

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The agency has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or Department of Transportation Regulatory Policies and Procedures. The changes in this interim final rule merely reflect amendments contained in Public Law 104-264. Accordingly, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601-612), the agency has evaluated the effects of this action on small entities. Based on the evaluation, we certify that this action will not have a significant impact on a substantial number of small entities. Accordingly, the preparation of a Regulatory Flexibility Analysis is unnecessary.

Paperwork Reduction Act

There are reporting requirements contained in the regulation that this rule is amending that are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. Accordingly, these requirements have been submitted previously to and approved by OMB, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*). These requirements had been approved through October 31, 1996, under OMB No. 2127-0001. A request for an extension of the OMB approval until the year 2000 is currently pending.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that it will not have any significant impact on the quality of the human environment.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. Accordingly, the preparation of a Federalism Assessment is not warranted.

List of Subjects in 23 CFR Part 1327

Driver licensing, Driver records, Highway safety, National Driver Register, Transportation safety.

In consideration of the foregoing, title 23 of the CFR is amended as follows:

PART 1327—PROCEDURES FOR PARTICIPATING IN AND RECEIVING INFORMATION FROM THE NATIONAL DRIVER REGISTER PROBLEM DRIVER POINTER SYSTEM

1. The authority citation for part 1327 will continue to read as follows:

Authority: Pub. L. 97-364, 96 Stat. 1740, as amended (49 U.S.C. 30301, *et seq.*); delegation of authority at 49 CFR 1.50.

§ 1327.6 [Amended]

2. Section 1327.6 is amended by redesignating paragraphs (f) and (g) as paragraphs (g) and (h), and by adding a new paragraph (f) as follows:

* * * * *

(f) *Air carriers.* (1) To initiate an NDR file check, the individual seeking employment as a pilot with an air carrier shall either:

(i) Complete, sign and submit a request for an NDR file check directly to the chief driver licensing official of a participating State in accordance with procedures established by the State for this purpose; or

(ii) Authorize, by completing and signing a written consent, the air carrier with whom the individual is seeking employment to request a file check through the chief driver licensing official of a participating State in accordance with procedures established by that State for this purpose.

(2) Until September 30, 1997, an NDR file check initiated under either paragraph (f)(1)(i) or (f)(1)(ii) of this section may be submitted directly to the NDR in accordance with procedures established by the NDR rather than through the chief driver licensing official of a participating State in accordance with procedures established by that State for this purpose.

(3) The request for an NDR file check or the written consent, whichever is used, must:

(i) State that NDR records are to be released;

(ii) State as specifically as possible who is authorized to receive the records;

(iii) Be dated and signed by the individual (or legal representative as appropriate);

(iv) Specifically state that the authorization is valid for only one search of the NDR;

(v) Specifically state that the NDR identifies probable matches that require further inquiry for verification; that it is

recommended, but not required, that the prospective employer verify matches with the State of record; and that individuals have the right to request records regarding themselves from the NDR to verify their accuracy; and

(vi) Specifically state that, pursuant to Section 502 of the Pilot Records Improvement Act of 1996, the request (or written consent) serves as notice of a request for NDR information concerning the individual's motor vehicle driving record and of the individual's right to receive a copy of such information.

(4) Air carriers that maintain, or request and receive NDR information about an individual must provide the individual a reasonable opportunity to submit written comments to correct any inaccuracies contained in the records before making a final hiring decision with respect to the individual.

(5) In the case of a match (probable identification), the air carrier should obtain the substantive data relating to the record from the State of record and verify that the person named on the probable identification is in fact the individual concerned before using the information as a basis for any action against the individual.

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Issued on: May 13, 1997.

Ricardo Martinez, M.D.,
Administrator, National Highway Traffic Safety Administration.

[FR Doc. 97-12925 Filed 5-16-97; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE-28-1009; FRL-5823-4]

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

ACTION: Final conditional approval.

SUMMARY: EPA is granting 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 conditionally approve the Delaware enhanced motor vehicle I/M program. EPA is conditionally approving Delaware's SIP revision based on the fact that: Delaware's SIP is deficient in certain aspects with respect to the

requirements of the Act and EPA's I/M program regulations. Delaware has made a commitment in a letter, dated March 6, 1997, to work with EPA to address the noted deficiencies by a date certain within one year from June 18, 1997. This action is taken under section 110 of the 1990 Clean Air Act(CAA).

EFFECTIVE DATE: This final rule is effective on June 18, 1997.

ADDRESSES: 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, P.O. 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.

SUPPLEMENTARY INFORMATION:

I. Background

On February 5, 1997, (62 FR 5361), EPA published a notice of proposed rulemaking (NPR) for the State of Delaware. The NPR proposed conditional approval of Delaware's low enhanced inspection and maintenance program, submitted on February 17, 1995 and supplemented on November 30, 1995, by the Delaware Department of Natural Resources and Environmental Control (DNREC). A description of Delaware's submittal and EPA's rationale for its proposed action were presented in the NPR and will not be restated here.

II. Public Comments/Response to Public Comments

There were no comments received during the public comment period on this notice.

III. Conditional Approval

Under the terms of EPA's February 5, 1997 notice of proposed conditional approval rulemaking (62 FR 5361), Delaware was required to make commitments to remedy deficiencies with the I/M program SIP (as specified in the above notice) within twelve months of today's final conditional approval notice. On March 6, 1997, Christophe Tulou, Secretary of the Delaware DNREC, submitted a letter to Michael McCabe, Regional Administrator, EPA Region III,

committing to address, by a date certain, all of the deficiencies listed in EPA's February 5, 1997 NPR. EPA has indicated in its acknowledgment letter to Delaware that it interprets this letter as a commitment to remedy all of the deficiencies that are listed in the proposed conditional approval notice 62 FR 5361) by June 18, 1997.

Because Delaware has submitted the commitment letter called for in EPA's February 5, 1997 NPR, EPA is today taking final conditional approval action upon the Delaware I/M SIP, under section 110 of the CAA.

IV. Final Rulemaking Action

EPA is conditionally approving Delaware's low enhanced I/M program as a revision to the Delaware SIP, based upon certain conditions. Should the State fail to fulfill the conditions by the deadline of no more than one year from June 18, 1997, this conditional approval will convert to a disapproval pursuant to CAA section 110(k). In that event, EPA would issue a letter to notify the State that the conditions had not been met, and that the approval had converted to a disapproval.

VI. Administrative Requirements

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

A. Executive Order 12866

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.

B. Regulatory Flexibility Act

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.

Conditional approvals of SIP submittals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State 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 CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air 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 the State's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new federal requirement.

C. Unfunded Mandates

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 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 conditional approval action 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 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 the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. 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 18, 1997.

Filing a petition for reconsideration by the Administrator of this final rule to conditionally approve the Delaware enhanced I/M SIP does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Administrative Procedures Act).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Nitrogen dioxide, Ozone, Reporting and record keeping requirements.

Dated: April 29, 1997.

W. Wisniewski,

Acting Regional Administrator, Region III.

Chapter I, title 40, of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart I—Delaware

2. Section 52.424 is amended by adding paragraph (b) to read as follows:

§ 52.424 Conditional Approval.

* * * * *

(b) The State of Delaware's February 17, 1995 submittal for an enhanced motor vehicle inspection and maintenance (I/M) program, and the November 30, 1995 submittal of the performance standard evaluation of the low enhanced program, is conditionally approved based on certain contingencies.

The following conditions must be addressed in a revised SIP submission. Along with the conditions listed is a separate detailed I/M checklist explaining what is required to fully remedy the deficiencies found in the proposed notice of conditional approval. This checklist is found in the Technical Support Document (TSD), located in the docket of this rulemaking, that was prepared in support of the proposed conditional I/M rulemaking for Delaware. This checklist and Technical Support document are available at the Air, Radiation, and Toxics Division, 841 Chestnut Bldg., Philadelphia, PA 19107, Telephone (215) 566–2183. By no later than one year from June 18, 1997, Delaware must submit a revised SIP that meets the following conditions for approvability:

(1) Provide a statement from an authorized official that the authority to implement Delaware's I/M program as stated above will continue through the attainment date and provide ZIP code information for the affected counties under the I/M program.

(2) Submit to EPA adopted regulations or procedures that implement an on-road vehicle testing program and remodel its program and demonstrate compliance with the I/M parameter standard so that it meets all the requirements of 40 CFR 51.351.

(3) Submit to EPA 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 that meet all the requirements of 40 CFR 51.353.

(4) Submit to EPA procedures or regulations that detail the number of personnel and equipment dedicated to the quality assurance program, data collection, data analysis, program administration, enforcement, public education and assistance, on-road testing and other necessary functions that meet all the requirements of 40 CFR 51.354.

(5) Submit to EPA procedures or regulations that meet the requirements of 40 CFR 51.355. This includes 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.

(6) Submit to EPA 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. In addition, Delaware must provide information on exempted vehicles regarding number, fleet percentage and account for them in its emissions reduction analysis. This submission must meet the requirements of 40 CFR 51.356.

(7) Submit to EPA procedures or regulations that address the requirements of 40 CFR 51.357.

(8) Submit to EPA regulations or procedures that address the requirements of 40 CFR 51.358.

(9) Submit to EPA regulations or procedures that address the requirements of 40 CFR 51.359, including: a quality control procedures manual or related document; proper calibration measures and associated recordkeeping; preventive maintenance measures/provisions for proper recording of quality control information.

(10) Submit to EPA regulations and/or procedures that address the requirements of 40 CFR 51.360. These include: provisions that implement a consumer price index (CPI) adjusted \$450 waiver for Kent and New Castle Counties, where the low enhanced program applies.

(11) Submit to EPA regulations and/or procedures that meet the requirements of 40 CFR 51.361, including providing EPA with the specific details of its Motorist Compliance Enforcement program, providing a commitment to maintain a specified enforcement level to be used for modeling purposes. Also Delaware

must provide regulations and legislation that implement a registration denial system.

(12) Submit to EPA regulations or procedures that meet the requirements of 40 CFR 51.362, including: providing procedures or regulations that detail how the motorist compliance enforcement oversight program will be implemented and a demonstration of the program's functionality.

(13) Submit to EPA regulations or procedures that meet the requirements of 40 CFR 51.363, including: providing procedures or regulations that detail how the quality assurance motorist compliance enforcement oversight program will be implemented and a demonstration of the program's functionality.

(14) Submit to EPA regulations or procedures that meet all the requirements of 40 CFR 51.364, including: providing the legal authority for establishing and imposing penalties, civil fines, license suspensions and revocations; providing quality assurance officials of the state with the authority to temporarily suspend station and/or inspector licenses immediately upon finding a violation that directly affects emissions reduction benefits, or an official opinion explaining any state constitutional impediments to such immediate suspension authority; and providing a description of the administrative and judicial procedures and responsibilities relevant to the enforcement process, including which agencies courts and jurisdictions are involved, who will prosecute and adjudicated cases and the resources and sources of the those resources which will support this function.

(15) Demonstrate that Delaware has existing data procedures that meet the requirements of 40 CFR 51.365; or develop and submit to EPA regulations, or procedures that meet all the requirements of 40 CFR 51.365.

(16) Demonstrate that Delaware has existing data analysis procedures that meet the requirements of 40 CFR 51.366 or develop and submit provisions/procedures that meet the requirements of 40 CFR 51.366.

(17) Provide to the EPA details of the inspectors training course along with addressing all of the requirements of 40 CFR 51.367.

(18) Provide to the EPA the details of the provisions and/or measures that will implement to protect the consumer and provide for the public awareness as well as address the rest of the requirements of 40 CFR 51.368.

(19) Provide to the EPA the details of the technician training course that it is

developing and address the requirements of 40 CFR 51.369.

(20) Provide to the EPA documents and/or provisions that meet the requirements of 40 CFR 51.370, including: providing details of its provisions to ensure that vehicles subject to enhanced I/M and are included in an emission related to recall, receive the required repairs prior to completing the emissions test and or renewing the vehicle registration.

(21) Meet the requirements of 40 CFR 51.371, including: adopting legislation that gives authority to implement an on-road testing program; providing details of an on-road testing program.

[FR Doc. 97-12629 Filed 5-16-97; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE027-1006; FRL-5823-3]

Approval and Promulgation of Air Quality Implementation Plans; Delaware—15 Percent Rate of Progress Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is conditionally approving a State Implementation Plan (SIP) revision submitted by the State of Delaware to meet the 15 Percent Rate of Progress Plan (RPP) requirements of the Clean Air Act (CAA). EPA is conditionally approving the SIP because the 15 Percent RPP, submitted by Delaware, will result in significant emission reductions in volatile organic compounds (VOCs) from the 1990 baseline and thus, will provide progress toward attainment of the ozone standard. This action is being taken under section 110 of the CAA.

EFFECTIVE DATE: The final rule is effective on June 18, 1997.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 566-2182, at the EPA Region III address above.

SUPPLEMENTARY INFORMATION: On February 5, 1997 (62 FR 5357), EPA published a notice of proposed rulemaking (NPR) for the State of Delaware. The NPR proposed conditional approval of Delaware's 15 Percent RPP. The formal SIP revision was submitted by the Delaware Department of Natural Resources and Environmental Control (DNREC) on February 17, 1995.

Other specific requirements of the 15 Percent RPP and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received during the comment period on the NPR. On March 6, 1997, EPA received a letter from the Secretary of Delaware DNREC committing to address the deficiencies identified in the proposed I/M SIP by a date certain within 1 year of this final conditional ruling.

Final Action

EPA is conditionally approving the 15 Percent RPP as a revision to the Delaware SIP. As credits from Delaware's enhanced I/M program are part of the 15 Percent RPP, EPA is also, via a separate rulemaking, conditionally approving Delaware's I/M SIP. Once Delaware satisfies the conditions of its I/M rulemaking and receives full approval, EPA will fully approve the 15 Percent RPP. Conversely, if the I/M rulemaking converts to a final disapproval, EPA's conditional approval of the 15 Percent RPP would also convert to a disapproval.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

A. Executive Order 12866

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.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare