

### C. Unfunded Mandates

Under Sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under Section 205, EPA must select the most cost effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed/promulgated does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action, Delaware 15% Rate of Progress Plan, approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to private sector, result from this action.

The Administrator's decision to approve or disapprove the Delaware 15% Rate of Progress Plan SIP revision will be based on whether it meets the requirements of section 110(a)(2)(A)-(K) and part D of the CAAA, and EPA regulation in 40 CFR part 51.

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

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental regulations, Nitrogen oxide, Reporting and recordkeeping, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401-7671q.

Dated: January 24, 1997.

W. Michael McCabe,

*Regional Administrator, Region III.*

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### 40 CFR Part 52

[DE-28-1007; FRL-5684-3]

#### Approval and Promulgation of Air Quality Implementation Plans; State of Delaware; Enhanced Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

**ACTION:** Proposed conditional approval.

**SUMMARY:** EPA is proposing conditional approval of a State Implementation Plan (SIP) revision submitted by the State of Delaware. This revision establishes and requires the implementation of a low enhanced motor vehicle inspection and maintenance (I/M) program in the counties of Kent and New Castle. The intended effect of this action is to propose conditional approval of the Delaware enhanced motor vehicle I/M program. EPA is proposing conditional approval because Delaware's SIP revision is deficient in certain aspects with respect to the requirements of the Clean Air Act and EPA's I/M program regulations. EPA regards the following deficiencies of the Delaware program as those most significantly affecting the program's operation: Lack of legal authority, finalized program regulations, certain testing and quality control procedures, waiver requirements; program evaluation requirements, sufficient quality control procedures and requirements; complete equipment specifications; specific enforcement requirements; certain public information and consumer enforcement requirements; certain public information and consumer protection requirements; sufficient enforcement authority; sufficient test documentation through test memoranda and procedural memoranda. EPA is currently working with the State on correcting these deficiencies. Delaware conducted a public hearing on December 18, 1996 on additional revisions to the Delaware I/M SIP which are intended to remedy some of the deficiencies noted in this notice. However, today's rulemaking applies to Delaware's I/M SIP submissions of February 24, 1995 and November 30, 1995 which are currently pending before EPA. EPA expects that Delaware will work, promptly to remedy these items, through future submissions necessary to meet the I/M rule requirements. In this notice, EPA cites its concerns with the Delaware I/M program. While some of these concerns are less significant to the program's immediate success, they still need to be corrected so as to achieve the program's full air quality protection potential. This action is taken under section 110 of the Clean Air Act.

**DATES:** Comments must be received on or before March 7, 1997.

**ADDRESSES:** Comments may be mailed to David L. Arnold, Chief, Ozone/CO & Mobile Sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania

19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107 and the Delaware Department of Natural Resources and Environmental Control, Air Quality Management Section, Division of Air and Waste Management, 89 Kings Highway, PO Box 1401, Dover, Delaware, 19903.

**FOR FURTHER INFORMATION CONTACT:** Paul T. Wentworth, P.E. at 215566-2183 at the EPA Region III address above, or via e-mail at Wentworth.Paul@epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the Region III office.

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

Motor vehicles are significant contributors of volatile organic compounds (VOC), carbon monoxide (CO) and nitrogen oxide (NO<sub>x</sub>) emissions. An important control measure to reduce these emissions is the implementation of a motor vehicle I/M program. Despite being subject to the most rigorous vehicle pollution control program in the world, cars and trucks still create toxic contaminants, about half of the ozone air pollution and nearly all of the carbon monoxide air pollution in United States cities. Of all highway vehicles, passenger cars and light-duty trucks emit most of the vehicle-related carbon monoxide and ozone-forming hydrocarbons. They also emit substantial amounts of nitrogen oxides and air toxics. Although the U.S. has made progress in reducing emissions of these pollutants, total fleet emissions remain high. This is because the number of vehicle miles traveled on U.S. roads has doubled in the last 20 years to 2 trillion miles per year, offsetting much of the technological progress in vehicle emission control over the same two decades. Projections indicate that the steady growth in vehicle travel will continue. Ongoing efforts to reduce emissions from individual vehicles will be necessary to achieve our air quality goals.

Today's cars are absolutely dependent on properly functioning emission controls to keep pollution levels low. Minor malfunctions in the emission control system can increase emissions significantly, and the average car on the road emits three to four times the new car standard. Major malfunctions in the emission control system can cause emissions to skyrocket. As a result, 10

to 30 percent of cars are causing the majority of the vehicle-related pollution problem. Unfortunately, it is rarely obvious which cars fall into this category, as the emissions themselves may not be noticeable and emission control malfunctions do not necessarily affect vehicle driveability.

Effective I/M programs, however, can identify these problem cars and assure their repair. I/M programs ensure that cars are properly maintained during customer use. I/M produces emission reduction results soon after the program is put in place. The Clean Air Act as amended in 1990 (herein referred to as the Act) requires that most polluted areas adopt either "basic" or "enhanced" I/M programs, depending on the severity of the problem and the population of the area. The moderate ozone nonattainment areas, plus marginal ozone areas with existing or previously required I/M programs, fall under the "basic" I/M requirements. Enhanced programs are required in serious, severe, and extreme ozone nonattainment areas with urbanized populations of 200,000 or more; CO areas that exceed a 12.7 parts per million (ppm) design value<sup>1</sup> with urbanized populations of 100,000 or more in the Northeast Ozone Transport Region (OTR).

"Basic" and "enhanced" I/M programs both achieve their objective by identifying vehicles that have high emissions as a result of one or more malfunctions, and by requiring them to be repaired. An "enhanced" program covers more of the vehicles in operation, employs inspection methods that are better at finding high emitting vehicles, and has additional features to better assure that all vehicles are tested properly and effectively repaired.

The Act requires states to make changes to improve existing I/M programs or to implement new ones for certain nonattainment areas. Section 182(a)(2)(B) of the Act directed EPA to publish updated guidance for I/M programs, taking into consideration findings of the Administrator's audits and investigations of these programs. The Act further requires each area to have an I/M program that incorporates this guidance into the SIP. Based on these requirements, EPA promulgated I/M regulations on November 5, 1992 (57 FR 52950, codified at 40 Code of

Federal Regulations (CFR) 51.350–51.373, herein referred to as the November 1992 Rule. Flexibility amendments to this rule, which provided for a low enhanced I/M performance standard were published on September 18, 1995 (60 FR 48029) and additional I/M flexibility amendments for qualified areas in the OTR were published on July 25, 1996 (61 FR 39031).

Under sections 182(c)(3), 187(a)(6) and 187(b)(1) of the Act, any area having a 1980 Bureau of Census-Defined urbanized area populations of 200,000 or more and that is either: (1) Designated as serious or worse ozone nonattainment or (2) moderate or serious CO attainment areas with a design value greater than 12.7 ppm, shall implement enhanced I/M in the 1990 Census-defined urbanized area. The Act also established the OTR in the Northeastern United States which includes the States of Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, Pennsylvania, New York, New Jersey, Delaware, Maryland, and Northern Virginia and the District of Columbia. Sections 182(c)(3) and 184(b)(1)(A) of the Act require the implementation of enhanced I/M programs in all metropolitan statistical areas (MSAs) located in the OTR that have a population of 100,000 or more people.

EPA's rules for I/M established a low and high enhanced standard. The high enhanced I/M program achieves a greater reduction in emissions (approximately 36%) and uses a highly technical test method. The low enhanced I/M performance standard provides flexibility for nonattainment areas that are required to implement enhanced I/M programs but which can meet the Act's emission reduction requirements for reasonable further progress (commonly referred to as 15% plans) and attainment from other sources without the stringency of the high enhanced I/M performance standard (60 FR 48029). All other provisions of the November 5, 1992 I/M rule, except as revised in 60 FR 48029 for extension of waivers and expenditure requirements, remain applicable to states available for low enhanced I/M. 40 CFR 51.35(g) provides that states may select the low enhanced performance standard if they have an approved SIP for 15%. In today's Federal Register EPA is also proposing conditional approval of Delaware's 15% plan.

The I/M regulation also establishes requirements for the following: Network type and program evaluation; adequate tools and resources; test frequency and

convenience; vehicle coverage; test procedures and standards; test equipment; quality control; waivers and compliance via diagnostic inspection; motorist compliance enforcement; motorist compliance enforcement program oversight; quality assurance; enforcement against contractors, stations and inspectors; data collection; data analysis and reporting; inspector training and licensing or certification; public information and consumer protection; improving repair effectiveness; compliance with recall notices; on-road testing; SIP revisions; and implementation deadlines. The performance standard for the high enhanced I/M program is different from the low enhanced program in that the high enhanced performance standard is based on high-technology transient test, known as IM240, for new technology vehicles (i.e., those with closed-loop control and especially, fuel injected engines), including a transient loaded exhaust short test incorporating hydrocarbons (HC), CO and NO<sub>x</sub> cutpoints, and evaporative system integrity (pressure) test and an evaporative system performance (purge) test. The low enhanced performance standard, however, allows for idle testing in place of high-tech testing.

Under the November 1992 I/M Rule enhanced I/M programs were required to initially begin phased-in implementation by January 1, 1995, with final full implementation slated for January 1, 1996. Due to recent EPA rule changes, and the flexibility afforded by the National Highway Systems Designation Act of 1995 (NHA), EPA believes, as explained below, that all states should be afforded extra time to begin full implementation of their enhanced I/M programs.

## II. Background

Delaware is part of the OTR and contains the following portions of the MSA that have a population of 100,000 or more: The MSA containing Kent and the MSA containing New Castle Counties. Section 182(c)(3) and 184(b)(1)(A) of the Act requires all states in the OTR region which contain MSAs or parts thereof with populations of 100,000 or more, to submit a SIP revision for an enhanced I/M program. Furthermore, both Kent and New Castle Counties are part of the Philadelphia-Wilmington-Trenton severe ozone nonattainment area. Section 51.351(g) of the November 1992 I/M rule as amended by 60 FR 48029 provides that states may select the low enhanced performance standard if they have an approved SIP for 15%. As previously stated, EPA is, today, also proposing

<sup>1</sup> The air quality design value is estimated using EPA guidance. Generally, the fourth highest monitored value with 3 complete years of data is selected as the ozone design value because the standard allows one exceedance for each year. The highest of the second high monitored values with 2 complete years of data is selected as the carbon monoxide design value.

conditional approval of Delaware's 15% plan.

On February 17, 1995 the Delaware Department of Natural Resources and Environmental Control (DNREC) officially submitted to EPA a revision to the Delaware SIP for an I/M program in Delaware, Kent and New Castle Counties. The submittal consisted of a copy of the final regulations in Regulation Numbers 26 and 33 of the Delaware Regulations Governing the Control of Air Pollution, by way of Secretary Order number 95-A-0012. On November 30, 1995 Delaware officially submitted the performance standard evaluation as a supplement to the February 17, 1995 SIP submittal. The performance standard evaluation provides for a low enhanced I/M program. Regulation 26 provides for the requirement that all repairs be done by a certified repair technician. Regulation 33 provides for pressure test and anti-tampering checks on vehicles in Kent and New Castle Counties.

EPA's summary of the requirements of the November 1992 I/M Rule as found in 40 CFR 51.350 through 51.373, and EPA's analysis of Delaware's submittal are outlined below. A more detailed analysis of Delaware's submittal is contained in a Technical Support Document (TSD) dated 11/27/96 which is available from the Region III office, listed in the **ADDRESSES** section. Parties desiring additional details on the federal I/M regulation are referred to the November 5, 1992 Federal Register notice (57 FR 52950) or 40 CFR 51.350-51.37, as well as the I/M Flexibility Amendments in the September 18, 1995 Federal Register notice (60 FR 48029) and the additional I/M flexibility amendments for qualified areas in the OTR, published on July 25, 1996 at (61 FR 39031).

### III. EPA's Analysis of Delaware's Low Enhanced I/M Program

As discussed above, section 182(c)(3), 184(b)(1)(A), 87(a)(6) and 187(b)(1) of the Act require that States adopt and implement regulations for an enhanced I/M program in certain areas. Based upon EPA's review of Delaware's submittal, EPA believes Delaware has not completely satisfied all aspects of the Act and the November 1992 I/M Rule. EPA has cited the deficiencies of Delaware's low enhanced I/M program, below. EPA proposes to conditionally approve the SIP if Delaware commits within 30 days of this proposal to

correct the deficiencies identified by this document by a date certain within 1 year of the final conditional ruling. If Delaware corrects the deficiencies by that date, and submits a new SIP revision, EPA will conduct a rulemaking to fully approve the revision. Each of the conditions must be fulfilled by Delaware and submitted to EPA as an amendment to Delaware's I/M SIP revision. If such commitment is not made within 30 days, EPA proposes in the alternative to disapprove the SIP revision. If Delaware does make a timely commitment, but the conditions are not met by the specified date within 1 year, EPA proposes that this rulemaking will convert to a final disapproval. EPA would notify Delaware by letter that the conditions have not been met and that the conditional approval has converted to a disapproval.

#### *Applicability—40 CFR 51.350*

Sections 182(c)(3) and 184(b)(1)(A) of the Act and 40 CFR 51.350 require all areas that are classified as serious or worse nonattainment areas and states in the OTR which contain MSAs or parts thereof with populations of 100,000 or more to implement an enhanced I/M program. Areas classified as marginal for ozone or moderate for CO shall meet the requirements of a basic I/M program. Delaware is part of the OTR. Kent and New Castle are Delaware counties that fall under the November 1992 I/M Rule. Kent and New Castle Counties are classified as severe nonattainment for ozone and are implementing a low enhanced I/M program.

The federal I/M regulation requires that legislation authorizing the program shall not sunset prior to the attainment deadline. Delaware's legislation, 7 Delaware Code, Chapter 67, Section 6702 provides authority to implement the program. However, this legislation is open ended and does not specify a date certain up to which the program is to continue. EPA needs confirmation through a commitment or statement by an authorized Delaware official that the program shall remain in effect for as long as required by law.

Federal I/M regulation requires that SIPs include a list of the ZIP codes of all areas covered by the I/M program. This is not contained in the current Delaware SIP submittal. EPA needs to receive a submitted document that details the ZIP codes of all areas covered by the I/M program.

Therefore, EPA proposes to conditionally approve the Delaware SIP based upon a commitment from Delaware within 30 days, to provide a statement from an authorized official that the authority to implement Delaware's I/M program as stated above will continue through to attainment and to provide ZIP code information for the affected counties under the I/M program. Additional information needed to remedy the deficiencies in this section is explained in § 51.350 of the I/M Rule and the list in the TSD prepared by EPA on this rulemaking.

#### *Enhanced I/M Performance Standard—40 CFR 51.351*

In accordance with the Act and with the November 1992 I/M Rule, the enhanced I/M program must be designed and implemented to meet or exceed a minimum performance standard, which is expressed as emission levels in area-wide average grams per mile (gpm) for certain pollutants. The performance standard shall be established using local characteristics, such as vehicle mix and local fuel controls, and the following parameters: network type, start date, test frequency, model year coverage, vehicle type coverage, exhaust emission test type, emission standards, emissions control device, evaporative system function checks, stringency, waiver rate, compliance rate, and evaluation date. The emission levels achieved by the Delaware's program design shall be calculated using the most current version, at the time of submittal, of the EPA mobile source emissions factor model. Areas shall meet the performance standard for the pollutants which cause them to be subject to enhanced I/M requirements. In the case of ozone nonattainment areas, the performance standard must be met for both NO<sub>x</sub> and HC. The Delaware submittal must meet the low enhanced I/M performance standard for HC and NO<sub>x</sub> in Kent and New Castle Counties.

The Delaware submittal includes a modeling demonstration of the performance standard that uses the following program design parameters. EPA here notes that not all of Delaware's parameter assumptions are acceptable, and as a condition of this rulemaking Delaware must remodel its program and demonstrate compliance with the I/M performance standard:

Parameter	Delaware's program
Network Type .....	Centralized test-only.
Start Date .....	1983 for existing programs; 1995 for area subject to the 1990 CAA.

Parameter	Delaware's program
Frequency .....	Biennial.
Model Years .....	1968 and beyond.
Vehicle type coverage .....	Light duty gasoline vehicles (LDGV), Light duty gasoline trucks 1 & 2 (LDT1, LDT2).
Exhaust emission test type .....	Idle testing of all covered vehicles.
Emission standards .....	Hydrocarbons: 220 ppm as hexane carbon monoxide: 1.2%.
Emission control .....	Pressure test and visual check of fuel inlet restrictor, gas cap, catalytic convertor For: 1968+ LDGV, 1970+ LDGT1 & LDGT2.
Evaporative System .....	Pressure decay test for above vehicle types.
Stringency rate .....	20% Pre 1981 models.
Waiver rate .....	3%.
Compliance rate .....	96%.
Evaluation dates .....	1996, 1999, 2002, 2005, and 2007.

The federal I/M rule requires on-road testing of at least 0.5% of the subject vehicle population, or 20,000 whichever is less, as a supplement to the periodic inspection required by the rule. Delaware does not have adopted regulations that implement an on-road testing program. Delaware will need to adopt regulations requiring on-road testing. Therefore, EPA proposes to conditionally approve the Delaware SIP based on receiving within 30 days of the publication of this notice, Delaware's commitment to submit to EPA by a date certain, within 1 year of the final conditional rulemaking, adopted regulations that implement an on-road vehicle testing program as called out in § 51.351(b) of the November 1992 I/M Rule. Additional information needed to remedy the deficiencies in this section is explained in § 51.351 of the I/M Rule and the list in the TSD.

#### *Network Type and Program Evaluation—40 CFR 51.353*

The enhanced program must include an ongoing evaluation to quantify the emission reduction benefits of the program, and to determine if the program is meeting the requirements of the Act and the federal I/M regulations. The SIP shall include details on the program evaluation and shall include a schedule for submittal of biennial evaluation reports, data from a State monitored or administered mass emissions test of at least 0.1% of the vehicles subject to inspection each year, a description of the sampling methodology, the data collection and analysis system and the legal authority enabling the evaluation program. In addition to these requirements, Delaware is required, in accordance with this section of the November 1992 I/M Rule, to provide in the biennial report, the results of undercover surveys of inspector effectiveness related to identifying vehicles in need of repair. Also, Delaware is required, in its biennial reports, to provide local fleet

emissions factors in assessing the actual effectiveness of the I/M program.

The November 1992 I/M Rule requires that SIPs include a description of the evaluation schedule and protocol, the sampling methodology, the data collection and analysis system, the resources and personnel for evaluation and related details of the evaluation program, and the legal authority enabling the evaluation program.

Delaware has legal authority to operate a motor vehicle program as stated in 7 Delaware Code, Chapter 60, Section 6010. However, Delaware's submittal contains no narrative description, regulations or procedures to address program evaluation; the network type is not specified; and there is no commitment that Delaware will in fact evaluate the program.

Regarding program evaluation elements, EPA needs to see evidence through procedures and or regulation that the following elements are addressed: (1) A provision for the first biennial evaluation to be reported to EPA by July 1997; (2) a description of the evaluation schedule, protocol, sampling methodology, data collection and analysis, and the resources and personnel for the evaluation program.

Therefore, EPA proposes to conditionally approve the Delaware SIP based on receiving within 30 days of the publication of this notice, Delaware's commitment to submit to EPA by a date certain, within 1 year of the final conditional rulemaking, a description of the evaluation schedule and protocol, the sampling methodology, the data collection and analysis system, the resources and personnel for evaluation and related details of the evaluation program, and the legal authority enabling the evaluation program. Additional information needed to remedy the deficiencies in this section is explained in § 51.353 of the I/M Rule and the checklist in the TSD.

#### *Adequate Tools and Resources—40 CFR 51.354*

The federal regulation requires Delaware to demonstrate that adequate funding of the program is available. A portion of the test fee or separately assessed per vehicle fee shall be collected, placed in a dedicated fund and used to finance the program. Alternative funding approaches are acceptable if demonstrated that the funding can be maintained. Reliance on funding from Delaware or local general fund is not acceptable unless doing otherwise would be a violation of Delaware's constitution. The SIP shall include a detailed budget plan which describes the source of funds for personnel, program administration, program enforcement, and purchase of equipment. The SIP shall also detail the number of personnel dedicated to the quality assurance program, data analysis, program administration, enforcement, public education and assistance and other necessary functions.

Delaware's SIP submittal does not provide a description of resources. EPA is aware that Delaware has funding through the 1993 House Bill 360 which dedicated 2.8 million dollars from state traffic fines/violations to be used for the enhanced I/M program. However, a copy of the enabling legislation for these funds was not included in Delaware's submittals pending before EPA. EPA needs to receive a copy of the document under official cover as well as additional details on how the program is funded. It is not clear what monies are used for current program operation, pressure test equipment, and where funding will come from to purchase equipment to perform the required mass based transient test. Delaware needs to provide these details.

Therefore, EPA proposes to conditionally approve the Delaware SIP based on receiving within 30 days of the publication of this notice, Delaware's commitment to submit to EPA by a date

certain, within 1 year of the final conditional rulemaking, a detailed budget plan which describes the source of funds for personnel, program administration, program enforcement, and purchase, of equipment. This submission must also include information on the number of personnel dedicated to the quality assurance program, data analysis, program administration, enforcement, public education and assistance and other necessary functions. Additional information required to remedy the deficiencies in this section is explained in § 51.354 of the I/M Rule and in the TSD.

*Test Frequency and Convenience—40 CFR 51.355*

The enhanced I/M performance standard assumes an annual test frequency, however, other schedules may be approved if the performance standard is achieved. The SIP shall describe the test year selection scheme, how the test frequency is integrated into the enforcement process and shall include the legal authority, regulations or contract provisions to implement and enforce the test frequency. The program shall be designed to provide convenient service to the motorist by ensuring short wait times, short driving distances and regular testing hours.

Delaware has stated that its program is a biennial testing program, but Delaware does not have adopted regulations or a narrative description of the program test frequency or what mechanisms are in place to insure short wait times for the motorist during program operation. Furthermore, the Delaware SIP does not identify safeguards to ensure vehicles will be tested on schedule. The Delaware SIP provides no regulations that require testing stations to test any subject vehicle presented for a test during the station's operating hours.

Therefore, EPA proposes to conditionally approve the Delaware SIP based on receiving within 30 days of the publication of this notice, Delaware's commitment to submit to EPA by a date certain, within 1 year of the final conditional rulemaking, a description of the test year selection scheme, and how the test frequency is integrated into the enforcement process. This description must include the legal authority, regulations or contract provisions to implement and enforce the test frequency. The program must be designed to provide convenient service to the motorist by ensuring short wait times, short driving distances and regular testing hours. Additional information needed to remedy the

deficiencies in this section is explained in § 51.355 of the I/M Rule and in the TSD.

*Vehicle Coverage—40 CFR 51.356*

The performance standard for enhanced I/M programs assumes coverage of all 1968 and later model year light duty vehicles and light duty trucks up to 8,500 pounds Gross Vehicle Weight Rating (GVWR), and includes vehicles operating on all fuel types. Other levels of coverage may be approved if the necessary emission reductions are achieved. Vehicles registered or required to be registered within the I/M program area boundaries, and fleets primarily operated within the I/M program area boundaries and belonging to the covered model years and vehicle classes comprise the subject vehicles. Fleets may be officially inspected outside of the normal I/M program test facilities, if such alternatives are approved by the program administration, but shall be subject to the same test requirements using the same quality control standards as non-fleet vehicles and shall be inspected in independent, test-only facilities, according to the requirements of 40 CFR 51.353(a). Vehicles which are operated on federal installations located within an I/M program area shall be tested, regardless of whether the vehicles are registered in state or local I/M area.

The federal I/M program regulation requires that SIPs include the legal authority or rule necessary to implement and enforce the vehicle coverage requirement, a detailed description of the number and types of vehicles to be covered by the program, and a plan for how those vehicles are to be identified including vehicles that are routinely operated in the area but that may not be registered in the area. There must also be a description of any special exemptions including the percentage and number of vehicles to be impacted by the exemption.

Delaware's current submission provides no breakdown by model year and weight. Since only gasoline powered internal combustion engines are subject to the program as provided in Delaware regulations 26 and 33, fuel type is not an issue. Additionally, the Delaware SIP submittal pending before EPA does not provide for an accounting for registered vehicles and those required to be registered in order to provide an estimate of unregistered vehicles subject to the I/M program. It is assumed that fleet vehicles are covered in the current regulations, however, no provisions for fleet testing are in the regulations and no authority

to provide for fleet testing is given. There are no provisions to address testing vehicles registered in other program areas. The Delaware SIP submittal does not address the federal fleet inspection program. Delaware's regulations provide for vehicle exemptions from its I/M program, however, the Delaware SIP submittal does not include an estimate of vehicles or a percentage of the subject fleet and no accounting is made in Delaware's emissions reduction analysis.

EPA proposes to conditionally approve the Delaware SIP based on receiving within 30 days of the publication of this notice, Delaware's commitment to submit to EPA by a date certain, within 1 year of the final conditional rulemaking, a description of vehicles covered by Delaware's I/M program, broken down by model year and weight; an accounting for registered vehicles and those required to be registered in order to provide an estimate of unregistered vehicles subject to the I/M program. Delaware also needs to submit provisions in its regulations that provide for fleet testing; testing vehicles registered in other program areas; and provide the legal authority or rules necessary to implement fleet testing. With regard to the fleet inspection program, Delaware needs to develop regulations and procedures that address fleet inspections and account for this in its vehicle coverage and in the modeling of the performance standard. Delaware also needs to provide information on exempted vehicles regarding number, fleet percentage and account for them in its emissions reduction analysis. Additional information needed to remedy deficiencies noted in this section is explained in § 51.356 of the I/M Rule and in the TSD.

*Test Procedures and Standards—40 CFR 51.357*

Written test procedures and pass/fail standards shall be established and followed for each model year and vehicle type included in the program. Test procedures and standards are detailed in 40 CFR 51.357 and in the EPA document entitled "High-Tech I/M Test Procedures, Emissions Standards, Quality Control Requirements, and Equipment Specifications", EPA-AA-EPD-IM-93-1, dated April 1994. The federal I/M regulations also require vehicles that have been altered from their original certified configuration (i.e., engine or fuel switching) to be tested in the same manner as other subject vehicles.

Delaware has provided detailed test procedures for each test as well as pass/

fail standards for each applicable model year for each test. However, Delaware needs to assure certain procedures conform with procedures contained in Appendix B to Subpart S of the November 5, 1992 November 1992 I/M Rule. Also regulations/procedures need to be provided that: (1) Ensure that initial tests are performed with no prior repair or adjustment at the facility; (2) provide access to permit owner observation; (3) provide for rejection of vehicles with missing components or unsafe conditions; (4) provide for appropriate retesting of primary and secondary components; and (5) address fuel and engine switching. Delaware must ensure that its evaporative test standards match EPA approved standards.

EPA proposes to conditionally approve the Delaware SIP based on receiving within 30 days of the publication of this notice, Delaware's commitment to submit to EPA by a date certain, within 1 year of the final conditional rulemaking, regulations/procedures that address the above deficiencies. Additional information needed to remedy the deficiencies in this section is explained in § 51.357 of the I/M Rule and in the TSD.

#### *Test Equipment—40 CFR 51.358*

Computerized test systems are required for performing any measurement on subject vehicles. The federal I/M regulation requires that SIP submissions include written technical specifications for all test equipment used in the program. The specifications shall describe the emission analysis process, the necessary test equipment, the required features, and written acceptance testing criteria and procedures.

Delaware's submission contains written technical specifications that addresses pass/fail criteria, calibration adjustments and quality control for idle testing. However no test specifications are provided for the idle or pressure tests. The State's submission does not describe equipment acceptance testing criteria and procedures. The test equipment is capable of testing all subject vehicles, however written test equipment specifications are not contained in the submission. Additionally, there is no commitment to update test equipment and no description of the test system configuration.

EPA proposes to conditionally approve the Delaware SIP based on receiving within 30 days of the publication of this notice, Delaware's commitment to submit to EPA by a date certain, within 1 year of the final

conditional rulemaking, regulations/procedures that address the general deficiencies noted above. Additional information needed to remedy the deficiencies in this section is explained in § 51.358 of the I/M Rule and in the TSD.

#### *Quality Control—40 CFR 51.359*

Quality control measures shall insure that emissions measurement equipment is calibrated and maintained properly and that inspection, calibration records, and control charts are accurately created, recorded and maintained.

Delaware has provided a description of quality control measures for emissions measurement equipment, however, the remaining requirements of this section have not been addressed. These include but are not limited to: A quality control procedures manual or related document; proper calibration measures and associated record keeping; preventive maintenance measures/provisions for proper recording of quality control information. In addition, the Delaware SIP does not contain provisions for maintenance, calibration and insuring test accuracy; equipment specifications; for steady-state and evaporative test equipment.

EPA proposes to conditionally approve the Delaware SIP based on receiving within 30 days of the publication of this notice, Delaware's commitment to submit to EPA by a date certain, within 1 year of the final conditional rulemaking, regulations/procedures and/or documents that address the general deficiencies noted above. Additional information needed to remedy the deficiencies in this section is explained in § 51.359 of the I/M Rule and the checklist in the TSD.

#### *Waivers & Compliance via Diagnostic Inspection—40 CFR 51.360*

The federal I/M regulations allows for the issuance of a waiver, which is a form of compliance with the program requirements that allows a motorist to comply without meeting the appropriate test standards. For enhanced I/M programs, an expenditure of at least \$450 in repairs, adjusted annually to reflect the change in the Consumer Price Index (CPI) as compared to the CPI for 1989, is required in order to qualify for a waiver. Waivers can only be issued after a vehicle has failed a retest performed after all qualifying repairs have been made. Any available warranty coverage must be used to obtain repairs before expenditures can be counted toward the cost limit. Tampering related repairs shall not be applied toward the cost limit. Repairs must be appropriate to the cause of the test failure. The

federal regulation allows for compliance via a diagnostic inspection after failing a retest on emissions and requires quality control of waiver assurance. The SIP must set a maximum waiver rate and must describe corrective action that would be taken if the waiver rate exceeds that committed to in the SIP.

Delaware has provisions in its regulations for issuance of waivers and has demonstrated that it has the necessary legal authority to issue the waivers and administrate the waiver system. It establishes the minimum dollar expenditure amounts for waivers to be issued in the areas that are required to implement the basic I/M program. However, in Kent and New Castle Counties, where the low enhanced program applies, the same basic waiver rate is in place. This does not meet the minimum requirement of \$450 which is a statutory requirement of the Act.

Time extensions are part of Delaware's rule provisions, but these provisions only partially fulfill the requirements regarding time extensions under this section. The Delaware SIP provides for the performance of a documented physical and functional analysis and for the cut point requirements which are consistent with EPA requirements. However, the Delaware SIP contains provisions that only partially fulfill the requirements for the quality control of waiver issuance.

EPA proposes to conditionally approve the Delaware SIP based on receiving within 30 days of the publication of this notice, Delaware's commitment to submit to EPA by a date certain, within 1 year of the final conditional rulemaking, regulations/procedures and/or documents that address the general deficiencies mentioned above. Additional information needed to remedy the deficiencies in this section is explained in § 51.360 of the I/M Rule and in the TSD.

#### *Motorist Compliance Enforcement—40 CFR 51.361*

The federal regulation requires that compliance shall be ensured through the denial of motor vehicle registration in enhanced I/M programs unless an exception for use of an existing alternative is approved. SIPs shall provide information concerning the enforcement process, legal authority to implement and enforce the program, and a commitment to a compliance rate to be used for modeling purposes and to be maintained in practice.

As a condition for this approval, Delaware needs to provide EPA with the specific details of its Motorist Compliance Enforcement program. Although Delaware has a registration denial system, under the basic I/M program, no details have been provided. The SIP submittal must include a commitment to maintain a specified enforcement level to be used for modeling purposes.

EPA proposes to conditionally approve the Delaware SIP based on receiving within 30 days of the publication of this notice, Delaware's commitment to submit to EPA by a date certain, within 1 year of the final conditional rulemaking, regulations/procedures and/or documents that address the general deficiencies noted above. Additional information needed to remedy the deficiencies noted above is explained in § 51.361 of the I/M Rule and in the TSD.

#### *Motorist Compliance Enforcement Program Oversight—40 CFR 51.362*

The federal I/M regulation requires that the enforcement program shall be audited regularly and shall follow effective program management practices, including adjustments to improve operation when necessary. The SIP shall include quality control and quality assurance procedures to be used to insure the effective overall performance of the enforcement system. An information management system shall be established which will characterize, evaluate and enforce the program.

Although Delaware has motorist compliance enforcement oversight procedures/regulations, they were not provided in the SIP submittal, specifically, 7 Delaware Code, Chapter 67 for enforcement procedures. These need to be provided to EPA along with the procedures manual.

EPA proposes to conditionally approve the Delaware SIP based on receiving within 30 days of the publication of this notice, Delaware's commitment to submit to EPA by a date certain, within 1 year of the final conditional rulemaking, regulations/procedures and/or documents that address the general deficiencies noted above. Additional information needed to remedy the deficiencies noted above is explained in § 51.362 of the I/M Rule and in the TSD.

#### *Quality Assurance—40 CFR 51.363*

An ongoing quality assurance program shall be implemented to discover, correct, and prevent fraud, waste and abuse in the program. The program shall include covert and overt

performance audits of the inspectors, audits of station and inspector records, equipment audits, and formal training of all State I/M enforcement officials and auditors. A description of the quality assurance program which includes written procedure manuals on the above discussed items must be submitted as part of the SIP.

As a condition for approval, Delaware needs to provide the EPA details of its existing quality assurance program that fulfill the detailed requirements listed in § 51.363 of the I/M rule.

EPA proposes to conditionally approve the Delaware SIP based on receiving within 30 days of the publication of this notice, Delaware's commitment to submit to EPA by a date certain, within 1 year of the final conditional rulemaking, regulations/procedures and/or documents that address the general deficiencies of this section. Additional information needed to remedy the deficiencies in this section is explained in § 51.363 of the I/M Rule and in the TSD.

#### *Enforcement Against Contractors, Stations and Inspectors—40 CFR 51.364*

Enforcement against licensed stations, contractors, and inspectors shall include swift, sure, effective and consistent penalties for violation of program requirements. The federal I/M regulation requires the establishment of minimum penalties for violations of program rules and procedures which can be imposed against stations, contractors and inspectors. The legal authority for establishing and imposing penalties, civil fines, license suspensions and revocations must be included in the SIP. State quality assurance officials shall have the authority to temporarily suspend station and/or inspector licenses immediately upon finding a violation that directly affects emission reduction benefits, unless constitutionally prohibited. An official opinion explaining any state constitutional impediments to immediate suspension authority must be included in the submittal. The SIP shall describe the administrative and judicial procedures and responsibilities relevant to the enforcement process, including which agencies, courts and jurisdictions are involved, who will prosecute and adjudicate cases and the resources and sources of those resources which will support this function.

7 Delaware Code, Chapter 60, section 6010 provides general authority to Secretary to adopt regulations necessary to implement program. However, Delaware has provided no procedures that address any requirements of this section. No specific regulation is

provided for enforcement against stations, inspectors, or contractors, nor is a penalty schedule provided. Delaware has not demonstrated that it has existing regulations under the basic I/M program.

The EPA proposes to conditionally approve the Delaware SIP based on receiving within 30 days of the publication of this notice, Delaware's commitment to submit to EPA by a date certain, within 1 year of the final conditional rulemaking, adopted regulations, rules and procedures that address the deficiencies of this section. Additional information needed to remedy the deficiencies in this section is explained in § 51.364 of the I/M Rule and in the TSD.

#### *Data Collection Section—40 CFR 51.365*

Accurate data collection is essential to the management, evaluation and enforcement of an I/M program. The federal I/M regulation requires data to be gathered on each individual test conducted and on the results of the quality control checks of test equipment required under 40 CFR § 51.359.

Delaware's SIP did not address data collection. Delaware needs to either demonstrate that it has existing data procedures that meet the requirements of this section or develop and submit regulations/provisions/procedures that meet this requirement.

The EPA proposes to conditionally approve the Delaware SIP based on receiving within 30 days of the publication of this notice, Delaware's commitment to submit to EPA by a date certain, within 1 year of the final conditional rulemaking, adopted regulations/procedures that address the deficiencies of this section. Additional information needed to remedy the deficiencies in this section is explained in § 51.365 of the I/M Rule and in the TSD.

#### *Data Analysis and Reporting—40 CFR 51.366*

Data analysis and reporting are required to allow for monitoring and evaluation of the program by Delaware and EPA. The federal I/M regulation requires annual reports to be submitted which provide information and statistics and which summarize activities performed for each of the following programs: Testing, quality assurance, quality control and enforcement. These reports are to be submitted by July of each year and shall provide statistics for the period from January to December of the previous year. A separate biennial report shall be submitted to EPA which addresses changes in program design, regulations,



legal authority, program procedures and any weaknesses in the program found during the two year period and how these problems will be or have been corrected.

Delaware's SIP did not address data analysis and reporting provisions. Delaware needs to either show EPA that it has existing data analysis procedures that meet the requirements of this section or develop and submit regulations/provisions/ procedures that meet this requirement.

The EPA proposes to conditionally approve the Delaware SIP based on receiving within 30 days of the publication of this notice, Delaware's commitment to submit to EPA by a date certain, within 1 year of the final conditional rulemaking, adopted regulations/procedures that address the deficiencies of this section. Additional information needed to remedy the deficiencies in this section is explained in § 51.366 of the I/M Rule and in the TSD.

#### *Inspector Training and Licensing or Certification—40 CFR 51.367*

The federal I/M regulations requires all inspectors to be formally trained and licensed or certified to perform inspections.

Regulation 26, Section 8 and Regulation 33, Section 8 requires certification of motor vehicle officers. These regulations also have provisions stipulating that motor vehicle officers complete a training course approved by the Delaware Division of Motor Vehicles. However, no description of the training course is given in the submission.

The EPA proposes to conditionally approve the Delaware SIP based on receiving within 30 days of the publication of this notice, Delaware's commitment to submit to EPA by a date certain, within 1 year of the final conditional rulemaking, adopted regulations/procedures that address the deficiencies of this section. Additional information needed to remedy the deficiencies in this section is explained in § 51.367 of the I/M Rule and in the TSD.

#### *Public Information and Consumer Protection—40 CFR 51.368*

The federal I/M regulation requires the SIP to include public information and consumer protection.

Delaware needs to provide provisions/measures that it will implement to protect the consumer and provide for public awareness.

The EPA proposes to conditionally approve the Delaware SIP based on receiving within 30 days of the

publication of this notice, Delaware's commitment to submit to EPA by a date certain, within 1 year of the final conditional rulemaking, adopted regulations/procedures that address the deficiencies of this section. Additional information needed to remedy the deficiencies in this section is explained in § 51.368 of the I/M Rule and in the TSD.

#### *Improving Repair Effectiveness—40 CFR 51.369*

Effective repairs are the key to achieving program goals. The federal regulation requires states to take steps to ensure that the capability exists in the repair industry to repair vehicles. The SIP must include a description of the technical assistance program to be implemented, a description of the procedures and criteria to be used in meeting the performance monitoring requirements required in the federal regulation and a description of the repair technician training resources available in the community.

EPA understands that the Delaware Department of Natural Resources and Environmental Control (DNREC) is jointly developing a technician training course with the Delaware Community College. The Delaware SIP must include information on this program as well as provisions for monitoring performance of repair facilities.

The EPA proposes to conditionally approve the Delaware SIP based on receiving within 30 days of the publication of this notice, Delaware's commitment to submit to EPA by a date certain, within 1 year of the final conditional rulemaking, adopted regulations/procedures that address the deficiencies of this section. Additional information needed to remedy the deficiencies in this section is explained in § 51.369 of the I/M Rule and in the TSD.

#### *Compliance with Recall Notices—40 CFR 51.370*

The federal regulation requires that Delaware establish methods to ensure that vehicles which are subject to enhanced I/M and are included in an emission related recall receive the required repairs prior to completing the emission test and/or renewing the vehicle registration.

Delaware must address all the provisions for recall notices under the federal regulation and noted in the TSD and as required under § 51.370 of the November 1992 I/M Rule.

The EPA proposes to conditionally approve the Delaware SIP based on receiving within 30 days of the publication of this notice, Delaware's

commitment to submit to EPA by a date certain, within 1 year of the final conditional rulemaking, adopted regulations/procedures that address the deficiencies in this Section. Additional information needed to remedy the deficiencies in this section is explained in § 51.370 of the I/M Rule and in the TSD.

#### *On-Road Testing—40 CFR 51.371*

On-road testing is required in enhanced I/M areas. The use of either remote sensing devices (RSD) or roadside pullovers including tailpipe emission testing can be used to meet the federal regulations. The program must include on-road testing of 0.5% of the subject fleet or 20,000 vehicles, whichever is less, in the nonattainment area or the I/M program area. Motorists that have passed an emissions test and are found to be high emitters as a result of an on-road test shall be required to pass an out-of-cycle test.

No legal authority to implement an on-road testing program was included in the Delaware SIP. The general authority to implement a program may be sufficient to require on-road testing, however, Delaware has no regulations in place to implement on-road testing.

The EPA proposes to conditionally approve the Delaware SIP based on receiving within 30 days of the publication of this notice, Delaware's commitment to submit to EPA by a date certain, within 1 year of the final conditional rulemaking, adopted regulations/procedures that address the deficiencies of this section. Additional information needed to remedy the deficiencies in this section is explained in § 51.371 of the I/M Rule and in the TSD.

#### *State Implementation Plan Submittals/ Submission Deadlines—40 CFR 51.372 through 51.373*

Delaware's submittal contains the following: (1) The legislative authority to implement the program; (2) Regulation 33 that adds a requirement for a pressure test and anti-tampering checks on light duty vehicles 1968 and newer and light duty trucks 1970 and newer in Kent and New Castle Counties; (3) Regulation 26 that adds a requirement that repairs on 1981 and later model year vehicles be performed by certified repair technicians to qualify for a waiver. This program became effective on January 1, 1997; and (4) the low enhanced performance standard evaluation. Delaware has indicated that its pressure test and anti-tampering program was effective as of January 1, 1995.



Delaware has demonstrated that the program meets the low-enhanced performance standard. Delaware has shown that program will achieve an air quality benefit. However, there are some specific administrative requirements of the rule that they have not addressed. Delaware has not adequately addressed: The waiver requirements; on-road testing requirements; program evaluation using mass based transient test procedure; specifics on network type and test frequency; sufficient quality control procedures and requirements; complete equipment specifications; specific enforcement requirements; public information and consumer protection requirements; sufficient enforcement authority; sufficient test document through test memoranda and procedural memoranda.

EPA understands that Delaware has adopted certain legislation and procedures that were not included in the submittals pending before EPA. Once legislation, regulations and/or procedures have gone through the adoption process, they will need to be officially submitted to EPA as a SIP revision supplement to the I/M SIP. Where new regulations/procedures are developed, the public notice and hearing process in section 110 of Act must be followed. EPA has a list of missing procedural manuals and enabling legislation in the TSD prepared on this rulemaking. EPA believes that most of the noted deficiencies can be addressed through regulation amendments and procedure manuals. The one exception is the lack of provisions establishing a \$450 waiver limit as prescribed in the Act. All states with enhanced programs are required to have this limit. EPA also remains concerned about how Delaware can maintain a 3% waiver limit using a \$200/\$75 waiver amount. EPA believes that the extension of the waiver deadline called out in the I/M rule, as revised in 60 FR 48029, will afford Delaware the opportunity to improve technician training so that by 1998, the majority of vehicles would be repaired below the CPI adjusted \$450 minimum waiver amount. Nevertheless, Delaware must take corrective action to address the waiver requirements and must also must take corrective action if the waiver rate exceeds that provided for in the Delaware SIP.

Therefore, EPA proposes to conditionally approve the Delaware SIP based upon a commitment from Delaware within 30 days, to adopt and submit final regulations to EPA and cure all of the deficiencies related to this section of the November 1992 I/M Rule

as explained above, by a date certain within 1 year. If Delaware fails to make the commitment, EPA proposes in the alternative to disapprove the SIP. If Delaware fails to meet the condition by the date specified, EPA proposes to convert this rule making to a disapproval at that time by letter.

EPA's review of the material indicates that with the conditions described above, Delaware has adopted a low enhanced I/M program in accordance with the requirements of the Act. EPA is proposing to conditionally approve the Delaware I/M SIP revision which was submitted to this office on February 24, 1995 and November 30, 1995 subject to the conditions described above. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional offices listed in the Addresses section of this notice.

#### Proposed Action

EPA proposes to conditionally approve the SIP if Delaware commits within 30 days of this proposal to correct the deficiencies identified by this document by a date certain within 1 year of the final conditional ruling. If Delaware corrects the deficiencies by that date, and submits a new SIP revision, EPA will conduct rulemaking to fully approve the revision. Each of the conditions must be fulfilled by Delaware and submitted to EPA as an amendment to Delaware's I/M SIP revision. If such commitment is not made within 30 days, EPA proposes in the alternative to disapprove the SIP revision. If Delaware does make a timely commitment, but the conditions are not met by the specified date within 1 year, EPA proposes that this rulemaking will convert to a final disapproval. EPA would notify Delaware by letter that the conditions have not been met and that the conditional approval has converted to a disapproval.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C., 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the requirements that Delaware is already imposing.

Therefore, because the Federal SIP approval does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to a disapproval under section 110(k), based on Delaware's failure to meet the commitment, it will not affect any existing State requirements applicable to small entities. Federal disapproval of Delaware's submittal would not affect its state-enforceability. Moreover, EPA's disapproval of the submittal would not impose a new Federal requirement. Therefore, EPA certifies that should this approval convert to a disapproval, this disapproval action would not have a significant impact on a substantial number of small entities because it would not remove existing requirements nor would it substitute a new federal requirement.

Under section 202 of the Unfunded Mandates Reform Act of 1995. ("Unfunded Mandates Act"), signed into law on March 22, 1995. EPA must prepare a budgetary impact statement to accompany any proposed or final that includes a Federal mandate that may result in estimated costs to Delaware, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed/promulgated does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

This action has been classified as a Table 3 action for signature by the

Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

If Delaware fails to meet any of the conditions of this approval action, the EPA Regional Administrator would directly make a finding, by letter, that the conditional approval had converted to a disapproval and the clock for imposition of sanctions under section 179(a) of the Act would start as of the date of the letter. Subsequently, a notice would be published in the Federal Register announcing that the SIP revision has been disapproved.

The Administrator's decision to approve or disapprove the Delaware I/ M SIP revision will be based on whether it meets the requirements of section 110(a)(2) (A)-(K) of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

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

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401-7671q.

Dated: January 24, 1997.

W. Michael McCabe,

*Regional Administrator, Region III.*

[FR Doc. 97-2847 Filed 2-4-97; 8:45 am]

BILLING CODE 6560-50-P

#### 40 CFR Parts 72, 73, 74, 75, 77, and 78

[FRL-5684-6]

RIN 2060-AF43, AF46, and AF47

#### Acid Rain Program; Permits, Allowance System, Sulfur Dioxide Opt-Ins, Continuous Emission Monitoring, Excess Emissions, and Appeal Procedures

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

**ACTION:** Notice of extension of comment period on proposed rule.

**SUMMARY:** On December 27, 1996 (61 FR 68340), the Environmental Protection Agency (EPA) promulgated a proposed rule revising the permits, allowance system, sulfur dioxide opt-ins, continuous emission monitoring, excess emissions, and appeal procedures rules. The proposed rule streamlines the Acid

Rain Program while still ensuring achievement of its statutory goals of reducing sulfur dioxide and nitrogen oxides emissions and the adverse health and ecological impacts of acidic deposition. EPA is extending the comment period so that comments on the proposed rule are due on February 10, 1997.

**DATES:** Comments on the December 27, 1996, proposed rule must be received on or before February 10, 1997.

**ADDRESSES:** *Comments.* Comments should be submitted in duplicate to EPA Air Docket Section (6102), Waterside Mall, Room M1500, 1st Floor, 401 M Street, S.W., Washington, D.C. 20460.

*Docket.* Docket No. A-95-56 containing supporting information used to develop the proposal is available for public inspection and copying from 8:30 a.m. to 12 p.m. and 1 p.m. to 3:30 p.m., Monday through Friday, excluding legal holidays, at EPA's Air Docket Section at the above address. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Kathy Barylski, at (202) 233-9074, U.S. Environmental Protection Agency, 401 M Street, S.W., Acid Rain Division (6204J), Washington D.C. (concerning revisions of parts 73 and 75); Dwight C. Alpern, Attorney-advisor, at (202) 233-9151 (same address) (concerning all other revisions); or the Acid Rain Hotline, at (202) 233-9620.

**SUPPLEMENTARY INFORMATION:** On January 24, 1997, EPA received a request that the period for submission of comments on the December 27, 1996, proposed rule be extended for 14 more days. EPA has considered the extension request as well as the importance of completing this rulemaking expeditiously. In light of these considerations, EPA extends the comment period to February 10, 1997.

Dated: January 28, 1997.

Brian J. McLean,

*Director, Acid Rain Program, Office of Atmospheric Programs, Office of Air and Radiation.*

[FR Doc. 97-2844 Filed 2-4-97; 8:45 am]

BILLING CODE 6560-50-P

#### 40 CFR Part 180

[OPP-300451; FRL-5584-6]

#### Formic Acid; Proposed Tolerance Exemptions

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to establish exemptions from the requirement of a

tolerance for residues of the biochemical pesticide formic acid in or on honey and beeswax when used to control tracheal mites in bee colonies and applied in accordance with accepted apiarian practices.

**DATES:** Comments, identified by the docket control number [OPP-300451], must be received on or before March 7, 1997.

**ADDRESSES:** By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public record by EPA without prior notice. The public record is available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number, [OPP-300451]. No CBI should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in unit IV. of this preamble.

**FOR FURTHER INFORMATION CONTACT:** By mail: Diana M. Horne, c/o Product Manager (PM) 90, Biopesticides and Pollution Prevention Division (7501W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 5-W57, CSI, 2800 Crystal Drive, Arlington, VA, (703) 308-