

The SIP revision updating the ozone and lead NAAQS are approved and updated North Carolina Rules 15A NCAC 02D .0405 and .0408 are incorporated into the SIP as of the effective date of the May 16, 2013, direct final action (July 15, 2013).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: June 28, 2013.

**Beverly H. Banister,**

*Acting Regional Administrator, Region 4.*

#### § 52.1770 [Amended]

For the reasons set forth in the preamble, EPA withdraws the revision of the entries for .0409 and .0410 in Table 1 of § 52.1770(c) published at 78 FR 28747 (May 16, 2013).

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2013-0223; FRL-9831-5]

#### Approval and Promulgation of Implementation Plans for Georgia: Partial Withdrawal

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

**ACTION:** Final rule; partial withdrawal.

**SUMMARY:** Due to comments received, EPA is publishing a partial withdrawal of the direct final approval of revisions to the Georgia State Implementation Plan (SIP). EPA stated in the direct final rule that if EPA received adverse comments by June 17, 2013, the rule would be withdrawn and not take effect.

**DATES:** The partial withdrawal is effective July 15, 2013.

**FOR FURTHER INFORMATION CONTACT:** Sara Waterson, Air Planning Branch, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303-8960. Phone number: (404) 562-9061; Email: [waterson.sara@epa.gov](mailto:waterson.sara@epa.gov).

**SUPPLEMENTARY INFORMATION:** On May 16, 2013 (78 FR 28744), EPA published a direct final rulemaking to approve portions of Georgia's September 15, 2008, August 30, 2010 (two submittals), and December 11, 2011, SIP submissions that update the Georgia SIP to incorporate EPA's current national ambient air quality standards (NAAQS)

for the sulfur dioxide, nitrogen dioxide, ozone, lead, and particulate matter (PM) NAAQS. The SIP submissions contain amendments to Georgia Rules 391-3-1-.02(4)(b), (c), (e), (f), and (g) reflecting EPA's current NAAQS for the aforementioned criteria pollutants. On May 16, 2013, EPA also published an accompanying proposed rulemaking to approve the SIP revisions in the event that EPA received adverse comments on the direct final rulemaking. See 78 FR 28776.

In the direct final rulemaking, EPA explained that the Agency was publishing the rule without prior proposal because the Agency viewed the submittals as non-controversial SIP amendments and anticipated no adverse comments. Further, EPA explained that the Agency was simultaneously publishing a separate document in the proposed rules section of the **Federal Register** to serve as the proposal to approve the SIP revisions should an adverse comment be filed. EPA also noted that the rule would be effective on July 15, 2013, without further notice unless the Agency received adverse comment by June 17, 2013. EPA explained that if the Agency received such comments, then EPA would publish a document withdrawing the final rule and informing the public that the rule would not take effect. It was also explained that all public comments received would then be addressed in a subsequent final rule based on the proposed rule, and that EPA would not institute a second comment period on these actions. The public was advised that if no comments were received that the rule would be effective on July 15, 2013, with no further action on the proposed rule.

On May 17, 2013, EPA received a comment from a single commenter that could be viewed as adverse with regard to the approval action that EPA contemplated for the PM portion of the Georgia SIP revision. In summary, the commenter noted that Georgia's SIP revision related to the PM<sub>2.5</sub> NAAQS that was addressed in EPA's May 16, 2013, rulemaking actions did not reflect EPA's December 2012 revision to this standard. The commenter recommended that EPA conditionally approve Georgia's "particulate matter SIP" on the condition that the State submit a revised SIP within a reasonable amount of time reflecting the December 2012 PM<sub>2.5</sub> NAAQS. The commenter expressed support for EPA's approval of the SIP revisions incorporating updates to the other NAAQS subject to the May 16, 2013, rulemakings.

As result of this comment, EPA is withdrawing the direct final action

related solely to the PM portion of the Georgia SIP revision. Specifically, through today's action, EPA is withdrawing the May 16, 2013, direct final approval of Georgia's SIP submission to update the PM NAAQS via incorporation of amended Georgia Rule 391-3-1-.02(4)(c) "Particulate Matter" into the SIP.

As indicated in the direct final rulemaking, EPA's May 16, 2013, proposed rulemaking approving Georgia's SIP revision related to the PM NAAQS is still in effect. The Agency is not opening an additional comment period and will only consider the comments received prior to June 17, 2013, the close of the public comment period. If EPA determines that it is appropriate to finalize the proposed approval of the Georgia SIP revision related to the PM NAAQS, EPA will publish a final rule which will include a response to the comment received. In the event that EPA determines that it is not appropriate to finalize the proposed approval related to the PM NAAQS, EPA may issue a subsequent proposal with a different course of action.

Today's withdrawal action does not affect EPA's May 16, 2013, direct final action on Georgia's SIP revisions related to the sulfur dioxide, nitrogen dioxide, ozone, and lead NAAQS. The SIP revisions updating the sulfur dioxide, nitrogen dioxide, ozone, and lead NAAQS are approved and amended Georgia Rules 391-3-1-.02(4)(b), (e), (f), and (g) are incorporated into the SIP as of the effective date of the May 16, 2013, direct final action (July 15, 2013).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: June 28, 2013.

**Beverly H. Banister,**

*Acting Regional Administrator, Region 4.*

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 L—Georgia

■ 2. Section 52.570 (c) is amended under Table 1, under Emission Standards by revising the entry for "391-3-1-.02(4)" to read as follows:

#### § 52.570 Identification of plan

\* \* \* \* \*

(c) \* \* \*

EPA-APPROVED GEORGIA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
<b>Emission Standards</b>				
*	*	*	*	*
391-3-1-.02(4)	Ambient Air Standards	9/13/2011	5/16/2013	Only subparagraphs (b), (e), (f), and (g) were approved.
*	*	*	*	*

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**DEPARTMENT OF TRANSPORTATION**

**Federal Motor Carrier Safety Administration**

**49 CFR Part 395**

**Hours of Service for Commercial Motor Vehicle Drivers; Regulatory Guidance Concerning Off-Duty Time**

**AGENCY:** Federal Motor Carrier Safety Administration, DOT.

**ACTION:** Regulatory guidance.

**SUMMARY:** FMCSA revises its April 4, 1997, regulatory guidance concerning the conditions that must be met in order for a commercial motor vehicle (CMV) driver to record meal and other routine stops made during a work shift as off-duty time. The Agency has reviewed the guidance and determined that it includes language that is overly restrictive and inconsistent with the hours-of-service regulations. The 1997 guidance has the effect of discouraging drivers from taking breaks during the work day, or documenting such breaks in their logbooks.

**DATES:** This guidance is effective July 12, 2013.

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas L. Yager, Chief, Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations; 1200 New Jersey Ave. SE., Washington, DC 20590, Telephone 202-366-4325, Email: [MCPSTD@dot.gov](mailto:MCPSTD@dot.gov).

**SUPPLEMENTARY INFORMATION:**

**Legal Basis**

The Secretary of Transportation has statutory authority to set minimum

standards for commercial motor vehicle safety. These minimum standards must ensure that: (1) CMVs are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of CMVs do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of CMVs is adequate to enable them to operate the vehicles safely; (4) the operation of CMVs does not have a deleterious effect on the physical condition of the operators; and (5) an operator of a commercial motor vehicle is not coerced by a motor carrier, shipper, receiver, or transportation intermediary to operate a commercial motor vehicle in violation of a regulation. (49 U.S.C. 31136(a)(1)–(5), as amended). The Secretary also has broad power in carrying out motor carrier safety statutes and regulations to “prescribe recordkeeping and reporting requirements” and to “perform other acts the Secretary considers appropriate.” (49 U.S.C. 31133(a)(8) and (10)).

The Administrator of FMCSA has been delegated authority under 49 CFR 1.87(f) to carry out the functions vested in the Secretary of Transportation by 49 U.S.C. chapter 311, subchapters I and III, relating to commercial motor vehicle programs and safety regulation.

**Background**

On April 4, 1997 (62 FR 16370), the Federal Highway Administration (FHWA) published “Regulatory Guidance for the Federal Motor Carrier Safety Regulations.” The notice presented interpretive guidance material for the Federal Motor Carrier Safety Regulations (FMCSRs) based on the FHWA’s consolidation or previously issued interpretations and regulatory guidance materials. The FHWA developed concise interpretive guidance

in question-and-answer form for each part of the FMCSRs.

The 1997 notice included the following guidance to 49 CFR 395.2 on page 16422 (62 FR 16422):

*Question 2:* What conditions must be met for a Commercial Motor Vehicle (CMV) driver to record meal and other routine stops made during a tour of duty as off-duty time?

*Guidance:* 1. The driver must have been relieved of all duty and responsibility for the care and custody of the vehicle, its accessories, and any cargo or passengers it may be carrying.

2. The duration of the driver’s relief from duty must be a finite period of time which is of sufficient duration to ensure that the accumulated fatigue resulting from operating a Commercial Motor Vehicle (CMV) will be significantly reduced.

3. If the driver has been relieved from duty, as noted in (1) above, the duration of the relief from duty must have been made known to the driver prior to the driver’s departure in written instructions from the employer. There are no record retention requirements for these instructions on board a vehicle or at a motor carrier’s principal place of business.

4. During the stop, and for the duration of the stop, the driver must be at liberty to pursue activities of his/her own choosing and to leave the premises where the vehicle is situated.

While FMCSA has not received any requests for clarification of the guidance, the Agency believes it is out-of-date and no longer provides practical assistance to motor carriers attempting to achieve compliance with the HOS rules. As currently written, the guidance lays out requirements for written instructions from drivers’ employers concerning the duration of breaks during the work shift which is inconsistent with the requirements of 49