

TABLE 4.—ACCEPTABLE GOODRICH SERVICE BULLETINS—Continued

Goodrich Service Bulletin	Revision level	Date
25-344	Original	October 15, 2003.
25-344	1	January 31, 2005.

Alternative Methods of Compliance (AMOCs)

(1)(1) The Manager, Los Angeles Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Issued in Renton, Washington, on May 30, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate,
Aircraft Certification Service.

[FR Doc. E7-10992 Filed 6-7-07; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51, 78, and 97

[EPA-HQ-OAR-2004-0439, FRL-8323-4]

RIN 2060-AN12

Petition for Reconsideration and Proposal for Withdrawal of Findings of Significant Contribution and Rulemaking for Georgia for Purposes of Reducing Ozone Interstate Transport

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action, we are requesting comments on EPA's response to a Petition for Reconsideration regarding a final rule we issued under Section 110 of the Clean Air Act (CAA) related to the interstate transport of nitrogen oxides (NO_x).

On April 21, 2004, we issued a final rule (Phase II NO_x SIP Call Rule) that required the State of Georgia to submit revisions to its State Implementation Plan (SIP) that prohibit specified amounts of NO_x emissions—one of the precursors to ozone (smog) pollution—for the purposes of reducing NO_x and ozone transport across State boundaries in the eastern half of the United States. This rule became effective on June 21, 2004.

Subsequently, the Georgia Coalition for Sound Environmental Policy (GCSEP

or Petitioners) filed a Petition for Reconsideration requesting that EPA reconsider the applicability of the NO_x SIP Call Rule to the State of Georgia. In response to this Petition, and based upon review of additional available information, EPA is proposing to remove Georgia from the NO_x SIP call region. Specifically, EPA proposes to rescind the applicability of the requirements of the Phase II NO_x SIP Call Rule to the State of Georgia, only.

DATES: *Comments.* Comments must be received on or before July 23, 2007.

Public Hearing. If anyone contacts us requesting to speak at a public hearing by June 25, 2007, we will hold a public hearing and hold the record open for purposes of rebuttal comments. Additional information about the hearing and rebuttal comments would be published in a subsequent **Federal Register** notice.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2005-0439, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail:* a-and-r-Docket@epa.gov.
- *Fax:* (202) 566-9744.
- *Mail:* Attention Docket ID No. EPA-HQ-OAR-2004-0439, U.S. Environmental Protection Agency, EPA West (Air Docket), Room 3334, 1301 Constitution Avenue, Northwest, Washington, DC. Please include a total of two copies.

• *Hand Delivery:* U.S. Environmental Protection Agency, EPA West (Air Docket), 1301 Constitution Avenue, Northwest, Room 3334, Washington, DC 20004. 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. EPA-HQ-OAR-2004-0439. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, 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 www.regulations.gov or e-mail. The www.regulations.gov Web site 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 www.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. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Air Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: Tim Smith, Air Quality Policy Division, Geographic Strategies Group (C539-04), Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541-4718, e-mail smith.tim@epa.gov. For legal questions, please contact Winifred Okoye, U.S.

EPA, Office of General Counsel, Mail Code 2344A, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone (202) 564-5446, e-mail at okoye.winifred@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action proposes to remove the applicability of certain requirements related to NO_x emissions in the State of Georgia. If these requirements were not removed, they would potentially affect electric utilities, cement manufacturing, and industries employing large stationary source internal combustion engines.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit information that you consider to be CBI electronically through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (e.g., subject heading, **Federal Register** proposal publication date and reference page number(s)).
- Follow directions—The EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and provide substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the specified comment period deadline.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Mr. Roberto Morales, U.S. Environmental Protection Agency, OAQPS Document Control Officer, 109 TW Alexander Drive, Room C404-02, Research Triangle Park, NC 27711. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by EPA, the information may be made available to the public without further notice to the commenter.

C. How Can I Find Information About a Possible Hearing?

People interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Pam Long, Air Quality Planning Division, Office of Air Quality Planning and Standards (C504-03), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541-0641, fax number (919) 541-5509, e-mail address long.pam@epa.gov, at least 2 days in advance of the public hearing. People interested in attending the public hearing should also call Ms. Long to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning the proposed action. If a public hearing is held, further information will be contained in a subsequent notice, including the scheduled date, and it will be held at 9:00 a.m. in EPA's Auditorium in Research Triangle Park, North Carolina, or at an alternate site nearby.

D. How Is This Preamble Organized?

The information presented in this preamble is organized as follows:

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 - G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
 - H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
 - I. National Technology Transfer Advancement Act
 - J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

II. Background

A. Background on NO_x SIP Call, Subsequent Litigation and Rulemaking Related to the State of Georgia

On October 27, 1998, EPA took final action to prohibit specified amounts of emissions of oxides of Nitrogen (NO_x), one of the main precursors of ground-level ozone, from being transported across State boundaries in the eastern half of the United States. (The NO_x SIP Call Rule) (63 FR 57356, (October 27, 1998)). We found that sources and emitting activities in 22 States and the District of Columbia (23 States)¹ were emitting NO_x in amounts that significantly contribute to downwind nonattainment of the 1-hour ozone national ambient air quality standard (NAAQS or standard). (63 FR 57356). We also determined separately that sources and emitting activities in these

¹ The 23 states were Alabama, Connecticut, Delaware, District of Columbia, Georgia, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Missouri, North Carolina, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin (63 FR 57394).

23 States emit NO_x in amounts that significantly contribute to and interfere with maintenance of downwind nonattainment of the 8-hour ozone NAAQS (63 FR 57358, 57379)). To determine significant contribution, we examined both the air quality impacts of emissions and the amount of reductions that could be achieved through the application of highly cost effective controls. The air quality impacts portion of our significant contribution analysis relied on state specific modeling, and modeling and recommendations by the Ozone Transport Assessment Group (OTAG) (62 FR 60335, (November 7, 1997), and 63 FR 57381–57399).

This analysis examined the impact of upwind emissions on downwind nonattainment areas. The preamble defined nonattainment for purposes of this analysis. It stated that a downwind area should be considered,

“nonattainment,” for purposes of section 110(a)(2)(D)(i)(I), under the 1-hour ozone NAAQS if the area (as of 1994–96 time period) had nonattainment air quality and if the area was modeled to have nonattainment air quality in the year 2007, after implementation of all measures specifically required of the area under the CAA as well as implementation of Federal measures required or expected to be implemented by that date.

63 FR 57386; See also 63 FR 57373–75; 62 FR 60324–25. We explained that “nonattainment [areas] includes areas that have monitored violations of the standard and areas that ‘contribute to ambient air quality in a nearby area’ that is violating the standard.” 63 FR 57373. Thus, to qualify as a downwind nonattainment receptor, an area had to be both in current nonattainment and also modeled to have nonattainment air quality in 2007. An area shown to be in attainment at either time was not considered a downwind receptor. 63 FR 57371, 73–75, 57382–83. See also 63 FR 57385–87 for our discussion on the determination of downwind nonattainment receptors.

We assessed each upwind State’s contribution to the 1-hour standard downwind nonattainment independent of the State’s contribution to the 8-hour standard nonattainment. 62 FR 60326; 63 FR 57377 and 57395. We determined and concluded that the level of NO_x emissions reductions necessary to address the significant contribution for the 8-hour NAAQS would be achieved using the same control measures for the 1-hour standard (63 FR 57446). Therefore, we promulgated only one NO_x emissions budget for each of the affected upwind States (63 FR 57439). Further, we required these States to submit revised SIPs, prohibiting those

amounts of NO_x emissions such that any remaining emissions would not exceed the level specified in the NO_x SIP Call regulations for that State in 2007. 62 FR 60364–5; 63 FR 57378 and 57426.

With regard to the State of Georgia, we determined that sources and emitting activities in the State of Georgia were significantly contributing to the 1-hour standard nonattainment in Birmingham, Alabama and Memphis, Tennessee (63 FR 57394). At the time the NO_x SIP Call Rule was being developed, monitored air quality data for 1994–1996 indicated that Memphis, Tennessee had nonattainment air quality² although we had redesignated the Memphis, Tennessee nonattainment area as an attainment area in 1995.³ 60 FR 3352, (January 17, 1995). Further, Birmingham, Alabama was a designated nonattainment area for the 1-hour ozone NAAQS at the time we issued the SIP Call. In addition, the modeling done at that time showed that receptors in the Memphis and Birmingham areas were modeled to have nonattainment air quality in the year 2007. Thus, Memphis, Tennessee and Birmingham, Alabama were “nonattainment” areas for purposes of the NO_x SIP Call Rule.

A number of parties, including certain States as well as industry and labor groups, challenged the NO_x SIP Call Rule. Specifically, Georgia and Missouri industry petitioners, citing the OTAG modeling and recommendations, maintained that EPA had record support for the inclusion of only eastern Missouri and northern Georgia as contributing significantly to downwind nonattainment. The United States Court of Appeals for the District of Columbia (D.C. Circuit or Court), upheld our findings of significant contribution for almost all jurisdictions covered by the NO_x SIP Call, with respect to the 1-hour standard⁴ but vacated and remanded the inclusion of Georgia and Missouri, *Michigan v. EPA*, 213 F. 3d 663 (D.C. Cir. 2000), cert. denied, 121 S. Ct. 1225 (2001) (*Michigan*). The Court agreed with

² Monitored air quality data indicated that the Memphis, Tennessee nonattainment area had nonattainment air quality from 1994 through 2000. Since 2001, the Memphis, Tennessee nonattainment area has had monitored attainment air quality data.

³ In the NO_x SIP Call Rule, we relied on the designated area solely as a proxy to determine which areas have air quality in nonattainment. “Our reliance on designated nonattainment areas for purposes of the 1-hour NAAQS does not indicate that the reference in section 110(a)(2)(D)(i)(I) to ‘nonattainment’ should be interpreted to refer to areas designated nonattainment.” 63 FR 57375 n.25.

⁴ In light of various challenges to the 8-hour standard, we stayed the 8-hour basis for the NO_x SIP Call rule indefinitely. (65 FR 56245, (September 18, 2000).

the litigants that only the Eastern portion of Missouri and Northern portion of Georgia were within a geographic area for photochemical modeling known as the “fine grid,” and thus, the record for the rulemaking supported only including those portions of the two States.⁵ Subsequently, in response to the Court decision in *Michigan*, we proposed (in what is referred to as the “Phase II NO_x SIP Call rule”), the inclusion of only the fine grid parts of the States of Georgia and Missouri in the NO_x SIP Call with respect to the 1-hour standard only. (67 FR 8396, (February 22, 2002)). We also proposed revised NO_x budgets for the States of Georgia and Missouri that would include only the fine grid portions of these States. On April 21, 2004, we finalized the Phase II NO_x SIP Call rule. This rule included eastern Missouri and northern Georgia as proposed, allocated revised NO_x budgets that reflected the inclusion of sources in only these areas, and set revised SIP submittal and full compliance dates of April 1, 2005 and May 1, 2007, respectively. 69 FR 21604, (April 21, 2004).

B. GCSEP Requests Related to Phase II NO_x SIP Call Rule

After our promulgation of the Phase II NO_x SIP Call rule, GCSEP, on June 16, 2004, took several legal actions: (1) A request that EPA reconsider the rulemaking in light of new information (2) a request that EPA stay the effectiveness of the rule pending a review of that information, and (3) a formal challenge to the rule in Federal Courts.

Petition for Reconsideration. GCSEP requested that EPA “convene a proceeding for reconsideration of the rule,” under section 307(d)(7)(B) of the Act. (Petition for Reconsideration, June 16, 2004) (Petition). GCSEP made this request based on assertions that:

- Certain events occurred after the close of notice and comment period of our February 21, 2002, proposal (that is, these events occurred after April 15, 2002), and
- EPA needed to reopen the rule for public notice and comment on those specific events.

GCSEP asserted that it “was impracticable to raise [its] objection within [the provided comment period] or [that] the grounds for [its] objection arose after the public comment period (but within the time specified for judicial review).” Section 307(d)(7)(B).

⁵ As the Court stated, “[a]ccordingly, they say the NO_x Budget for Missouri and Georgia should be based solely on those emissions.” 213 F. 3d at 684.

In addition, GCSEP further asserted that its objection was “of central relevance to the outcome of the rule.” Section 307(d)(7)(B).

Request for Stay of Effectiveness.

GCSEP also requested a stay of the effectiveness of the Phase II NO_x SIP Call Rule as it relates to the State of Georgia only. The stay would delay the applicability of Phase II NO_x SIP Call requirements to Georgia during the period EPA would conduct notice-and-comment rulemaking to address the issues raised in the Petition (*i.e.*, the action initiated in this notice). On March 1, 2005, EPA proposed to stay the effectiveness of the Phase II NO_x SIP Call Rule as requested by GCSEP. (70 FR 9897, (March 1, 2005)). Four parties commented on the proposed rule, raising issues related to the merits of the stay, and also raising issues related to the merits of the Petition. On August 31, 2005, EPA finalized, as proposed, a stay of the effectiveness of the Phase II NO_x SIP Call Rule as it related to Georgia only. (70 FR 51591, (August 31, 2005)). EPA also responded to comments on the stay but indicated that it would respond to comments on the reconsideration in any subsequent reconsideration action.

Challenge in Circuit Court. Finally, GCSEP filed a challenge to the Phase II NO_x SIP call rule in the Court of Appeals for the 11th Circuit, which has since been transferred to the D.C. Circuit. *Georgia Coalition for Sound Environmental Policy v. EPA*, Case No. 04–13088–C. The EPA and GCSEP have requested and the Court has granted the request to hold the challenge in abeyance pending completion of the present rulemaking.

C. Purpose of This Proposal

This proposal initiates the process to respond to the Petition for Reconsideration. We propose to agree with the central point raised by the petitioner. That is, we propose to amend EPA regulations as recommended by GCSEP to remove only the State of Georgia from inclusion in the Phase II NO_x SIP call rule based on additional information that became available after the close of the comment period for the proposed Phase II rule. We are not reopening any other portions of the NO_x SIP Call and Phase II NO_x SIP Call rules for public comment and reconsideration.

The primary purpose of this notice is to provide our rationale and an opportunity to comment on our proposed response to the Petition.

As noted in Section III below, the four parties who commented on the March 1, 2005 proposal related to the Stay of Effectiveness also provided a number of

comments related to the Petition for Reconsideration. In this notice, we respond to a number of issues raised in these previous comments. We will fully respond to all substantive comments on the reconsideration in the final action on this proposal.

III. Proposed Response to GCSEP's Petition for Reconsideration

A. Proposed Action

The EPA proposes to amend the Phase II NO_x SIP call rule to remove the State of Georgia only. The EPA proposes to agree with GCSEP's request, and in this action we are proposing to rescind or withdraw our finding that sources and emitting activities in the State of Georgia emit NO_x in amounts that significantly contribute to nonattainment of the 1-hour ozone standard in nonattainment areas in other States. We request comment on this proposal. We are not reopening any other portions of the NO_x SIP Call and Phase II NO_x SIP Call rules for public comment and reconsideration.

B. Rationale for Proposed Action

In the Petition for Reconsideration, GCSEP argued that the State of Georgia did not meet EPA's stated rationale for the NO_x SIP call when EPA promulgated the Phase II NO_x SIP Call rule. In short, GCSEP argued that (1) EPA based its inclusion of Northern Georgia on a finding that Northern Georgia contributes to nonattainment of the one-hour standard in Birmingham, Alabama and Memphis, Tennessee; (2) neither Birmingham nor Memphis was a nonattainment area at the time of the Phase II rulemaking; and (3) as a result of the revised attainment status of Birmingham and Memphis, there are no 1-hour ozone nonattainment areas in any States affected by NO_x emissions from Northern Georgia, and (4) therefore Northern Georgia no longer satisfied EPA's stated rationale for inclusion in the NO_x SIP call regulation. On each of these points, EPA proposes to agree.

In the 1998 NO_x SIP Call Rule, we articulated a test for selecting the receptors used in evaluating impacts on downwind “nonattainment,” under section 110(a)(2)(D)(i)(I). We defined “nonattainment” areas as including “areas that have monitored violations of the standard and areas that ‘contribute to ambient air quality in a nearby area’ that is violating the standard” (63 FR 57373; See also, 63 FR 57375–85).

Additionally, as noted previously, to be defined as “nonattainment” receptors, the receptor also had to be modeled to have nonattainment air quality in the year 2007.

As earlier explained, with regard to the State of Georgia, EPA determined that sources and emitting activity in this State emit NO_x in amounts that significantly contribute to nonattainment of the 1-hour ozone standard in the Birmingham, Alabama and Memphis, Tennessee nonattainment areas (63 FR 57394). Although we had redesignated the Memphis, Tennessee nonattainment area in 1995, monitored air quality data for 1994–1996 indicated nonattainment air quality.⁶ Birmingham, Alabama was designated nonattainment for the 1-hour ozone NAAQS and also had nonattainment air quality. Thus, at the time of the promulgation of the 1998 NO_x SIP Call rule, both Memphis, Tennessee and Birmingham, Alabama were in “nonattainment” for purposes of the NO_x SIP Call Rule. In addition, modeling done at that time showed that both areas were also projected to have nonattainment air quality in 2007.

We have now redesignated these areas to 1-hour ozone attainment areas and both currently have monitored air quality data that does not violate the 1-hour ozone standard. More specifically, on March 12, 2004, we redesignated Birmingham, Alabama, to attainment of the 1-hour ozone NAAQS. 69 FR 11798, (March 12, 2004). In addition, the Memphis, Tennessee nonattainment area, which was redesignated in 1995 has had monitored attainment air quality data since 2001.

Therefore, we agree with GCSEP that after promulgation of the NO_x SIP Call Rule in 1998, both Memphis, Tennessee and Birmingham, Alabama now show attainment of the 1-hour ozone standard. Thus, they no longer meet the definition of “nonattainment” used in the 1998 NO_x SIP Call to identify downwind receptor areas for the air quality impacts portion of the significant contribution analysis.

In light of the fact that both downwind receptor areas no longer qualify as nonattainment areas for purposes of the significant contribution analysis, we are proposing to withdraw our findings of significant contribution for the State of Georgia for the 1-hr standard. This in effect would mean that the State of Georgia would no longer be required to submit a revised SIP, by April 1, 2005, that prohibits certain amounts of NO_x emissions. Additionally, we would no longer require the State of Georgia to adopt and implement NO_x control measures,

⁶ Monitored air quality data indicated that the Memphis, Tennessee nonattainment area had nonattainment air quality from 1994 through 2000. Since 2001, the Memphis, Tennessee nonattainment area has had monitored attainment air quality data.

(originally required by May 1, 2007), that ensure the State achieves the aggregate NO_x emissions budget set out in the Phase II NO_x SIP Call Rule in the 2007 ozone season. There are no other areas that would be affected by our decision to withdraw the findings of significant contribution for the State of Georgia. We are soliciting comments on this proposal.

C. Other Issues Raised by the Petitioner

In addition to the issue of our redesignation of downwind receptors, discussed above, GCSEP raised a number of additional issues and concerns in its petition. GCSEP believes these additional issues and concerns provide additional rationale for its petition, and for the recommendation to not include Georgia in the NO_x SIP call regulations. Because EPA is proposing to rescind the findings of significant contribution for the State of Georgia, and therefore, the requirement to comply with the NO_x SIP call requirements, we do not believe that we need to take comment on these additional issues and concerns. Moreover, we believe that petitioners could have raised most of these issues and concerns during the comment period for the Phase II rulemaking. Therefore, we do not believe that they are of central relevance to the outcome of that rulemaking. Section 307(d)(7)(B) requires a petitioner to make a showing that it was “impracticable to raise [an] objection within the provided comment period or [that] the grounds for such objection arose after the period for public comment * * * and that such objection is of central relevance to the outcome of the rule.” Because EPA is proposing to rescind the SIP call requirements for Georgia on the grounds discussed herein, we do not believe it is either necessary or appropriate to respond to these additional arguments in this notice. A brief summary of each of these additional points is contained below:

Flaws in SIP call methodology. GCSEP’s petition asserts that the CAA requires State-specific findings regarding a State’s contribution. Citing CAA language in sections 110(k)(5) and 110(a)(2)(D), and noting that the NO_x SIP Call relied on “subregional” runs with multi-State aggregations, GCSEP argues that the NO_x SIP Call was flawed.

Changes to Georgia’s SIP. GCSEP’s petition notes that Georgia’s current SIP contains regulations that achieve additional NO_x reductions which went into effect between May 1, 2003 and June 1, 2004. For example, NO_x emissions from electric generating units

(EGUs), in the fine grid area of Georgia were reduced approximately 66% from 2000 levels. Because these required emissions reductions were not part of Georgia’s SIP when EPA originally evaluated the adequacy of the SIP in 1997 and 1998, GCSEP argues that the Phase II NO_x SIP Call Rule should have revisited its prior determination that the SIP was “inadequate” to prevent significant downwind impacts.

EPA’s analysis outdated. GCSEP notes that there is a significant time period between EPA’s additional analysis of the original 1998 rule and the Final Phase II rule in 2004. As a result, GCSEP asserts that EPA’s record and basis for including Georgia in the SIP Call is so “stale” that data can no longer be used to support EPA’s decision.

Assertions that EPA’s decision to proceed with the final rule is arbitrary and capricious. GCSEP argues in the petition that EPA was “arbitrary and capricious” in including Georgia in its final rule without considering new information related to redesignation of areas in Alabama and Tennessee. In support of this argument, GCSEP discusses hypothetical arguments EPA might have made in rejecting its petition for reconsideration, using a response to a comment regarding our continued inclusion of Missouri in the Phase II NO_x SIP Call Rule. (69 FR 21626–27).

IV. Response to Previous Comments on the Reconsideration Issue

As we stated in the final rule staying the effectiveness of the requirements of Phase II in Georgia, we received four comments raising issues that we deemed beyond the scope of the proposed stay. In this notice, EPA is now providing responses to those comments because we had indicated that we would be responding to them within the context of this rulemaking. (70 FR 51594).

Lack of a NO_x emissions cap. Two commenters—the North Carolina Division of Air Quality (NCDAQ), and the Alabama Department of Environmental Management (ADEM)—opposed GCSEP’s request for reconsideration and recommendation to remove Georgia from the SIP call regulations. Both NCDAQ and ADEM acknowledged that the current Georgia ozone SIP may currently be achieving greater NO_x emissions reductions from Georgia sources that would have been subject to the NO_x SIP call. Nonetheless, both NCDAQ and ADEM expressed concerns that sources of NO_x emissions in Georgia would not be subject to an emissions cap unlike sources located in neighboring states

that are subject to the NO_x SIP Call Rule.

The EPA agrees that certain sources in Georgia would not formally be subject to an emissions cap. The EPA believes, however, that in practice it is extremely unlikely that NO_x emissions in Georgia could increase above the levels required by the NO_x SIP Call even in the absence of a cap. The principal reason that emissions will not increase is that local NO_x emission reductions continue to be needed to address 8-hour ozone nonattainment in Atlanta. Given this long term need, SIP revisions will continually seek and provide decreases in NO_x emissions. See also our response below to the comment on the effect of our removal of Georgia from the NO_x SIP Call Rule on 8-hour ozone standard nonattainment downwind areas.

Effects on downwind 8-hour ozone standard nonattainment. Both NCDAQ and ADEM expressed concerns that the lack of a “cap” on certain sources in Georgia may impede the ability of neighboring States to meet and maintain the 8-hour ozone NAAQS.

The EPA believes that current analyses show that sources and emitting activities in Georgia do not contribute significantly to 8-hour ozone standard nonattainment in any other States. In the analysis for the final Clean Air Interstate Rule (CAIR), (70 FR 25162, (May 12, 2005)), EPA concluded that sources and emitting activities in Georgia do not significantly contribute to ozone nonattainment in other States, and accordingly, did not include Georgia within the region subject to NO_x caps under CAIR for the ozone season.

ADEM notes in their comments that the CAIR modeling analysis assumed full implementation of the NO_x SIP call in all affected States including Georgia. Although the ADEM does not make this point specifically, EPA infers from this comment a suggestion that EPA would have to revisit the CAIR modeling, without subjecting Georgia to the NO_x SIP call, for EPA’s conclusions related to Georgia’s contribution in other States to continue to be supportable.

The EPA believes there is ample evidence that shows that the current Atlanta SIP reductions achieves greater reductions than would have been required by the Phase II NO_x SIP Call Rule. The EPA has conducted an analysis, included in the docket for this rule, which shows that this is currently the case. Control measures implemented for the 1-hour ozone attainment demonstration for the Atlanta area were phased in beginning in 1999 and were fully implemented by the 2003 ozone

season. This analysis showed, for example, that:

- Due to the 1999 Atlanta attainment SIP, five EGUs are limited to the equivalent of 0.13 lb/million BTU (five plant average). In combination with the two remaining EGUs, there is a seven plant limit of 0.20 lb/million BTU.
- Total NO_x reductions modeled for the Atlanta attainment SIP were 431 tons per day, while the Phase II NO_x SIP Call Rule would have achieved emission reductions of 387 tons per day of NO_x (59,258 tons per ozone season (69 FR 21629). Thus, total emission reductions from the Atlanta attainment SIP were estimated to be at least as great as reductions from the Phase II NO_x SIP Call Rule.
- Future emissions projections of EGU emissions, conducted by EPA using its integrated planning model (IPM), indicate that some EGUs located within the fine grid area will be controlled by advanced NO_x controls (selective catalytic reduction), based on the Atlanta attainment SIP instead of the projected Phase II SIP SIP Call requirements.
- The Atlanta attainment SIP achieves substantial NO_x emission reductions from non-EGU control measures in the Atlanta control plan. This includes, for example, RACT requirements for sources not included in the NO_x SIP Call Rule, and restrictions on open burning.

Moreover, as noted previously, Georgia will need further reductions in NO_x emissions over time to continue to address 8-hour ozone nonattainment in Atlanta. Accordingly, EPA finds no basis to question its conclusion in the CAIR analysis that Georgia emissions do not contribute to 8-hour ozone nonattainment in other States.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a “significant regulatory action” under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO. This action is proposing to grant a petition of reconsideration requesting that the State of Georgia not be included in the NO_x SIP Call and does not impose any additional control requirements or incur any additional costs.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction

Act, 44 U.S.C. 3501 *et seq.*, because the action proposes to remove a regulatory requirement.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA’s regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this proposed rule on small entities, small entity is defined as: (1) A small business as defined in the Small Business Administration’s (SBA) regulations at 13 CFR 12.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small

entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives “which minimize any significant economic impact of the rule on small entities.” 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This action neither imposes requirements on small entities, nor will there be impacts on small entities beyond those, if any, required by or resulting from the NO_x SIP Call and the Section 126 Rules. We have therefore concluded that this proposed rule will relieve regulatory burden for all small entities affected by this rule. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for any proposed or final rules with “Federal mandates” that may result in the expenditure to State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any 1 year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling

officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or Tribal governments or the private sector. The EPA prepared a statement for the final NO_x SIP Call that would be required by UMRA if its statutory provisions applied. This action does not create any additional requirements beyond those of the final NO_x SIP Call, and will actually reduce the requirements by excluding the State of Georgia, and therefore no further UMRA analysis is needed.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. "Policies that have federalism implications" is defined in the Executive Order to include regulations that 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."

This proposed rule does not have federalism implications. It 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. This action does not impose an enforceable duty on these entities. This action imposes no additional burdens beyond those imposed by the final NO_x SIP Call. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR

67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This proposed rule does not have Tribal implications, as specified in Executive Order 13175.

It will not have substantial direct effects on Tribal governments, 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 in Executive Order 13175. This action does not significantly or uniquely affect the communities of Indian Tribal governments. The EPA stated in the final NO_x SIP Call Rule that Executive Order 13084 did not apply because that final rule does not significantly or uniquely affect the communities of Indian Tribal governments or call on States to regulate NO_x sources located on Tribal lands. The same is true of this action. Thus, Executive Order 13175 does not apply to this rule. EPA specifically solicits additional comment on this proposed rule from tribal officials.

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

Executive Order 13045: "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 proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action does not impose requirements beyond those, if any, required by or resulting from the NO_x SIP Call and Section 126 Rules.

The public is invited to submit or identify peer-reviewed studies and data, of which the Agency may not be aware, that assessed results of early life

exposure to NO_x (or ground-level ozone, of which NO_x is a precursor).

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

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy effects.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rulemaking does not involve technical standards, therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or

the environment. For the final NO_x SIP Call, the Agency conducted a general analysis of the potential changes in ozone and particulate matter levels that may be experienced by minority and low-income populations as a result of the requirements of that rule. These findings were presented in the RIA for the NO_x SIP Call. This action does not affect this analysis.

List of Subjects

40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

40 CFR Part 78

Acid rain, Air pollution control, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

40 CFR Part 97

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

Dated: June 1, 2007.

William L. Wehrum,

Assistant Administrator for Air and Radiation.

For the reasons set forth in the preamble, part 51 of chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority citation for Part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

Subpart G—Control Strategy

2. Section 51.121 is amended as follows:

- a. By revising paragraph (c)(2).
- b. By removing the entry for “Georgia” from the tables in paragraphs (e)(2)(i), (e)(4)(iii) and (g)(2)(ii).
- c. By removing and reserving paragraph (e)(2)(ii)(C).
- d. By removing paragraph (s).

§ 51.121 Findings and requirements for submission of State implementation plan revisions relating to emissions of oxides of nitrogen.

* * * * *

(c) * * *

(2) With respect to the 1-hour ozone NAAQS, the portions of Missouri,

Michigan, and Alabama within the fine grid of the OTAG modeling domain. The fine grid is the area encompassed by a box with the following geographic coordinates: Southwest Corner, 92 degrees West longitude and 32 degrees North latitude; and Northeast Corner, 69.5 degrees West longitude and 44 degrees North latitude.

* * * * *

[FR Doc. E7–11036 Filed 6–7–07; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2006–0571; FRL–8324–1]

Approval and Promulgation of Implementation Plans for Arizona; Maricopa County PM–10 Nonattainment Area; Serious Area Plan for Attainment of the 24-Hour and Annual PM–10 Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On July 25, 2002, EPA approved under the Clean Air Act (CAA) the serious area particulate matter (PM–10) plan for the Maricopa County portion of the metropolitan Phoenix (Arizona) nonattainment area (Maricopa County area). Among other things, EPA approved the best available control measure (BACM) and most stringent measure (MSM) demonstrations in the plan and granted the State’s request for an attainment date extension for the area. EPA’s approval was challenged in the U.S. Court of Appeals for the Ninth Circuit. In response to the Court’s remand, EPA reassessed the BACM and MSM demonstrations for the significant source categories of on-road motor vehicles and nonroad engines and equipment exhaust, specifically regarding whether California Air Resources Board (CARB) diesel is a BACM and/or MSM. As a result of this reassessment, EPA again approved the BACM and MSM demonstrations in the plan and granted the State’s request to extend the attainment deadline from 2001 to 2006. In light of its recent finding that the Maricopa County area failed to attain the 24-hour PM–10 National Ambient Air Quality Standard (NAAQS) by December 31, 2006, EPA is again reassessing the BACM and MSM demonstrations in the plan and is again proposing to approve these demonstrations.

DATES: Any comments must arrive by July 9, 2007.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2006–0571, by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions.

2. *E-mail:* weisner.carol@epa.gov.

3. *Mail or deliver:* Marty Robin, Office of Air Planning (AIR–2), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through the eRulemaking portal or e-mail. The eRulemaking portal is an anonymous access system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. 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.

Docket: The index to the docket for this action is available electronically at <http://www.regulations.gov> and in hard copy at EPA Region 9, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed directly below.

FOR FURTHER INFORMATION CONTACT: Carol Weisner, U.S. EPA Region 9, (415) 947–4107, weisner.carol@epa.gov or <http://www.epa.gov/region09/air/actions>.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us” and “our” refer to EPA.

I. Background

A. EPA’s 2002 Approval

On July 25, 2002, EPA approved multiple documents submitted to EPA by Arizona for the Maricopa County area as meeting the CAA requirements