

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be

inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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 rule 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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 16, 2004. Filing a petition for reconsideration by the Administrator of this final rule does

not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 3, 2004.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

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

**PART 52—[AMENDED]**

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

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

**Subpart (K)—Florida**

■ 2. Section 52.520, is amended by adding a new entry at the end of the table in paragraph (d) for "Broward County Aviation Department" to read as follows:

**§ 52.520 Identification of plan.**

\* \* \* \* \*

(d) \* \* \*

**EPA APPROVED FLORIDA SOURCE-SPECIFIC REQUIREMENTS**

Name of source	Permit number	State effective date	EPA approval date	Explanation
* * * * * Broward County Aviation Department.	* * * * *	* * * * * August 15, 2003	* * * * * June 17, 2004 [Insert citation of publication].	* * * * * Order Granting Variance from Rule 62-252.400.

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[GA-62, GA-64-200418; FRL-7672-4]

**Approval and Promulgation of Implementation Plans Georgia: Approval of Revisions to the State Implementation Plan**

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

**ACTION:** Final rule.

**SUMMARY:** On July 18, 2003, EPA published a proposed rule (68 FR 42653) proposing to approve revisions to the State of Georgia's "Gasoline Marketing Rule" which were submitted to EPA on January 31, 2003, and June 19, 2003.

Adverse comment was received during the comment period, and this action addresses the adverse comments and grants final approval to the revisions.

**DATES:** *Effective Date:* This rule will be effective July 19, 2004.

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

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.

Air Protection Branch, Georgia Environmental Protection Division, Georgia Department of Natural Resources, 4244 International

Parkway, Suite 120, Atlanta, Georgia 30354. Telephone (404) 363-7000.

**FOR FURTHER INFORMATION CONTACT:**

Scott M. Martin, 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 is (404) 562-9036. Mr. Martin can also be reached via electronic mail at [martin.scott@epa.gov](mailto:martin.scott@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On January 31, 2003, and June 19, 2003, the Georgia Environmental Protection Division ("GAEPD") submitted revisions to the "Gasoline Marketing Rule," provided in Georgia's Rules for Air Quality Control, Chapter 391-3-1-.02(2)(bbb) (the "Georgia Fuel Rule,") to EPA. The revisions, which are in response to concerns regarding adequate gasoline supply, address the Georgia Fuel Rule's gasoline sulfur requirements, which would have been effective April 1, 2003, and associated reporting and testing requirements. EPA proposed approval of these revisions in a **Federal Register** published on July 18, 2003, (68 FR 42653). Adverse comment was received during the comment period. In today's action, EPA is responding to the adverse comment, and granting final approval to GAEPD's request for a revision to the gasoline sulfur requirement for the period of April 1, 2003, through December 31, 2003.

**II. Comment and Response**

EPA received comments from the public on the Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on July 18, 2003, (68 FR 42653). Comments were submitted by Chevron, Williams Energy, and Collier Shannon Scott on behalf of QuickTrip. Two Commentors expressed support of this proposed rulemaking. The other Commentor, while in favor of the NPRM to revise the State's implementation date from January 1, 2004, to September 16, 2003, expressed concern about the State's original revision of the implementation date from April 1, 2003.

The following discussion summarizes and responds to the adverse comment received.

*Comment*

By delaying the Georgia Gasoline Marketing Rule's original April 1, 2003 compliance deadline for 30 ppm sulfur gasoline, Georgia delayed significant VOC and NO<sub>x</sub> emissions reductions this

summer and failed to make "reasonable further progress" required under sections 182(c)(2)(B), 182(c)(2)(C) and 182(f) of the Clean Air Act this year. Since most, if not all, VOC and NO<sub>x</sub> emission reductions achieved by the Atlanta area nonattainment SIP would have been achieved by the original Georgia fuels rule, the relaxation of the sulfur standard for nine months in 2003 substantially delayed needed emission reductions in the greater Atlanta area. It was technologically achievable to meet 30 ppm sulfur gasoline demand on April 1, 2003, since some companies achieved it. Although Georgia can move back towards the RFP track by accelerating the compliance date to September 16, 2003 (rather than January 1, 2004), any additional delays or relaxations would again threaten Atlanta's ability to meet RFP requirements and should not be allowed under the Clean Air Act.

*Response*

The emissions reductions in the Atlanta 1-Hour Ozone State Implementation Plan (SIP) are associated with many different sources throughout the 43 counties surrounding and including the nonattainment area. The emission reductions expected from the Georgia Gasoline Marketing Rule are a very small portion of a very large number of reductions expected and achieved in the 2003 ozone season from the controls in the Atlanta SIP. For instance, the majority of the emission reductions are associated with the elevated emissions from power plants. Even though the April 1, 2003, compliance date for the Gasoline Marketing Rule was delayed until September 16, 2003, reasonable further progress was achieved. The Georgia Environmental Protection Division has provided all elements that were required to achieve reasonable further progress, and has implemented many of these measures. EPA believes that revision of the second phase of the Georgia Gasoline Marketing Rule (*i.e.*, requirement for 30 ppm sulfur in gasoline as opposed to 150 ppm (*i.e.*, for Phase 1) or 90 ppm sulfur (*i.e.*, interim requirement beginning April 1, 2003) in gasoline) did not interfere with the section 182(c)(2) RFP requirement.

In addition to the adverse comment mentioned above, Commentors provided EPA with their proposal on enforcement options for all regulated parties that fail to supply the 30 parts per million (ppm) gasoline after September 15, 2003. Some Commentors requested flexibility and case-by-case consideration for the imposition of a per-gallon-fee for noncompliant

gasoline, while other Commentors urged EPA to impose a per-gallon-fee for noncompliant gasoline.

In a letter entitled "Re: Enforcement Discretion—Georgia's Low Sulfur/Low RVP Fuel Program," dated April 24, 2003, from John Peter Suarez of EPA's Office of Enforcement and Compliance Assurance to Ron Methier of the Georgia Environmental Protection Division, EPA provides detail of enforcement discretion that could be provided to all regulated parties after September 15, 2003. Specifically, the letter states "After September 15, 2003, all regulated parties will be required to meet the sulfur requirements of the applicable Georgia regulations, *i.e.*, 30 ppm annual average, and a per-gallon cap of 150 ppm. In the event that a regulated party is unable to supply compliant gasoline to the Atlanta-area market beginning September 16, 2003, and provided that EPA believes additional relief is necessary, EPA will require the non-complying party to enter into a compliance agreement requiring that party to remediate the harmful effects of the excess emissions caused by its gasoline by contributing not less than 7 cents per gallon to an emissions offset program in the affected area as approved by the State of Georgia."

**III. Final Action**

EPA is granting final approval to the revisions to the Georgia SIP described above because they are consistent with EPA guidance and the CAA, as amended in 1990.

**IV. Statutory and Executive Order Reviews**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it 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).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority

to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

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 rule 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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 16, 2004. Filing a petition for reconsideration by

the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 26, 2004.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

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

PART 52—[AMENDED]

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

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

Subpart L—Georgia

2. Section 52.570(c), is amended by revising the entry for "391-3-1-.02(2)(bbb) Gasoline Marketing" to read as follows:

§ 52.570 Identification of plan.

\* \* \* \* \*
(c) \* \* \*

EPA APPROVED GEORGIA REGULATIONS

Table with 6 columns: State citation, Title/subject, State effective date, EPA approval date, Explanation. Row 1: 391-3-1-.02(2)(bbb) Gasoline Marketing 6/24/2003 6/17/2004 [Insert citation of publication].

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