

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.

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## 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

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 CAAA 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 CAAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v US EPA*, 427 US 246, 256-66 (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 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 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, conditionally approving 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.

#### 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 the 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 CAA, 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 conditionally approving Delaware's 15% RPP 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 pertaining to the Delaware 15% RPP may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

Environmental protection, Air pollution control, Hydrocarbons, Reporting and recordkeeping, Ozone, Volatile organic compounds.

Dated: April 29, 1997.

**William T. 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 added to read as follows:

##### § 52.424 Conditional approval

(a) EPA is conditionally approving as a revision to the Delaware State implementation plan the 15 Percent Rate of Progress Plan and associated contingency measures for the Delaware ozone nonattainment areas classified as severe, namely Kent and New Castle Counties, submitted by the Secretary of Delaware Department of Natural Resources and Environmental Control on February 17, 1995. EPA is also conditionally approving the I/M SIP in a separate rulemaking, as credits from that program are part of the 15 Percent RPP. By no later than one year from June 18, 1997, Delaware must submit a revised I/M SIP that meets the conditions stated in the I/M SIP final rulemaking. Once Delaware satisfies the conditions of its I/M rulemaking and receives full approval, EPA will fully approve the 15 Percent RPP SIP. Conversely, if the I/M rulemaking converts to a final disapproval, EPA's conditional approval of the 15 Percent RPP SIP would also convert to a disapproval.

(b) [Reserved].

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#### ENVIRONMENTAL PROTECTION AGENCY

##### 40 CFR Part 52

[AK-12-7100; FRL-5826-8]

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

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

**ACTION:** Interim final rule.

**SUMMARY:** EPA is granting interim approval of a State Implementation Plan (SIP) revision submitted by Alaska. This revision does not affect or change the currently operating basic inspection and maintenance (I/M) program in the Municipality of Anchorage (MOA) and the Fairbanks North Star Borough (FNSB). The intended effect of this action is to approve the level of effectiveness credit for the state's