances of the 2015 ozone NAAQS and that it is now improper and arbitrary for the EPA to approve the SIP revision without analytical support showing that NNSR can be removed without further impeding attainment of this standard.

Regarding PSD as a substitute for NNSR, SELC states that NNSR provides substantial environmental benefits beyond PSD by, among other things, requiring offsets and significantly more effective pollution controls. SELC argues that the air pollution reductions from NNSR are needed given the recent violations of the 2015 ozone standard in the Atlanta Area.

Regarding RACT, SELC states that the Area’s maintenance plan suggests that RACT may be inadequate to prevent increased emissions in the absence of NNSR, and therefore, it would be improper to remove NNSR without validating the sufficiency of RACT to prevent increased emissions.

Response 2: The EPA disagrees with this comment. As discussed in Response 1, Congress determined that NNSR permitting is only required in areas designated or redesignated as nonattainment. CAA section 175A contingency measures are the statutory mechanism to “promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area,” and NNSR is not a required contingency measure. PSD is the statutorily mandated major NSR permitting program in areas designated or redesignated as attainment or unclassifiable. As required by CAA section 165(a)(3) and 40 CFR 51.166(k), Georgia’s SIP-approved PSD regulations at Rule 391–3–1–.02(7) prevent the construction or modification of major NSR sources whose emissions would, among other things, cause or contribute to air pollution in violation of the NAAQS.¹³

Similarly, Georgia’s SIP-approved NSR permitting rules prevent the State from issuing any NSR permit—including permits for non-PSD minor sources—without first making an affirmative finding that, among other things, the proposed construction or modification will not cause or contribute to a failure to attain or maintain any ambient air quality standard.”¹⁴ Because these rules prevent interference with the NAAQS,

collectively cover the same universe of major sources as NNSR, and apply in areas redesignated to attainment, they allow for the removal of NNSR in those redesignated areas under CAA section 110(l).¹⁵ Section 110(l) only prohibits the EPA from approving a SIP revision that would interfere with the NAAQS and reasonable further progress or any other applicable CAA requirement. It does not prohibit the EPA from removing a SIP-approved provision that achieves greater reductions than a replacement provision (or provisions) so long as the change would not interfere with CAA requirements. By their express terms, SIP-approved Rules 391–3–1–.02(7) and 391–3–1–.03(8)(a) prevent the construction or modification of sources that would interfere with the NAAQS, and therefore, no air quality analysis is necessary.

Regarding SELC’s comments on RACT, the statement that the EPA made a “claim regarding the sufficiency of RACT requirements” is inaccurate. The NPRM does not mention RACT, and the EPA is not relying on RACT to satisfy CAA section 110(l). As discussed above, the EPA can remove NNSR from Georgia’s SIP under section 110(l) because SIP-approved Rules 391–3–1–.02(7) and 391–3–1–.03(8)(a) prevent construction or modification that would interfere with the NAAQS. It is therefore unnecessary to evaluate the “sufficiency of RACT” before removing NNSR from Georgia’s SIP. Regardless, Georgia’s RACT provisions remain in the SIP, as they are not being requested to be removed by the State in the June 27, 2024, SIP revision, and will therefore continue to achieve emissions reductions in the Atlanta Area due to the partial overlap between the counties in the Atlanta Area and those in the 1997 and 2008 Atlanta ozone maintenance areas.¹⁶

Georgia was not required to include RACT in its SIP for the Atlanta Area

¹⁰ See CAA section 161 (each SIP “shall contain emission limitations and such other measures as may be necessary, as determined under regulations promulgated under this part, to prevent significant deterioration of air quality in each region (or portion thereof) designated pursuant to section 7407 [(CAA section 107)] as attainment or unclassifiable”); CAA section 165 (setting forth PSD requirements); 40 CFR 51.166(a)(7)(i) (requiring SIPs to include PSD requirements for the construction of new major stationary sources or any project at an existing major stationary source in areas designated as attainment or unclassifiable under sections 107(d)(1)(A)(ii) or (iii) of the Act).

¹¹ CAA section 175A(d) states “Each plan revision submitted under this section shall contain such contingency provisions as the Administrator deems necessary to assure that the State will promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area. Such provisions shall include a requirement that the State will implement all measures with respect to the control of the air pollutant concerned which were contained in the State implementation plan for the area before redesignation of the area as an attainment area. The failure of any area redesignated as an attainment area to maintain the national ambient air quality standard concerned shall not result in a requirement that the State revise its State implementation plan unless the Administrator, in the Administrator’s discretion, requires the State to submit a revised State implementation plan.”

¹² See *Greenbaum v. EPA*, 370 F.3d 527, 535 (6th Cir. 2004); memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation titled “Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment” (October 14, 1994) (Nichols Memorandum).

¹³ See Rule 391–3–1–.02(7)(b)(8) (adopting 40 CFR 52.21(k) by reference).

¹⁴ See Rule 391–3–1–.03(8)(a).

¹⁵ NNSR is a prospective permitting program. Therefore, after removal of NNSR from Georgia’s SIP, the conditions issued pursuant to these permits, along with any associated emissions offsets, will remain in effect. See NPRM at 42345; 84 FR 47213, 47215 (September 9, 2019).

¹⁶ The Atlanta 1-hour ozone NAAQS area consisted of the following counties: Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Paulding, and Rockdale. The 1997 8-hour ozone NAAQS maintenance area consists of the following counties: Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, Spalding, and Walton. The 2015 8-hour ozone NAAQS Atlanta Area consists of the following counties: Bartow, Clayton, Cobb, DeKalb, Fulton, Gwinnett, and Henry. All current maintenance counties for the 2015 8-hour ozone NAAQS have applicable RACT requirements that are not being removed from the SIP in this action.

because it was a marginal nonattainment area for the 2015 8-hour ozone NAAQS.¹⁷ The EPA previously approved Georgia's RACT submission required by CAA section 182(a)(2)(A) in response to the CAA Amendments of 1990.¹⁸ Additionally, the EPA approved specific RACT measures for the 1997 8-hour ozone NAAQS to satisfy the moderate area requirements at CAA section 182(b)(2).¹⁹ The contingency plan portion of Georgia's maintenance plan for the Atlanta Area includes the commitment that if emissions from the Area are contributing to a Tier II trigger condition (*i.e.*, the quality assured ozone design value is equal to or greater than 0.071 ppm at a monitor in the Atlanta Area or the periodic emission inventory updates reveal excessive or unanticipated growth greater than 10 percent in NO_x or VOC emissions), EPD will evaluate, among other things, existing SIP measures "such as RACT" to see if they are "adequate or up-to-date" and additional measures such as the adoption of new and revised RACT rules based on Groups II, III, and IV Control Techniques Guidelines that may be deemed appropriate and effective. From the context of the Tier II discussion, it is clear that Georgia is referring to new measures or revisions to existing measures such as the SIP-approved RACT requirements that may be "adequate" or "appropriate and effective" to remedy a Tier II NAAQS exceedance or unanticipated inventory growth. Given that the RACT provisions were developed in the past for earlier ozone NAAQS, it is possible that Georgia might determine that these control measures could be updated to remedy a Tier II exceedance of the 2015 ozone NAAQS. Any specific measures being considered by Georgia in response to a Tier II exceedance and submitted as a SIP revision would be addressed in a separate action.

Comment 3: SELC asserts that the EPA's action to remove NNSR is unlawful because CAA section 175A requires Georgia's NNSR provisions to be included in Georgia's maintenance plan as a contingency measure. SELC further argues that NNSR is incorporated by reference into the maintenance plan, citing a statement in the maintenance plan that says, "Under Section 175A(d), the minimum requirement for contingency measures is

the implementation of all measures that were contained in the SIP before the redesignation."

SELC states that the Atlanta region has fallen out of attainment with the 2015 ozone NAAQS, triggering the precise NNSR provisions that the EPA proposes to remove. SELC cites to Webster's Collegiate Dictionary and to caselaw regarding plain language and word context to argue that the term "measure" in section 175A(d) includes NNSR. According to SELC, Georgia's NNSR provisions serve "as a means to achieving the fundamental goal of controlling ozone pollution so that Atlanta can attain compliance with the 2015 ozone NAAQS," and NNSR provisions "unambiguously constitute a 'measure[] with respect to the control of the air pollutant concerned.'"

SELC's comment discusses *Greenbaum v. EPA*, 370 F.3d 527 (6th Cir. 2004), a case decided by the U.S. Court of Appeals for the Sixth Circuit (Sixth Circuit) involving a redesignation of the Cleveland, Ohio area (Cleveland Area) from nonattainment to attainment of the 1987 coarse particulate matter NAAQS. SELC notes that *Greenbaum* is not controlling in the U.S. Court of Appeals for the Eleventh Circuit and argues that the logic underlying *Greenbaum* is inapplicable for several reasons. SELC points out that Ohio's SIP—unlike Georgia's SIP—did not contain NNSR at the time of redesignation, and that the Atlanta Area is currently violating the NAAQS whereas the Cleveland Area was not. According to SELC, the *Greenbaum* Court decided Ohio was governed by PSD, not NNSR, because the Cleveland Area was attaining the NAAQS at the time of the decision. Because the Atlanta Area is currently violating the NAAQS, SELC contends that PSD cannot function properly and ensure that new or modified sources will not cause or contribute to a NAAQS violation. SELC further claims that PSD lacks a framework for issuing a construction permit to a source that would contribute to a NAAQS violation, but that NNSR is specifically designed to accommodate new construction in a nonattainment area by enabling a new source to purchase offsetting emission reductions from other sources.

SELC also argues that *South Coast v. EPA*, 472 F.3d 882 (D.C. Cir. 2006), a decision by the U.S. Court of Appeals for the District of Columbia (D.C. Circuit), "casts doubt on the correctness" of *Greenbaum* because the D.C. Circuit concluded that the term "control" under section 172(e) includes NNSR. According to SELC, this case is relevant because section 175A(d) also

uses the term "control," and sections 172(e) and 175A(d) "both address the need to retain SIP requirements that serve to constrain pollution levels where an area is not attaining the NAAQS."

Finally, SELC asserts that *Greenbaum* "stands on uncertain legal footing as the decision was premised on deference to the EPA's interpretation of the statute under the *Chevron*[²⁰] standard." SELC states that courts must now decide for themselves the best reading of the statute rather than deferring to agency interpretations because the U.S. Supreme Court overruled *Chevron* in *Loper Bright v. Raimondo*, 603 U.S. 369 (2024).

Response 3: The EPA disagrees that CAA section 175A requires NNSR provisions to be included in maintenance plans as contingency measures and that NNSR is included as a contingency measure in Georgia's 2015 8-hour ozone maintenance plan. As discussed below, NNSR is not a "measure" under CAA section 175A, and therefore, repeating the statutory text of CAA section 175A(d) regarding "measures" could not incorporate NNSR by reference as a contingency measure.

SELC argues that NNSR is a "measure" under CAA section 175A(d) given the plain meaning of that term and the legal principle that words derive meaning from the context in which they are used. Although SELC invokes this legal principle, it fails to follow it. SELC turns directly from section 175A(d) to Webster's Collegiate Dictionary, ignoring the context of the statute and relying on the dictionary definition to argue that the meaning of the term "measure" in section 175A(d) is plain. However, the fact that a word has a dictionary definition is hardly conclusive. It is how the word is employed in the context of the statute that determines its meaning.²¹ Once examined in the context of CAA section 110 as discussed below, SELC's interpretation of the term "measure" fails.

The context in which the term "measure" is used in section 175A(d) does not lead to the conclusion that

²⁰ *Chevron v. NRDC*, 467 U.S. 837 (1984).

²¹ See, e.g., *Food & Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 132 (2000) ("In determining whether Congress has specifically addressed the question at issue, a reviewing court should not confine itself to examining a particular statutory provision in isolation. The meaning—or ambiguity—of certain words or phrases may only become evident when placed in context."); *Bailey v. United States*, 516 U.S. 137, 145 (1995) ("The meaning of statutory language, plain or not, depends on context.") (quoting *Brown v. Gardner*, 513 U.S. 115, 118 (1994)).

¹⁷ Under the CAA, marginal ozone nonattainment areas are generally not required to implement RACT. RACT requirements formally apply for ozone nonattainment areas classified as moderate or higher. See 40 CFR 51.1312(a)(1).

¹⁸ See 70 FR 34660 (June 15, 2005).

¹⁹ See 77 FR 59554 (September 28, 2012) and 78 FR 16783 (March 19, 2013).

NNSR is such a measure. This section requires implementation of “all measures with respect to the control of the air pollutant concerned” that were in the nonattainment SIP. Therefore, it is clear that Congress considered some aspects of the nonattainment SIP to be measures to be included as contingency measures in the maintenance plan, and some not. Had Congress intended an area to reimplement the nonattainment SIP as a whole upon any violation, it would have said so by simply requiring an area that violates the NAAQS after redesignation to reimplement the nonattainment SIP. But Congress did not do so; instead, it requires as contingency measures a subset of the nonattainment SIP provisions—those “measures” with respect to the control of the air pollutant concerned. Section 175A(d) provides no indication which provisions of a SIP are appropriately considered measures with respect to the control of the air pollutant, so one must turn elsewhere in the statute for guidance. The most logical, and therefore best, place to find context is section 110, which lists the required SIP provisions.

Among the required components of a SIP, section 110 specifically refers to “control measures.”²² Subparagraph (A) requires SIPs to include “enforceable emission limitations and other control measures, means, or techniques, as may be necessary or appropriate to meet the requirements of the Act.” *Id.* Later in the list, subparagraph (C) requires the SIP to also include “a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source . . . , including a permit program as required in parts C and D of this subchapter.”²³ If NNSR was among the control measures in subparagraph (A), the separate reference in subparagraph (C) to Part D (NNSR), in addition to the control measures in subparagraph (A) would be unnecessary. Thus, section 110 does not consider the Part D (NNSR) or Part C (PSD) permit programs to be among the control measures set forth in subparagraph A. Thus, the best reading of the statute is that “measures with respect to the control of the air pollutant concerned” in section 175A(d) and the “control measures” in section 110(a)(2)(A) are one and the same, and do not include NNSR.

The nature of the NNSR program itself further supports the interpretation that

it is not intended to be a contingency measure in section 175A(d). Unlike the contingency measures listed in the Atlanta Area’s maintenance plan, which require immediate emission reductions on existing sources and therefore have an immediate effect on air quality in response to a violation of the NAAQS, implementing NNSR has no immediate effect on emissions. Any violation of the NAAQS that occurs after redesignation is the result of emissions by existing sources, and as discussed in Response 2, NNSR is a prospective permit program. Therefore, implementation of NNSR has no effect on those emissions. Unlike the potential contingency measures for the Atlanta Area, which require prompt reductions from existing sources, NNSR cannot promptly correct a violation of the NAAQS.

The EPA agrees that the purpose of NNSR provisions is to serve “as a means to” achieving the fundamental goal of controlling ozone pollution so that a nonattainment area can attain compliance, while allowing for new or expanded projects in the area. However, once a nonattainment area is redesignated to attainment, an NNSR program is no longer required in the area, even as a contingency measure. Instead, once an area is redesignated to attainment, PSD applies.

The Sixth Circuit upheld the EPA’s longstanding interpretation of section 175A(d) in *Greenbaum*. SELC attempts to distinguish *Greenbaum* on multiple grounds, none of which are compelling. The fact that Georgia resides in the Eleventh Circuit does not make the Sixth Circuit’s logic any less valid or persuasive. SELC points out that no other court has adopted *Greenbaum*’s holding that NNSR is not a “measure” under section 175A(d), but this argument is misleading because there are no other published cases addressing this legal question. Notably, SELC cannot point to any opinion holding that NNSR is a “measure” under section 175A(d). SELC claims that the logic in *Greenbaum* is inapplicable because the Ohio SIP did not contain NNSR at the time of redesignation and the Atlanta Area is currently violating the NAAQS. However, whether a SIP contains NNSR at the time of redesignation and whether an area is violating the NAAQS after redesignation are not relevant to the question of whether NNSR is a “measure” within the meaning of section 175A(d).

Although Ohio did not have NNSR in its SIP at the time of redesignation, the *Greenbaum* Court acted “as if [NNSR] had been” included in the SIP “for the purposes of addressing [the] claims

regarding § 175A.”²⁴ Thus, the outcome in *Greenbaum* did not turn on whether NNSR was in the SIP, and this distinction between the Ohio and Georgia SIPs is immaterial. Instead, the EPA’s interpretation of the term “measure” under section 175A(d)—and the *Greenbaum* decision upholding that interpretation—are based on a legal evaluation of that term in the context of the CAA as described above. It is also illogical to argue that an area’s post-redesignation violations have any impact on the meaning of “measures” under section 175A(d). The “measures” required by CAA section 175A(d) are the air pollution control measures “which were contained in the [SIP] before redesignation of the area as an attainment area.”²⁵ Thus, the “measures” required by CAA section 175A(d) are fixed at the time of redesignation—they are those air pollution control measures that were in the SIP at the time of the redesignation. A post-redesignation violation of the NAAQS has no impact on what is or is not a “measure.” Contrary to SELC’s suggestion, the fact that “Atlanta is currently violating the NAAQS” has no impact on *Greenbaum*’s conclusion that NNSR is not a “measure” within the meaning of section 175A(d).

The EPA agrees with the SELC-cited statement from *Greenbaum* that it would make little sense for NNSR to have been included in the post-attainment SIP because permitting in attainment areas is governed by the PSD program, but the Agency disagrees with SELC’s assertion that PSD cannot function properly and ensure that new or modified sources will not cause or contribute to NAAQS violations in areas failing to meet the NAAQS. It makes little sense to have NNSR in the post-attainment SIP because, as the *Greenbaum* Court points out, the CAA unambiguously requires NNSR only in nonattainment areas and PSD only in attainment areas: “According to 42 U.S.C. 7502(c)(5), 7503, SIPs governing nonattainment areas must include [N]NSR programs. Under 42 U.S.C. 7471, by contrast, SIPs governing attainment areas must include PSD programs.”²⁶ The application depends on the official designation status of an area, not whether air quality is above a NAAQS, and a State cannot simultaneously apply PSD and NNSR programs for new major sources and major modifications in a redesignated area. PSD—not NNSR—is required in

²² See CAA section 110(a)(2)(A).

²³ *Id.* at CAA section 110(a)(2)(C) (emphasis added).

²⁴ 370 F.3d at 535.

²⁵ CAA section 175A(d).

²⁶ 370 F.3d at 536.

the Atlanta Area because the EPA redesignated it to attainment.

Regarding the proper function of the PSD program, again, Congress mandated that PSD apply in attainment and unclassifiable areas regardless of whether air quality in those areas is exceeding a NAAQS and designed contingency measures in approved maintenance plans as the mechanism to address violations of the NAAQS in areas redesignated from nonattainment to attainment. As discussed in Response 2, Georgia's SIP-approved PSD regulations at Rule 391–3–1–.02(7) prevent the construction or modification of major NSR sources whose emissions would, among other things, cause or contribute to air pollution in violation of the NAAQS, as required by CAA section 165(a)(3)(B) and 40 CFR 51.166(k).^{27 28} SELC is wrong in arguing that that permitting “cannot function properly” in an attainment area that is “failing to meet the NAAQS.” If an area “is not continuing to meet the standard after redesignation to attainment,” additional provisions—namely 40 CFR 51.165(b) and/or 40 CFR part 51, appendix S—would apply to a major source that would cause or contribute to a violation of any NAAQS.^{29 30}

SELC further attempts to support its claim by citing the D.C. Circuit's *South Coast* decision, claiming that the court's decision in *South Coast* regarding what qualifies as a “control” under CAA section 172(e) calls into question *Greenbaum*'s validity. However, *South Coast* involves a different legal question concerning different parts of the CAA involving different terms. The *South Coast* decision addresses this exact point, stating “*Greenbaum* involved a different ultimate question, namely, whether [N]NSR is required for attainment areas, and required that court to determine the meaning of a different term, ‘measures.’ Because the term ‘measures’ was used in the provision providing for redesignation to attainment, the Sixth Circuit found it appropriate to refer to other instances of ‘measures’ elsewhere in the Act and concluded that [N]NSR was not a ‘measure.’ This has no bearing on

whether [N]NSR is a ‘control.’”³¹ SELC's attempt to use a decision regarding the meaning of “control” under section 172(e) to inform the meaning of the term “measure” under section 175A(d) is directly contrary to the *South Coast* Court's opinion. As discussed above, section 110 is the best place to find context for the term “measure.”

In its final observation for *Greenbaum*, SELC claims that the decision is on “uncertain legal footing” as it was “premised on deference” under *Chevron* which was overruled by *Loper Bright*. As an initial matter, *Greenbaum* did not apply *Chevron* deference to reach its conclusion that SIPs governing nonattainment areas must include NNSR and SIPs governing attainment areas must include PSD because the court found the text of the statute unambiguous.³² It is true that, in interpreting the term “measure” under section 175A(d), the Sixth Circuit deferred to the EPA pursuant to *Chevron*.³³ But *Loper Bright* does not make *Greenbaum* any less persuasive and does not change the EPA's analysis because the Agency's interpretation is the best reading of the statute for the reasons described earlier in this Response 3. The EPA's interpretation of “measure” is based on the structure and text of the CAA and the context in which the term is used.

Furthermore, “discarding *Chevron* deference does not mean ignoring agency interpretations.”³⁴ While *Loper Bright* requires “courts to do their ordinary job of interpreting statutes,” it also directs courts to give “due respect for the views of the Executive Branch.”³⁵ “The weight of such a judgment in a particular case will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.”³⁶ As discussed above, the EPA has consistently interpreted the term “measure” under CAA section 175A(d) to exclude NNSR, and that interpretation is supported by a thorough, valid reading of the statutory provisions. Thus, even under *Loper Bright*, the EPA's longstanding, consistent interpretation still has the

“power to persuade, if lacking power to control.”³⁷

Comment 4: SELC states that the air quality violations in the Atlanta Area have activated the Tier II trigger in the contingency plan portion of the Area's maintenance plan and that EPD is therefore required to conduct additional analysis and implement one or more contingency measures necessary to re-attain the 2015 ozone NAAQS. SELC states that the NNSR provisions are intended to address the precise situation Atlanta is facing, so it is a “particularly strange and ill-advised time” to propose removing these provisions. SELC also states that removing these provisions will complicate and undermine the identification of additional contingency measures currently underway pursuant to the Tier II trigger. SELC asserts that if the NNSR provisions are removed, these new contingency measures will need to address both the air pollution causing the Atlanta Area's current failure to attain and new pollution that would result from permitted new sources under the less stringent PSD program.

Response 4: The EPA disagrees that NNSR provisions are intended to address the situation in the Atlanta Area and that removal of NNSR will complicate and undermine the identification of contingency measures currently underway. As discussed in the responses above, Congress determined that NNSR permitting is only required in areas designated or redesignated as nonattainment. CAA section 175A contingency measures are the statutory mechanism to “promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area,” and NNSR is not a required contingency measure. If Congress had intended NNSR to address a situation such as the one in the Atlanta Area, it would not have made the application of NNSR dependent on designation status or it would have mandated NNSR as a contingency measure.

It is also unclear how the removal of NNSR would complicate and undermine the identification of contingency measures currently underway. First, Georgia's SIP-approved Rules 391–3–1–.02(7) and 391–3–1–.03(8)(a) prevent construction or modification that would interfere with the NAAQS. Second, contingency measures are designed to promptly remedy the NAAQS violation that triggered the application of those measures, and major NSR permitting is

²⁷ The PSD program requires public participation, and the public can seek judicial review of issued permits at the state level.

²⁸ See Rule 391–3–1–.02(7)(b)(8) (adopting 40 CFR 52.21(k) by reference).

²⁹ See Nichols Memorandum.

³⁰ 40 CFR 51.165(b) and 40 CFR part 51, appendix S provide compensating protections when the construction or modification of major sources would cause or contribute to a violation of any NAAQS, including in attainment or unclassifiable areas that are violating the NAAQS, and therefore, further support removal of NNSR from Georgia's SIP under CAA section 110(l).

³¹ *South Coast*, 472 F.3d at 902 (emphasis in original, citation omitted).

³² *Greenbaum*, 370 F.3d at 536.

³³ *Greenbaum*, 370 F.3d at 537.

³⁴ See *Texas v. United States EPA*, 137 F.4th 353, 365 (5th Cir. 2025) (*Texas* 2025).

³⁵ 603 U.S. at 403.

³⁶ See *Skidmore v. Swift & Co.*, 323 U.S. 134, 140, 65 S. Ct. 161, 164 (1944).

³⁷ 603 U.S. at 402 (quoting *Skidmore*, 323 U.S. at 140).

a lengthy process that impacts the prospective construction and modification of only the largest stationary sources. Any emissions from new major NSR sources or modifications moving forward will therefore be predicted well in advance of construction and can be accounted for in the development of contingency measures. Third, permit conditions issued pursuant to NNSR permits in the Area, along with any associated emissions offsets, will remain in effect.

Comment 5: SELC argues that maintaining NNSR is necessary due to proposed new major sources of NO_x emissions in the Atlanta Area and that it is imperative that these new sources be held to the more rigorous NNSR permitting standards given that the Atlanta Area is out of compliance with the 2015 ozone standard. SELC identifies two proposed new combined cycle natural gas electrical generating units (gas EGUs) at Georgia Power Company's Plant Bowen and two proposed new gas EGUs at Georgia Power Company's Plant Wansley. Plant Bowen is in the Atlanta Area and Plant Wansley is located outside the Area in Carroll County. SELC states that reviewing these and other permit applications under PSD rather than NNSR will dramatically impede the Area's ability to re-attain the 2015 ozone NAAQS and comply with that standard going forward.

Response 5: The EPA disagrees with this comment. As discussed in the responses above, Congress determined that NNSR permitting is only required in areas designated or redesignated as nonattainment. CAA section 175A contingency measures are the statutory mechanism to "promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area," NNSR is not a required contingency measure, and SIP-approved Georgia Rules 391–3–1–.02(7) and 391–3–1–.03(8)(a) prevent the construction or modification of sources that would interfere with the NAAQS. Any concerns regarding specific proposed new major stationary sources or major modifications to existing major sources in the Atlanta Area are outside the scope of this SIP revision. All proposed PSD permits are subject to a public comment period pursuant to SIP-approved Rule 391–3–1–.02(7)(b)¹⁴ (incorporating 40 CFR 52.21(q) by reference), and any comments raised during that period must be submitted to EPD as the permitting authority.

III. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes

incorporation by reference. In accordance with requirements of 1 CFR 51.5, and as discussed in Sections I and II of this preamble, the EPA is finalizing the incorporation by reference of Georgia Rule 391–3–1–.02(1), *General Requirement*, which is being revised to change 'nonattainment' to 'non-attainment' for consistency;³⁸ Rule 391–3–1–.02(2)(nnn), *NO_x Emissions from Large Stationary Gas Turbines*, which is being revised to address a cross-reference impacted by other changes approved in this final rule; Rule 391–3–1–.03(6)(j), *Construction Permit Exemption for Pollution Control Projects*, which is being revised to address a cross-reference impacted by other changes approved in this final rule;³⁹ Rule 391–3–1–.03(8), *Permit Requirements*, which is being revised to remove NNSR requirements; and Rule 391–3–1–.03(13), *Emission Reduction Credits*, which is being revised to remove wording that allows or refers to the use of emission reduction credits; all of which have a State-effective date of June 19, 2023, into the Georgia SIP. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by the EPA for inclusion in the State implementation plan, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.⁴⁰

IV. Final Action

The EPA is approving the aforementioned Georgia SIP revision consisting of changes to Rule 391–3–1–.02(1), *General Requirement*; Rule 391–3–1–.02(2)(nnn), *NO_x Emissions from Large Stationary Gas Turbines*; Rule 391–3–1–.03(6), *Exemptions*, at subsection (j), *Construction Permit Exemption for Pollution Control Projects*; Rule 391–3–1–.03(8), *Permit*

Requirements; and Rule 391–3–1–.03(13), *Emission Reduction Credits*.

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 CAA and applicable Federal regulations.⁴¹ Thus, in reviewing SIP submissions, the EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this 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 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);
 - Is not an Executive Order 14192 (90 FR 9065, February 6, 2025) regulatory action because this action is not significant under Executive Order 12866;
 - 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 subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;
 - Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
 - 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.
- In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rule does not have Tribal implications and will not impose substantial direct costs on Tribal

³⁸ The table entry for Georgia Rule 391–3–1–.02(1), at 40 CFR 52.570(c) is revised in this action to correct a typographical error in the Rule's title, by changing it from "General Requirements" to "General Requirement."

³⁹ Subparagraphs 391–3–1–.03(6)(a) through (i)—except for 391–3–1–.03(6)(b)16, which is not approved into the SIP—remain in the SIP with a state effective date of July 29, 2020. See 87 FR 19643 (April 5, 2022).

⁴⁰ See 62 FR 27968 (May 22, 1997).

⁴¹ See 42 U.S.C. 7410(k); 40 CFR 52.02(a).

governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. 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 December 7, 2026. 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.⁴²

List of Subjects in 40 CFR Part 52

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

Dated: September 25, 2026.

Kevin McOmber,

Regional Administrator, Region 4.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart L—Georgia

■ 2. In § 52.570(c), amend table 1 by revising the entries for “391–3–1–.02(1)”, “391–3–1–.02(2)(nnn)”, “391–3–1–.03(6)”, “391–3–1–.03(8)”, and “391–3–1–.03(13)” to read as follows:

§ 52.570 Identification of plan.

* * * * *

(c) * * *

TABLE 1 TO PARAGRAPH (c)—EPA-APPROVED GEORGIA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
* * *	* * *	* * *	* * *	* * *
391–3–1–.02(1)	General Requirement	6/19/2023	10/8/2026, 91 FR [Insert Federal Register page where the document begins].	
* * *	* * *	* * *	* * *	* * *
391–3–1–.02(2)(nnn)	NO _x Emissions from Large Stationary Gas Turbines.	6/19/2023	10/8/2026, 91 FR [Insert Federal Register page where the document begins].	
* * *	* * *	* * *	* * *	* * *
391–3–1–.03(6)	Exemptions	7/29/2020	4/5/2022, 87 FR 19643 ...	Except for subparagraph 391–3–1–.03(6)(j) which was approved into the SIP on 10/8/2026 with a state effective date of 6/19/2023, and Rule 391–3–1–.03(6)(b)16, which is not approved into the SIP.
* * *	* * *	* * *	* * *	* * *
391–3–1–.03(8)	Permit Requirements	6/19/2023	10/8/2026, 91 FR [Insert Federal Register page where the document begins].	
* * *	* * *	* * *	* * *	* * *
391–3–1–.03(13)	Emission Reduction Credits.	6/19/2023	10/8/2026, 91 FR [Insert Federal Register page where the document begins].	
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[FR Doc. 2026–20636 Filed 10–7–26; 8:45 am]

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⁴² See section 307(b)(2).