

the initial and final regulatory flexibility analyses requirement of sections 603 and 604.

#### List of Subjects in 38 CFR Part 20

Administrative practice and procedure; Claims; Lawyers; Legal services; Veterans; Authority delegations (government agencies).

Approved: June 29, 2001.

**Anthony J. Principi,**

*Secretary of Veterans Affairs.*

For the reasons set out in the preamble, 38 CFR part 20 is amended as set forth below:

#### PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

1. The authority citation for part 20 continues to read as follows:

**Authority:** 38 U.S.C. 501(a) and as noted in specific sections.

2. In § 20.1404, paragraph (b) is revised amended to read as follows:

##### § 20.1404. Rule 1404. Filing and pleading requirements; withdrawals.

\* \* \* \* \*

(b) *Specific allegations required.* The motion must set forth clearly and specifically the alleged clear and unmistakable error, or errors, of fact or law in the Board decision, the legal or factual basis for such allegations, and why the result would have been manifestly different but for the alleged error. Non-specific allegations of failure to follow regulations or failure to give due process, or any other general, non-specific allegations of error, are insufficient to satisfy the requirement of the previous sentence. Motions which fail to comply with the requirements set forth in this paragraph shall be dismissed without prejudice to refile under this subpart.

\* \* \* \* \*

3. In § 20.1409, paragraph (b) is revised amended to read as follows:

##### § 20.1409. Rule 1409. Finality and appeal.

\* \* \* \* \*

(b) For purposes of this section, a dismissal without prejudice under Rule 1404(a) (§ 20.1404(a) of this part), Rule 1404(b) (§ 20.1404(b)), or Rule 1404(f) (§ 20.1404(f)), or a referral under Rule 1405(e) is not a final decision of the Board.

\* \* \* \* \*

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#### ENVIRONMENTAL PROTECTION AGENCY

##### 40 CFR Part 52

[TX 28-1-7382a; FRL-7008-3]

#### Approval and Promulgation of Implementation Plans; Texas; Houston/Galveston Ozone Nonattainment Area Vehicle Miles Traveled Offset Plan

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

**ACTION:** Direct final rule.

**SUMMARY:** In this direct final action, the EPA is approving the Texas State Implementation Plan (SIP) for the Houston/Galveston Ozone Nonattainment Area (HGA) Vehicle Miles Traveled (VMT) Offset Plan as part of the State's effort to attain the National Ambient Air Quality Standard (NAAQS) for ozone. The State demonstrated that emissions from increases in VMT or numbers of vehicle trips within HGA will not rise above an established ceiling by 2007; thereby not requiring additional transportation control measure (TCM) offsets to prevent an increase in VMT above the ceiling. This action replaces the October 21, 1997 proposed disapproval of the HGA VMT Offset SIP revision previously submitted on August 16, 1994. This action is being taken under sections 110 and 182 of the Federal Clean Air Act, as amended (the Act).

**DATES:** This direct final rule is effective on September 10, 2001, without further notice, unless EPA receives adverse comment by August 9, 2001. If significant adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Written comments should be mailed to Thomas H. Diggs, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202-2377. Copies of the relevant material for this notice are available for inspection during normal business hours at the following locations. Persons interested in examining these documents should make an appointment at least 24 hours before the visiting day.

Environmental Protection Agency, Region 6, Air Planning Section (6PD-L), 1445 Ross Avenue, Suite 700, Dallas, TX 75202-2377.

Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas 78753.

**FOR FURTHER INFORMATION CONTACT:** Ms. Brooke M. Ivener, Air Planning Section (6PD-L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone (214) 665-7362.

#### SUPPLEMENTARY INFORMATION:

##### I. Table of Contents

1. Background
2. State Submittals
3. Analysis of 1997 VMT Plan
4. Comments on the Proposed Disapproval Action

Throughout this document "we," "us," and "our" means EPA.

##### 1. Background

###### What Is a VMT SIP?

Section 182(d)(1)(A) of the Act requires states containing ozone nonattainment areas classified as severe, pursuant to section 181(a) of the Act, to adopt transportation control strategies and TCMs to offset increases in emissions resulting from growth in VMT or numbers of vehicle trips and to obtain reductions in motor vehicle emissions as necessary (in combination with other emission reduction requirements) to comply with the Act's Reasonable Further Progress milestones (section 182(b)(1) and (c)(2)(B)) and attainment demonstration requirements (section 182(c)(2)(A)). Our interpretation of section 182(d)(1)(A) is discussed in the April 16, 1992, General Preamble to Title I of the Act (57 FR 13498, the General Preamble). Section 182(d)(1)(A) of the Act requires that states submit the VMT Offset SIP by November 15, 1992, for any severe and above ozone nonattainment area. Texas has one severe ozone nonattainment area, the HGA area, with an attainment deadline of 2007.

##### 2. State Submittals

###### Previous Submittals

On November 13, 1992, the State submitted a committal SIP to EPA for VMT Offset for the HGA nonattainment area. The submittal committed to submitting subsequent SIPs in 1993 and 1994 to parallel development of the 15 percent Rate of Progress (ROP) SIP revision, and to parallel the Post 1996 ROP SIP revision and the demonstration of attainment SIP revision, both due November 1994. On November 12, 1993, and November 6, 1994, the State of Texas submitted revisions to the SIP for the VMT Offset Plan to fulfill the committal SIP requirement. On October 21, 1997, EPA proposed disapproval of the 1993 and 1994 VMT Offset SIP submittals (62 FR 54598). These submittals were no longer accurate since the calculated vehicle emissions relied

upon programs no longer in effect; specifically, a centralized loaded mode vehicle inspection and maintenance (I/M) program and an Employer Trip Reduction (ETR) program. A complete discussion of the background surrounding program changes is included in the above referenced proposed disapproval action.

#### Current Submittal

The State subsequently submitted a SIP revision for VMT Offset on August 25, 1997. The submittal was determined complete on December 10, 1997. For information regarding our analysis of the State submittal, please refer to the Technical Support Document for this action. On May 17, 2000, the State submitted to the EPA a new SIP revision for VMT Offset. This submittal does not contain any substantive changes and does not affect any approval of the revision submitted on August 25, 1997. The State submitted the revision, which the State adopted on May 9, 2000, because the VMT Offset SIP references the TCM rules in 30 TAC § 114.270, which were reevaluated and renumbered. The discussion of the VMT Offset SIP in this rule is therefore still in reference to the August 25, 1997 submittal, as it is the substantive SIP revision document on which this proposed approval is based.

#### 3. Analysis of 1997 VMT Plan

##### How Is the VMT Offset Requirement Satisfied?

The EPA General Preamble (57 FR 13498, 13521–13523, April 16, 1992) explains how to demonstrate that the VMT requirement is satisfied. Sufficient measures must be adopted so projected motor vehicle volatile organic compound (VOC) emissions will stay beneath a ceiling level established through modeling of mandated transportation-related controls. When growth in VMT and vehicle trips would otherwise cause a motor vehicle emissions upturn, this upturn must be prevented by TCMs. If projected total motor vehicle emissions during the ozone season in one year are not higher than during the previous ozone season due to the control measures in the SIP, the VMT Offset requirement is satisfied. In order to make these projections, two curves of vehicle emissions are modeled (please refer to Graph 1 in the Technical Support Document). The upper curve profiles the effects of required reductions from the following mandatory programs: a low-enhanced performance standard vehicle I/M program, Reid Vapor Pressure (RVP) controls, and reformulated gasoline. The

lower curve depicts the control strategy program and includes the effects not only of the mandated controls, but also of the Motorist Choice I/M program and TCMs.

##### What Does Texas' Demonstration Show?

The August 25, 1997, VMT SIP submittal includes a projection of the mobile source emissions profile for HGA through 2007, the date by which the HGA area is to attain the NAAQS for ozone. It also contains an upper curve modeled scenario that includes the effects of required reductions from the following mandatory programs: a Low-Enhanced Performance Standard I/M program, Phase II RVP controls, reformulated gasoline, and the Federal Vehicle Control Program (FMVCP) for new vehicles, including the Tier I FMVCP standard. The lower curve, which depicts the control strategy program, includes the Motorist Choice I/M program, Phase II RVP controls, reformulated gasoline, the FMVCP, and certain TCMs.

##### What TCMs Are Part of the VMT Offset SIP?

The Transportation Policy Council for the HGA Transportation Management Area adopted, through resolution on September 29, 1995, TCM commitments in the 1996–1997 Transportation Implementation Project and the 2020 Metropolitan Transportation Plan. These TCMs were included in the 15% ROP Plan and the Post 1996 ROP Plan submitted on July 24, 1996, and have been included in the VMT Offset SIP as measurable emission reduction credits.

The TCM commitments for Fiscal Year (FY) 1996 include 14.7 miles of High Occupancy Vehicle (HOV) Lanes, 3,745 parking spaces in Park-and-Ride Lots, 41 miles of Arterial Traffic Management Systems, 22.2 miles of Computer Transportation Management Systems, and 2.9 miles of signalization.

Although not credited for the VMT Offset SIP demonstrations, as explained below, the TCMs for FY 1999 include 3.2 miles of Accident Investigation Sites, 65.8 miles of Arterial Traffic Management Systems, 262.3 miles of Bicycle Facilities, 70.3 miles of Computer Transportation Management Systems, 3.5 miles of HOV lanes, 1643 Park and Ride Lot spaces, 49.3 miles of signalization, and 225 Vanpool vans. The TCMs for FY 2007 include 30.0 miles of Accident Investigation Sites, 1.5 miles of Arterial Traffic Management Systems, and 59.5 miles of Computer Transportation Management Systems.

EPA stated in its comment letter dated June 5, 1997, that any TCMs for which Texas takes credit in the VMT SIP

should be specifically documented on a project-by-project basis. At the time of comment in 1997, the HGA Metropolitan Planning Organization (MPO) committed to TCM reductions on a project category (e.g., HOV lanes) basis, not on a project specific basis. Therefore, to resolve the dilemma, no future credit is taken in the SIP for any TCMs committed for milestone years after November 15, 1996. Thus, the lower curve includes only TCMs through FY 1996. A detailed description of the FY 1996 TCM projects and the associated implementation, and completion schedules is included in an Appendix to the SIP. The EPA gave conditional interim approval of these FY 1996 TCMs as part of the 15 percent ROP Plan on November 10, 1998 (62 FR 62943). It is worth mentioning here that later SIPs have included additional TCMs which are not credited. This, in effect, means that the VMT Offsets are, in actuality, even greater than accounted for here.

##### Results of the Analysis

The modeled curves in Graph 1 satisfy the VMT Offset requirement as discussed in the General Preamble. Modeling of the lower curve, at no time, shows the emission estimates meeting or exceeding the lowest point in the upper curve, reached in 2007. The upper curve reaches its lowest point in 2007, so no upward turn is demonstrated in this instance. The low point establishes the ceiling, but no true ceiling is established in this demonstration because there is no upward turn of the curve to identify the lowest point. Since the curve does not turn upward (indicating the control programs are offsetting increases in emission from growth in VMT) no TCMs would be necessary to offset emissions from growth in VMT. The State, however, chose to include the five FY 1996 TCMs anyway, although they are not necessary.

The TCMs selected reduce emissions associated with mobile sources by relieving congestion, improving traffic flow, and decreasing idle time. As required by section 182(d)(1)(A) of the Act, they neither impede adequate access to downtown or other commercial and residential areas nor increase or relocate emissions and congestion.

The August 25, 1997 submittal includes all elements required by the Act to fulfill the requirements for a VMT Offset Plan in the HGA severe ozone nonattainment area. It is worth noting that subsequent to the submission of the VMT Offset plan, Texas has submitted additional mobile source control

measures as part of its attainment plan. These include a more extensive I/M program and a low emissions diesel requirement. Therefore, if these additional control measures were factored in to the analysis, the area would be able to demonstrate compliance by a wider margin.

#### 4. Comments on the Proposed Disapproval Action

Three comments were received in response to the proposed disapproval (referenced above) of the 1993 and 1994 submittals which comprised the VMT Offset requirement. Two comments supported the proposed disapproval because the SIP relied upon the repealed I/M and ETR Programs. The SIP submittal being acted upon in this action does not rely on those two programs. A third comment supported approval of the August 1997 VMT Offset submittal. No other comments were received.

## II. Final Action

The EPA has determined that Texas has adequately demonstrated that emissions from growth in VMT and number of vehicle trips will not rise above the ceiling. Therefore, we are approving the VMT Offset SIP, submitted by the State on August 25, 1997 and with minor revisions submitted on May 17, 2000, under sections 110 and 182 of the Act.

The EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the "Proposed Rules" section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are received. This rule will be effective on September 10, 2001 without further notice unless we receive adverse comment by August 9, 2001. If EPA receives adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

## III. Administrative Requirements

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. 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 (Public Law 104-4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This rule will 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), because it 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 Act. This rule also is not subject to Executive Order 13045 (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 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 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. The rule does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied

with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. 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. The 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). This rule will be effective September 10, 2001 unless EPA receives adverse written comments by August 9, 2001.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 10, 2001. 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) of the Act.

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 13, 2001.

**Jerry Clifford,**

*Acting Regional Administrator, Region 6.*

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

**PART 52—[AMENDED]**

**Subpart SS—Texas**

one entry is added to the end of the table to read as follows:

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

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

2. In § 52.2270, paragraph (e), in the table entitled “EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP,”

**§ 52.2270 Identification of plan.**

\* \* \* \* \*  
(e) \* \* \*

**EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP**

Name of SIP provision	Applicable geographic or non-attainment area	State submittal/effective date	EPA approval date	Comments
* Vehicle Miles Traveled Offset Plan.	* Houston/Galveston Ozone nonattainment area.	* 05/09/2000	* July 10, 2001, 66 FR 35906 ..	* Originally submitted 11/12/93 and revised 11/06/94, 8/25/97, and 05/17/00.

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[GA-47; GA-52; GA-55-200111; FRL-7009-3]

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

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

**ACTION:** Final rule.

**SUMMARY:** In a December 16, 1999, **Federal Register** document (see 64 FR 70478), EPA proposed to approve the 1-hour ozone attainment demonstration for the Atlanta nonattainment area (Atlanta attainment demonstration), as well as the underlying rule revisions, which were submitted by the Georgia Environmental Protection Division (GAEPD) on October 28, 1999. EPA’s proposed approval was based on the condition that the GAEPD satisfy certain requirements established in the proposal. Subsequently, the GAEPD submitted revisions to the Atlanta attainment demonstration on January 31, 2000, and July 31, 2000. Those rule revisions were proposed for approval in the **Federal Register** on December 18, 2000, at 65 FR 79034. No adverse comments were received pertaining to any rule revisions. In today’s action, EPA is granting final approval to the rule revisions contained in the December 16, 1999, and December 18, 2000, proposals. Action will be taken on the Atlanta attainment demonstration in a separate notice.

**EFFECTIVE DATE:** This rule will be effective August 9, 2001.

**ADDRESSES:** All comments should be addressed to: Scott M. Martin at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303.

Copies of the State submittals are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 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 at (404) 562-9036. martin.scott@epa.gov.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In a December 16, 1999, **Federal Register** document (see 64 FR 70478), EPA proposed to approve the 1-hour ozone attainment demonstration for the Atlanta nonattainment area (Atlanta attainment demonstration), as well as the underlying rule revisions, which were submitted by the Georgia Environmental Protection Division (GAEPD) on October 28, 1999. EPA’s proposed approval was based on the condition that the GAEPD satisfy certain requirements established in the proposal. Subsequently, the GAEPD submitted revisions to the Atlanta attainment demonstration on January 31, 2000, and July 31, 2000. Those rule revisions were proposed for approval in the **Federal Register** on December 18, 2000, at 65 FR 79034. No adverse comments were received pertaining to any rule revisions. In today’s action, EPA is granting final approval to the rule revisions contained in the

December 16, 1999, and December 18, 2000, proposals. Action will be taken on the Atlanta attainment demonstration in a separate notice.

*Description of Major Revisions to Rules for Air Quality Submitted on October 28, 1999*

The October 28, 1999, attainment demonstration submittal included several regulations that will reduce emissions of NO<sub>x</sub> and VOC in the Atlanta modeling domain. EPA is approving the revisions to Georgia’s Rules for Air Quality Control Chapter 391-3-1 described below.

Rule 391-3-.02, subparagraph (2)(ii) relating to “VOC Emissions from Surface Coating of Miscellaneous Metal Parts and Products” is being amended. This rule is amended to exempt aerospace manufacturing and rework facilities from the rule. The rule is also being modified in order to keep Rule (ii) consistent with the most current Architectural Aluminum Manufacture’s Association (AAMA) standard in place.

The current rule only exempts the surface coating of airplane exteriors. Rule (ii) is no longer applicable to aerospace sources because the State has previously submitted a new rule limiting VOC emissions from aerospace manufacturing and rework facilities that meets EPA requirements (i.e., AAMA standards). In order to keep Rule (ii) consistent with the current AAMA standard, subparagraph 5.(xiii) has been modified to state that the coatings must satisfy the requirements of the most recent AAMA publication (number AAMA 605.2). This will prevent the standard that is stated in Rule (ii) from becoming outdated.

Rule 391-3-1-.02 subsection (6) relating to “Specific Monitoring” is being amended by adding a new subsection (a)2.(xii) which requires affected sources to install and operate continuous emissions monitoring