

*G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks*

*Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

*H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use*

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

*J. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. section 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. section 804(2). This rule will be effective May 28, 2004.

*K. Petitions for Judicial Review*

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 June 28, 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: March 8, 2004.

**Wayne Nastri,**  
*Regional Administrator, Region IX.*

■ Part 52, chapter I, title 40 of the 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 D—Arizona**

■ 2. Section 52.120 is amended by adding paragraphs (c)(84)(i)(I), (84)(i)(J), and (84)(i)(K) to read as follows:

**§ 52.120 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(84) \* \* \*

(i) \* \* \*

(I) Rules 2-8-280, 2-8-290, 2-8-300, 2-8-310, and 2-8-320, adopted on June 29, 1993.

(J) Rules 3-8-700 and 3-8-710, amended on February 22, 1995.

(K) Rule 5-24-1040, codified on February 22, 1995.

\* \* \* \* \*

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[R04-OAR-2003-FL-0001-200414(w); FRL-7654-5]

**Approval and Promulgation of Implementation Plans: Florida; Broward County Aviation Department Variance; Withdrawal of Direct Final Rule**

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

**ACTION:** Withdrawal of direct final rule.

**SUMMARY:** Due to an adverse comment, EPA is withdrawing the direct final rule to approve revisions to State Implementation Plan submitted by the State of Florida for the purpose of a department order granting a variance from Rule 62-252.400 to the Broward County Aviation Department. In the direct final rule published on April 6, 2004, (69 FR 17929), we stated that if we received adverse comment by May 6, 2004, the rule would be withdrawn and not take effect. EPA subsequently received an adverse comment. EPA will address the comment received in a subsequent final action based upon the proposed action also published on April 6, 2004, (69 FR 18006). EPA will not institute a second comment period on this action.

**EFFECTIVE DATE:** The Direct final rule is withdrawn as of April 28, 2004.

**FOR FURTHER INFORMATION CONTACT:** Sean Lakeman, 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) 562-9043. Mr. Lakeman can also be reached via electronic mail at [lakeman.sean@epa.gov](mailto:lakeman.sean@epa.gov).

**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.

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

Dated: April 20, 2004.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[WV064-6033a; FRL-7652-6]

**Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Revision to the State Implementation Plan Addressing Sulfur Dioxide in Marshall County**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve a revision to the West Virginia State Implementation Plan (SIP). The revision consists of a Consent Order for PPG Industries, Inc., which will continue to achieve and maintain the national ambient air quality standards (NAAQS) for sulfur dioxide (SO<sub>2</sub>) in Marshall County, West Virginia. EPA is approving this revision to incorporate the Consent Order into the federally approved SIP in accordance with the requirements of the Clean Air Act.

**DATES:** This rule is effective on June 28, 2004 without further notice, unless EPA receives adverse written comment by May 28, 2004. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by WV064-6033 by one of the following methods:

A. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

B. *E-mail:* [morris.makeba@epa.gov](mailto:morris.makeba@epa.gov)

C. *Mail:* Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. WV064-6033. EPA's policy is that all comments received will be included in the public docket

without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [regulations.gov](http://regulations.gov) or e-mail. The federal [regulations.gov](http://regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [regulations.gov](http://regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW, Room B108, Washington, DC 20460; and West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, SE., Charleston, West Virginia 25304-2943.

**FOR FURTHER INFORMATION CONTACT:** Ellen Wentworth, (215) 814-2034, or Denis Lohman, (215) 814-2192, or by e-mail at [wentworth.ellen@epa.gov](mailto:wentworth.ellen@epa.gov) or [lohman.denny@epa.gov](mailto:lohman.denny@epa.gov)

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On August 2, 2000 (65 FR 47339), EPA approved and promulgated a revision to the West Virginia SIP addressing SO<sub>2</sub> in Marshall County, West Virginia. This SIP revision consisted of Consent Orders prescribing new SO<sub>2</sub> emission limits and operating practices for three facilities in Marshall County, West Virginia. The facilities were PPG Industries (CO-SIP-2000-1),

Bayer Corporation (CO-SIP-2000-2), and Columbian Chemicals Company (CO-SIP-2000-3). The changes to the emission limits were approved into the West Virginia SIP and are federally enforceable. These changes in emission rates were necessary as a result of these sources being modeled as "nearly background sources" in the preliminary modeling of the Kammer power plant in Marshall County. The preliminary modeling indicated that these sources, at their existing allowable emission rates, were substantial contributors to modeled predicted violations of the NAAQS for SO<sub>2</sub>. The West Virginia Department of Environmental Protection (WVDEP) initiated action to complete a refined modeling analysis and determine appropriate emission limits for these sources and others in and near to Marshall County. With the emission limits and work practice requirements being approved for these three facilities, and the existing SIP-approved emission rates for the other sources modeled, the refined modeling results predict worst-case concentrations for the 3-hour, 24-hour, and annual averaging periods of 1294 micrograms per cubic meter of air (µg/m<sup>3</sup>) for the secondary 3-hour, 352 µg/m<sup>3</sup> for the primary 24-hour standard, and 62 µg/m<sup>3</sup> for the primary annual standard, respectively. Approval of the August 2, 2000 SIP revision, incorporating the provisions of CO-SIP-2000-1, (65 FR 47339) ensured that all ambient concentrations were below the applicable SO<sub>2</sub> NAAQS of 1300 µg/m<sup>3</sup>, 365 µg/m<sup>3</sup>, and 80 µg/m<sup>3</sup>, respectively. For more detailed information on the modeling for the SIP revision of August 2, 2000, please see the technical support document (TSD) prepared for that rulemaking.

In September 2001, PPG requested an extension of the compliance date (June 1, 2002) contained in CO-SIP-2000-1 for raising the height of three (3) emissions points. These emission points included Process # 036, the Sulfur Recovery Unit; Process # 016, the CS<sub>2</sub> Flare; and Process # 004, the Inorganics Flare. The request for an extension of the compliance date for these emission points was incorporated into a Consent Order, CO-SIP-C-2001-35A (2000), which amended CO-SIP-2000-1, and provided for an extension until September 1, 2003 for raising the heights of Process # 004, the Inorganics Flare; Process # 036, the CS<sub>2</sub> Sulfur Recovery Unit; and Process # 016, the CS<sub>2</sub> Flare to heights of sixty-five (65) meters above grade. All other provisions and requirements of CO-SIP-2000-1 remained in effect. This Consent Order was approved by the WVDEP on