

must consider whether this regulation will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under Section 3 of the Small Business Act (15 U.S.C. 632).

For reasons given in the Regulatory Evaluation, the Coast Guard expects the impact of this regulation to be minimal. The Coast Guard certifies under 5 U.S.C. 605(b) that this regulation will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that under section 2.B.2.e. of Commandant Instruction M16475.1B, revised 59 FR 38654, July 29, 1994, the promulgation of this regulation is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist are included in the docket. Under the National Environmental Policy Act, the approval of the permit for marine event for this event is a federal action which is categorically excluded in accordance with section 2.B.2.e(35)(h) of Commandant Instruction M16475.1B, as amended, July 29, 1994. This fireworks display lasts less than 30 minutes and is expected to involve less than 200 spectator craft.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Temporary Regulation

For reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; 49 CFR 1.46.

2. A temporary § 165.T01-129 is added to read as follows:

§ 165.T01-129 Safety Zone; Brick Summerfest Fireworks, Metedeconk River, Brick, New Jersey.

(a) *Location.* All waters of the Metedeconk River within a 300 yard radius of the fireworks platform located on the "T dock" pier, on Windward Beach, Brick, New Jersey, in the approximate position 40°03'25" N latitude, 074°06'47" W longitude (NAD 1983).

(b) *Effective period.* This section is in effect on August 31, 1995, from 8 p.m. until 10 p.m., unless extended or terminated sooner by the Captain of the Port, New York.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply to this safety zone.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: August 19, 1995.

J. Rutkovsky,

Commander, U.S. Coast Guard, Captain of the Port New York, Acting.

[FR Doc. 95-21561 Filed 8-29-95; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[GA-033-1-7037a; FRL-5276-1]

Approval and Promulgation of Implementation Plans Georgia: Approval of Revisions to Minor Source Permit Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Georgia State Implementation Plan (SIP) to allow the State of Georgia to issue Federally enforceable state operating permits (FESOP). On March 15, 1995, the State of Georgia through

the Georgia Department of Natural Resources, Environmental Protection Division (EPD) submitted a SIP revision fulfilling the requirements necessary for a state FESOP program to become Federally enforceable. In order to extend the Federal enforceability of Georgia's FESOP program to hazardous air pollutants (HAP), EPA is also approving Georgia's FESOP program pursuant to section 112 of the Clean Air Act as amended in 1990 (CAA) so that the State may issue FESOP for HAP.

DATES: This final rule will be effective October 30, 1995 unless adverse or critical comments are received by September 29, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to Yolanda Adams, at the EPA Regional Office listed below. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.
Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365.

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

FOR FURTHER INFORMATION CONTACT: Yolanda Adams, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365. The telephone number is 404/347-3555 x4149. Reference file GA033-01-7037.

SUPPLEMENTARY INFORMATION: On March 15, 1995, the State of Georgia through the EPD submitted a SIP revision designed to make certain permits issued under Georgia's existing minor source operating permit program Federally enforceable pursuant to EPA requirements as specified in a **Federal Register** document, "Requirements for the preparation, adoption, and submittal of implementation plans; air quality, new source review; final rules." (see 54 FR 22274, June 28, 1989). The State will continue to issue permits which are not Federally enforceable under its existing minor source operating permit rules as

it has done in the past. The SIP revision which is the subject of today's rulemaking adds additional requirements to the State's current minor source operating permit program which allows the State to issue Federally enforceable operating permits, and provides for the issuance of generic operating permits.¹ This voluntary SIP revision allows EPA and citizens under the CAA to enforce terms and conditions of Georgia's FESOP program. Operating permits that are issued under the State's FESOP program that is approved into the State SIP and under section 112(l) will provide Federally enforceable limits to an air pollution source's potential to emit. Limiting of a source's potential to emit through Federally enforceable operating permits can affect a source's applicability to Federal regulations such as title V operating permits, New Source Review (NSR) preconstruction permits, Prevention of Significant Deterioration (PSD) preconstruction permits for criteria pollutants and Federal air toxics requirements mandated under section 112 of the CAA.

In the aforementioned June 28, 1989, **Federal Register** document, EPA listed five criteria necessary to make a State's minor source operating permit program Federally enforceable and, therefore, approvable into the SIP. This revision satisfies the five criteria for Federal enforceability of the State's FESOP program.

The first criteria for a state's operating permit program to become Federally enforceable is that the permit program that the state wishes to be Federally enforceable must be approved into the SIP. On March 15, 1995, the State of Georgia submitted through the EPD a SIP revision designed to meet the five criteria for Federal enforceability. Today's action will approve these regulations into the Georgia SIP, thereby, meeting the first criteria for Federal enforceability.

The second criteria for a state's operating permit program to become Federally enforceable is that the regulations approved into the SIP impose a legal obligation that operating permit holders adhere to the terms and limitations of such permits. Georgia's regulations meet this criteria in Rule 391-3-1-.03, subsections (2)(g) and (12)(a), by requiring that under penalty of law, the holder of any Air Quality Permit must adhere to the terms, limitations, and conditions of that permit and subsequent revisions of that

permit. Hence, the second criteria for Federal enforceability is met.

The third criteria necessary for a state's operating permit program to be Federally enforceable is that the state operating permit program require that all emissions limitations, controls, and other requirements imposed by such permits will be at least as stringent as any other applicable limitations and requirements contained in the SIP or enforceable under the SIP, and that the program may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the SIP, or that are otherwise "Federally enforceable" (e.g. standards established under sections 111 and 112 of the Act). Georgia satisfies this criteria in Rule 391-3-1-.03, subsection (2)(c) by stating that an operating permit will be issued upon evidence of compliance with the provisions of the Act and the rules and regulations promulgated thereunder. Said permit shall specify the conditions under which the facility shall be operated in order to comply with the Act and rules and regulations. As a condition for the issuance of an operating permit, Georgia may require the applicant to conduct performance tests and monitoring and provide reports concerning operations, to demonstrate compliance with the Act and the rules and regulations. Therefore, this subsection of Georgia's permits rule satisfies the third criteria for Federal enforceability.

The fourth criteria for a state's operating permit program to become Federally enforceable is that limitations, controls, and requirements in the operating permits are quantifiable, and otherwise enforceable as a practical matter. Georgia's Rule 391-3-1-.03, subsections (2)(h) and (12)(b), requires that the limitations, controls, and requirements in Federally enforceable operating permits be permanent, quantifiable, and otherwise enforceable as a practical matter. Therefore, the Georgia FESOP program satisfies the fourth criteria for Federal enforceability.

The fifth criteria for a state's operating permit program to become Federally enforceable is to provide EPA and the public with timely notice of the proposal and issuance of such permits, and to provide EPA, on a timely basis, with a copy of each proposed (or draft) and final permit intended to be Federally enforceable. This process also must provide for an opportunity for public comment on the permit applications prior to issuance of the final permit. Rule 391-3-1-.03, subsections (2)(i) and (12)(c), states that prior to the issuance of any Federally

enforceable operating permit, EPA and the public will be notified and given a chance for comment on the draft permit. EPA notes that any permit which has not gone through an opportunity for public comment and EPA review under the Georgia FESOP program will not be Federally enforceable.

In addition to requesting approval into the SIP, Georgia has also requested approval of its FESOP program under section 112(l) of the Act for the purpose of creating Federally enforceable limitations on the potential to emit of HAP through the issuance of Federally enforceable state operating permits. Approval under section 112(l) is necessary because the proposed SIP approval discussed above only extends to the control of criteria pollutants.

EPA believes that the five approval criteria for approving FESOP programs into the SIP, as specified in the June 28, 1989, **Federal Register** document, are also appropriate for evaluating and approving the programs under section 112(l). The June 28, 1989, document does not address HAP because it was written prior to the 1990 amendments to section 112, not because it establishes requirements unique to criteria pollutants.

In addition to meeting the criteria in the June 28, 1989, document, a FESOP program that addresses HAP must meet the statutory criteria for approval under section 112(l)(5). Section 112(l) allows EPA to approve a program only if it: (1) contains adequate authority to assure compliance with any section 112 standards or requirements; (2) provides for adequate resources; (3) provides for an expeditious schedule for assuring compliance with section 112 requirements; and (4) is otherwise likely to satisfy the objectives of the CAA.

EPA plans to codify the approval criteria for programs limiting potential to emit of HAP, such as FESOP programs, through amendments to Subpart E of Part 63, the regulations promulgated to implement section 112(l) of the CAA. (See 58 Fed. Reg. 62262, November 26, 1993.) EPA anticipates that these regulatory criteria, as they apply to FESOP programs, will mirror those set forth in the June 28, 1989, document. The EPA also anticipates that since FESOP programs approved pursuant to section 112(l) prior to the planned Subpart E revisions will have been approved as meeting these criteria, further approval actions for those programs will not be necessary.

EPA has authority under section 112(l) to approve programs to limit potential to emit of HAP directly under section 112(l) prior to this revision to

¹ A generic permit is a single operating permit that establishes terms and conditions that must be complied with by all sources subject to that permit.

Subpart E. Section 112(l)(5) requires the EPA to disapprove programs that are inconsistent with guidance required to be issued under section 112(l)(2). This might be read to suggest that the "guidance" referred to in section 112(l)(2) was intended to be a binding rule. Even under this interpretation, EPA does not believe that section 112(l) requires this rulemaking to be comprehensive. That is, it need not address every possible instance of approval under section 112(l). EPA has already issued regulations under section 112(l) that would satisfy any section 112(l)(2) requirement for rulemaking. Given the severe timing problems posed by impending deadlines set forth in "maximum achievable control technology" (MACT) emission standards under section 112 and for submittal of title V permit applications, EPA believes it is reasonable to read section 112(l) to allow for approval of programs to limit potential to emit prior to promulgation of a rule specifically addressing this issue. Therefore, EPA is approving Georgia's FESOP program so that Georgia may begin to issue Federally enforceable operating permits as soon as possible.

EPA believes that Georgia's FESOP program meets the approval criteria specified in the June 28, 1989 **Federal Register** document and in section 112(l)(5) of the CAA. As discussed previously in this document, Georgia's FESOP program meets the five criteria necessary for Federal enforceability.

Regarding the statutory criteria of section 112(l)(5) referred to above, EPA believes Georgia's FESOP program contains adequate authority to assure compliance with section 112 requirements because the third criterion of the June 28, 1989, document is met, that is, because the program does not allow for the waiver of any section 112 requirement. Sources that become minor through a permit issued pursuant to this program would still be required to meet section 112 requirements applicable to non-major sources.

Regarding the requirement for adequate resources, EPA believes Georgia has demonstrated that it can provide for adequate resources to support the FESOP program. EPA expects that resources will continue to be adequate to administer that portion of the State's minor source operating permit program under which Federally enforceable operating permits will be issued since Georgia has administered a minor source operating permit program for several years. EPA will monitor Georgia's implementation of its FESOP program to ensure that adequate resources are in fact available. EPA also

believes that Georgia's FESOP program provides for an expeditious schedule for assuring compliance with section 112 requirements. This program will be used to allow a source to establish a voluntary limit on potential to emit to avoid being subject to a CAA requirement applicable on a particular date. Nothing in Georgia's FESOP program would allow a source to avoid or delay compliance with a CAA requirement if it fails to obtain an appropriate Federally enforceable limit by the relevant deadline. Finally, EPA believes it is consistent with the intent of section 112 and the CAA for states to provide a mechanism through which sources may avoid classification as a major source by obtaining a Federally enforceable limit on potential to emit.

Eligibility for Federal enforceability of permits extends not only to permits issued after the effective date of this rule but also extends to permits issued under the State's current rule prior to the effective date of today's rulemaking. If the State followed its own procedures, each permit issued under this regulation to establish a title I condition (e.g. for a source to have minor source potential to emit) was subject to public notice and prior EPA review. Therefore, EPA will consider all such operating permits issued which were processed in a manner consistent with both the State regulations and the five criteria to be federally enforceable with the promulgation of this rule provided that any permits that the State wishes to make federally enforceable are submitted to EPA and accompanied by documentation that the procedures approved today have been followed. EPA will expeditiously review any individual permits so submitted to ensure their conformity to the program requirements.

With the addition of these provisions, Georgia's FESOP program satisfies all the requirements listed in the June 28, 1989, **Federal Register** document. EPA is approving this revision to the State of Georgia's SIP thus making the State's FESOP program Federally enforceable.

Final Action

In this action, EPA is approving the Georgia FESOP program. EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document elsewhere in this **Federal Register**, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective October 30, 1995 unless, by September 29, 1995, adverse or critical comments

are received. If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective October 30, 1995.

The Agency has reviewed this request for revision of the Federally-approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. EPA has determined that this action conforms with those requirements.

Under section 307(b)(1) of the CAA, 42 U.S.C. 7607 (b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 30, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for 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) of the CAA, 42 U.S.C. 7607 (b)(2)). The Office of Management and Budget has exempted this action from review under Executive Order 12866.

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

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

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in

association with proposed or final rules that include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State has elected to adopt the program provided for under Section 110 of the Clean Air Act. These rules may bind the State government to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action would impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to the State government, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of \$100 million or more to the State government in the aggregate or to the private sector.

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

The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2).

List of Subjects in 40 CFR Part 52

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

Dated: August 3, 1995.

Patrick M. Tobin,
Acting Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401-7671q.

Subpart L—Georgia

2. Section 52.570 is amended by adding paragraph (c)(46) to read as follows:

§ 52.570 Identification of plan.

* * * * *

(c) * * *

(46) Revisions to minor source permit rules submitted by the Georgia Environmental Protection Division on March 15, 1995.

(i) Incorporation by reference. Revised Rule 391-3-1-.03, "Permits", sections (1), (2), and (12), effective August 17, 1994.

(ii) Other material. None.

[FR Doc. 95-21466 Filed 8-29-95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

[MT31-1-7007a; FRL-5275-1]

Clean Air Act Approval and Promulgation of PM₁₀ State Implementation Plan for Montana; Missoula Air Pollution Control Program Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA approves the State implementation plan (SIP) revisions submitted by the State of Montana with a letter dated March 3, 1995. This submittal consists of several revisions to Missoula City-County Air Pollution Control Program regulations, which were adopted by the Montana Board of Health and Environmental Sciences (MBHES) on September 16, 1994. These rules include regulations regarding emergency procedure, paving of roads, driveways, and parking lots, street sweeping, National standards of performance for new stationary sources (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAPs), and solid fuel burning devices. Further, this submittal satisfies the one remaining commitment made by the State in a previous PM₁₀ SIP submittal.

DATES: This final rule is effective on October 30, 1995 unless adverse comments are received by September 29, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the State's submittal and other information are available for inspection during normal business hours at the following locations:

Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202-2405; Montana Department of Health and Environmental Sciences, Air Quality Division, Cogswell Building, Helena, Montana 59620-0901; and The Air and Radiation Docket and Information Center, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Amy Platt, 8ART-AP, Environmental Protection Agency, Region VIII, (303) 293-1769.

SUPPLEMENTARY INFORMATION:

I. Background

The Missoula, Montana area was designated nonattainment for PM₁₀ and classified as moderate under Sections 107(d)(4)(B) and 188(a) of the Clean Air Act, upon enactment of the Clean Air Act Amendments of 1990.¹ See 56 FR 56694 (Nov. 6, 1991); 40 CFR 81.327 (Missoula and vicinity). The air quality planning requirements for moderate PM₁₀ nonattainment areas are set out in Subparts 1 and 4 of Part D, Title I of the Act.² The EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under Title I of the Act, including those State submittals containing moderate PM₁₀ nonattainment area SIP requirements [see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)]. Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in this action and the supporting rationale.

Those States containing initial moderate PM₁₀ nonattainment areas such as Missoula were required to submit, among other things, several provisions by November 15, 1991. These provisions are described in EPA's final rulemaking on the Missoula moderate PM₁₀ nonattainment area SIP (59 FR 2537-2540, January 18, 1994).

In a letter dated August 20, 1991, the Governor of Montana submitted to EPA the Missoula City-County Air Pollution

¹ The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Pub. L. No. 101-549, 104 Stat. 2399. References herein are to the Clean Air Act, as amended ("the Act"). The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. Sections 7401, *et seq.*

² Subpart 1 contains provisions applicable to nonattainment areas generally and Subpart 4 contains provisions specifically applicable to PM₁₀ nonattainment areas. At times, Subpart 1 and Subpart 4 overlap or conflict. EPA has attempted to clarify the relationship among these provisions in the "General Preamble" and, as appropriate, in today's notice and supporting information.