

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[DC049-2026a; FRL-6973-7]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Oxygenated Gasoline Program**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the District of Columbia State Implementation Plan (SIP). The revision makes the oxygenated gasoline program a contingency measure for the District of Columbia (the District), which means that the oxygenated gasoline program would only be required to be implemented in the District if there is a violation of the carbon monoxide (CO) national ambient air quality standard (NAAQS). The District's revision also makes technical amendments to its oxygenated gasoline regulations which correct the deficiencies previously identified by EPA in a January 26, 1995 final rule granting limited approval/limited disapproval of those regulations. Therefore, the limited approval/limited disapproval is being converted to a full approval. EPA is approving this revision in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on July 9, 2001 without further notice, unless EPA receives adverse written comment by June 8, 2001. 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: Written comments should be mailed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. 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, 401 M Street, SW., Washington, DC 20460; and the District of Columbia Department of Public Health, Air Quality Division, 51 N Street, NE., Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT:

Kelly L. Bunker, (215) 814-2177, or by e-mail at bunker.kelly@epa.gov.

SUPPLEMENTARY INFORMATION:**I. Introduction**

Motor vehicles are significant contributors of carbon monoxide (CO) emissions. An important control measure to reduce these emissions is the use of oxygenates in motor vehicles' gasoline. Extra oxygen enhances fuel combustion, which tends to be less efficient in cold weather. The oxygen also helps to offset fuel-rich operating conditions, particularly during vehicle starting, which are more prevalent in the winter. By adding oxygenates to gasoline, exhaust emissions of carbon monoxide are reduced. A gasoline blend containing 2.7 percent (%) oxygen by weight will result in a 15% to 20% reduction in CO emissions.

Section 211(m) of the Clean Air Act, 42 U.S.C. § 7401 *et seq.* (the Act) requires that states with carbon monoxide nonattainment areas with design values of 9.5 parts per million (ppm) or more, based on data for the two year period of 1988 and 1989 or any two year period after 1989, submit revisions to their State Implementation Plan (SIP) which establish oxygenated gasoline programs. These programs were to begin no later than November 1, 1992.

The oxygenated gasoline programs must require gasoline in the specified control areas to contain not less than 2.7% oxygen by weight (known as a per-gallon program), except that states may adopt an averaging program employing marketable oxygen credits. Where an averaging program is adopted, gasoline containing oxygen above 2.7% by weight may offset the sale of gasoline with a oxygen content below 2.7% by weight.

The minimum 2.7% standard shall apply during that portion of the year in which the areas are prone to high ambient concentrations of CO. The Act requires that the oxygenated gasoline program apply to all gasoline sold or dispensed in the larger of the Consolidated Metropolitan Statistical Area (CMSA) or the Metropolitan Statistical Area (MSA) in which the nonattainment area is located.

II. Background

EPA determined that the 1988 and 1989 monitoring data for the Metropolitan Washington area was invalid because of poor data quality and, therefore, inadequate to properly characterize the ambient concentrations of CO. Therefore, data from 1987 and 1988 was used and the Metropolitan Washington area was designated as a CO

nonattainment area with a design value of 11.4 ppm. The District of Columbia (the District) is part of the Metropolitan Washington area CO nonattainment area. Consequently, as per the requirements of section 211(m) of the Act, an oxygenated gasoline program was required to be implemented in the District's portion of the Washington, DC, MSA.

On October 27, 1993, the District officially submitted to EPA a revision to its SIP for an oxygenated gasoline program. The District's oxygenated gasoline regulations, located at 20 District of Columbia Municipal Regulations (DCMR) Chapter 1, Section 199; Chapter 5, Section 500 and 502 and Chapter 9, Section 904, required the implementation of a program to be implemented on a per gallon basis. EPA granted limited approval/limited disapproval of these regulations as a SIP revision on January 26, 1995 (60 FR 5134).

On October 12, 1995, the District submitted a redesignation request and maintenance plan for its portion of the Metropolitan Washington area CO nonattainment area. In its demonstration of maintenance, the District showed that its oxygenated gasoline program was not necessary for attainment and continued maintenance of the CO national ambient air quality standards (NAAQS). The oxygenated gasoline program was relegated to a contingency measure in the maintenance plan. If the redesignated area violates the CO standard then the oxygenated gasoline program would be reinstated at the beginning of the next oxygenated gasoline control period. EPA approved the redesignation request and maintenance plan on January 30, 1996 (61 FR 2931).

The District was required to adopt and submit to EPA a revision to their oxygenated gasoline regulation which: (1) required the use of the oxygenated gasoline program as a contingency measure if the redesignated area violates the CO standard and (2) corrected the deficiencies in the regulations previously identified by EPA in the January 26, 1995 rulemaking (60 FR 5134).

On July 3, 1997, the District amended its oxygenated gasoline regulations to reflect the requirements of the federally approved CO maintenance plan. The regulation revision requires the implementation of the oxygenated gasoline program in the District if there are two or more exceedances of the of NAAQS for CO in a calendar year. The regulation states that the oxygenated gasoline program will not commence until at least 180 days after the Mayor

determines that the contingency measure has been triggered.

On October 17, 1997, the District submitted the July 3, 1997 amended oxygenated gasoline regulations as a formal revision to its SIP. The revisions to the oxygenated gasoline regulation are found at 20 DCMR, Chapter 9 (Motor Vehicle Pollutants, Lead, Odors, and Nuisance Pollutants), Section 904, new subsection 904.3. These regulatory revisions became effective on July 25, 1997. On October 26, 2000 and December 8, 2000, the District of Columbia supplemented the October 17, 1997 SIP submittal. The supplements contain revisions to 20 DCMR at subsections 199.1 and 502.18. These revisions correct the deficiencies identified in EPA's January 26, 1995 limited approval/limited disapproval rulemaking (60 FR 5134). These regulatory revisions were adopted by the District of Columbia on October 26, 2000 and became effective on December 8, 2000.

The October 17, 1997 SIP submittal and its October 26 and December 8, 2000 SIP supplements are the subject of this action. A more detailed analysis of the District's submittal is contained in a Technical Support Document (TSD) which is available from the Region III office listed in the **ADDRESSES** section of this notice.

III. EPA's Analysis of the District of Columbia's Amendment to Its Oxygenated Gasoline Regulation

As previously stated, on January 26, 1995 (60 FR 5134), EPA published a final rule granting limited approval/limited disapproval of the District's oxygenated gasoline regulation found in 20 DCMR Sections 199, 500.4, 500.5, 502.18, 904.1, 904.2. EPA identified three things lacking in the District's regulation, namely, a definition for the term "carrier", a sampling procedure, and a procedure for the calculation of oxygen content in the gasoline sampled. The October 26, 2000 and December 8, 2000 SIP supplements correct the three deficiencies. The three deficiencies and EPA's evaluation of the corrections is provided below.

1. The regulation lacks a definition for the term "carrier".

EPA Evaluation—A definition for the term "carrier" had been added to Subsection 199.1 of 20 DCMR. This definition is acceptable and corrects the deficiency.

2. The regulation lacks a sampling procedure.

EPA Evaluation—EPA's sampling procedures are detailed in Appendix D of 40 CFR Part 80. EPA has recommended that states adopt these

sampling procedures. The District has revised 20 DCMR Subsection 502.18 to require the use of the sampling methodologies set forth at 40 CFR Part 80, Appendix D or other methods approved by EPA. This deficiency has been corrected.

3. The regulation lacks a procedure for the calculation of oxygen content in the gasoline sampled.

EPA Evaluation—The District has revised 20 DCMR Subsection 502.18 to require the use of procedures for the calculation of oxygenated content in the gasoline found in the EPA guidance document entitled "Guidelines for Oxygenated Gasoline Credit Programs under Section 211(m) of the Clean Air Act as Amended," which was made available in the **Federal Register** on October 20, 1992 (57 FR 47853), or other methods developed or approved by EPA. This corrects the deficiency.

This SIP revision also relegates the oxygenated gasoline program to a contingency measure, only to be implemented if there are two or more exceedances of the NAAQS for CO in a calendar year at any monitor located in the Metropolitan Washington, DC MSA. This regulation change, found at Subsection 904.3 of 20 DCMR, conforms with the District of Columbia's CO maintenance plan which was approved by the EPA as a SIP revision on January 30, 1996 (61 FR 2931). The regulation states that the oxygenated gasoline program will not commence until at least 180 days after the Mayor determines that the contingency measure has been triggered.

IV. Final Action

EPA is approving the revisions to 20 DCMR which relegate the oxygenated gasoline program to a contingency measure, only to be implemented if there are two or more exceedances of the NAAQS for CO in a calendar year at any monitor located in the Metropolitan Washington, DC MSA. The District's revision also makes technical amendments to the oxygenated gasoline regulations which correct the deficiencies previously identified in EPA's January 26, 1995 limited approval/limited disapproval rulemaking. Therefore, the January 26, 1995 limited approval/limited disapproval is hereby being converted to a full approval. EPA is approving this revision in accordance with the requirements of the Clean Air Act.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipate no adverse comment. However, in the "Proposed Rules" section of today's **Federal**

Register, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on July 9, 2001 without further notice unless EPA receives adverse comment by June 8, 2001. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Administrative Requirements

A. General 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 13084 (63 FR 27655, May 10, 1998). 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 Clean Air 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 Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. 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. 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.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. 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 July 9, 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 granting full approval of the District of Columbia's oxygenated gasoline regulation and relegating it to be a contingency measure of its CO

maintenance plan 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, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: April 24, 2001.

William C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 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 J—District of Columbia

2. In § 52.470 the table in paragraph (c) is amended:

a. Under Chapter 1 by adding a new Section 199 after the existing entry for Section 199;

b. Under Chapter 5 by revising the entry for Section 502.18; and

c. Under Chapter 9 by revising the entry for Section 904.

The revisions and addition read as follows:

§ 52.470 Identification of plan.

* * * * *

(c) EPA approved regulations.

EPA-APPROVED DISTRICT OF COLUMBIA REGULATIONS

State citation	Title/Subject	State effective date	EPA approval date	Comments
* * *				
Chapter 1—General				
* * *				
Section 199	Definitions and Abbreviations	12/8/00	May 9, 2001 66 FR 23614	Addition of the definition of the word "carrier" to subsection 199.1.
* * *				
Chapter 5—Source Monitoring and Testing				
* * *				
Section 502.18	Sampling Tests and Measurements.	12/8/00	May 9, 2001 66 FR 23614	Provision is amended by adding an oxygenated gasoline sampling procedure and oxygen content calculation.
* * *				
Chapter 9—Motor Vehicle Pollutants, Lead, Odors, and Nuisance Pollutants				
Section 904	Oxygenated Fuels	7/25/97	May 9, 2001 66 FR 23614	Addition of subsection 904.3 to make the oxygenated gasoline program a CO contingency measure.
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY-112-9933(a); FRL-6975-5]

Approval and Promulgation of Air Quality Implementation Plans; Kentucky: Approval of American Greetings Corporation; Source-Specific State Implementation Plan Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On March 30, 1999, the Commonwealth of Kentucky submitted, through the Natural Resources and Environmental Protection Cabinet, a source-specific revision to the Kentucky State Implementation Plan (SIP). This source-specific SIP revision allows American Greetings Corporation to have an alternative averaging period of 30 days for compliance determination. EPA is approving this revision because the 30 day alternate averaging period does not jeopardize maintenance of the National Ambient Air Quality Standards (NAAQS).

DATES: This direct final rule is effective July 9, 2001 without further notice, unless EPA receives adverse comment by June 8, 2001. If adverse comment is received, EPA 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: Written comments should be addressed to Randy Terry, at the EPA Regional Office listed below. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Copies of SIP materials which are incorporated by reference into 40 CFR Part 52 (the documents relative to this action) are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency;
Region 4 Air Planning Branch; 61
Forsyth Street, SW; Atlanta, Georgia
30303-8960

Commonwealth of Kentucky; Division
for Air Quality; 803 Schenkel Lane;
Frankfort, KY 40601-1403

FOR FURTHER INFORMATION CONTACT:
Randy Terry at 404/562-9032.

SUPPLEMENTARY INFORMATION:

I. Background

On March 30, 1999, the Commonwealth of Kentucky submitted, through the Natural Resources and Environmental Protection Cabinet, a source-specific revision to the Kentucky SIP. This source-specific SIP revision allows American Greetings Corporation to have an alternative averaging period of 30 days for compliance determination.

To meet the requirements of this SIP revision, American Greetings Corporation must provide all record keeping in accordance with regulation 401 KAR 59:212, *New Graphic Arts Facilities Using Rotogravure and Flexography*, Section 4(6). These records shall include, but are not limited to, the following:

- (a) Applicable regulation number;
- (b) Application method and substrate type;
- (c) Amount and type of graphic arts material or solvent used at each point of application, including exempt compounds;
- (d) The volatile organic compound (VOC) content as applied in each graphic arts materials or solvent;
- (e) The date for each application for graphic arts material or solvent; and
- (f) The amount of surface preparation, clean-up, or wash-up solvent (including exempt compounds) used and the VOC content of each;

In addition, the permittee must keep monthly records of the pounds of each ink and topcoat lacquer used and the corresponding VOC contents and hours of operation. These emissions shall be calculated and recorded in tons per month and tons per 12 months. Tons per 12 months shall represent a rolling average. These records shall be made available for inspection to any authorized representative of the Division for Air Quality upon request.

Agency policy regarding SIP revisions for averaging times for compliance with VOC emission limits is stated in a January 20, 1984, memo from John R. O'Conner, Acting Director, Office of Air Quality Planning and Standards: "Current Agency guidance specifies the use of a daily weighted average for VOC regulations as the preferred alternative where continuous compliance is not feasible."

The aforementioned memo also approves the utilization of averaging period for VOC emissions for as long as thirty days, providing that certain conditions are met.

These requirements consist of the following elements.

1. The VOC limits must be specified in an enforceable form with appropriate compliance dates.

2. A description of the affected processes and associated historical production and operating rates.

3. A description of the control techniques to be applied to the affected processes such as low solvent and waterborne coating; technology and/or add-on controls.

4. The nature of the emission control program whether a bubble, a regulation change, a compliance schedule, or some other form of alternative control program.

5. The method of record keeping and reporting to be employed to demonstrate compliance with the new emission limit requirement and to support the showing that the emission limit is consistent with Reasonable Further Progress (RFP) and the demonstration of attainment.

II. Analysis of State's Submittal

In response to meeting the aforementioned requirements, Kentucky submitted the results of a detailed statistical analysis verifying that the actual emissions emitted are consistently below the allowable emissions. Based on this analysis, Kentucky utilizing a monthly averaging recording system has a very minimal chance that the emissions will exceed ten percent of the permitted emission rate.

Kentucky's submittal addressed the NAAQS for ozone in the Appalachian Air Quality Control Region where the facility is located. Kentucky found that there were no violations of the ozone NAAQS during 1992-1995, based on an evaluation of the 1996-1997 Kentucky Environmental Quality Commission's Environmental Annual Status Report on Air Quality. EPA's review of additional ozone data in the Aerometric Information Retrieval System (AIRS) for the surrounding counties of Bell, Perry, and Pulaski for the years 1992-2000 found no ozone violations. Based on the air quality analysis by Kentucky and EPA's review of additional ozone air quality data, EPA concludes there will be no adverse environmental impact on the surrounding ozone attainment area from the adoption of 30-day monthly VOC record keeping for the American Greetings Corporation.

The use of thirty day averaging period as a maximum averaging time for VOC emissions is consistent with current agency policy, as detailed in the January 20, 1984, John O'Conner memo. Because of the simplicity of this action, no technical support document was prepared.

III. Final Action

EPA is approving the aforementioned changes to the SIP because they are