

in charge of a consular section determines that the application was not adjudicated as a result of action by the U. S. Government over which the alien had no control and for which the alien was not responsible, that precluded the applicant from benefiting from the processing.

#### § 42.72 [Amended]

6. Amend § 42.72 by removing and reserving paragraph (c).

#### § 42.74 [Amended]

7. Amend § 42.74 by:
- In paragraph (a)(2)(i), (b)(iv), and (c), removing "statutory", removing "and issuance" and adding in its place "processing", and adding "prescribed in the Schedule of Fees" after "fees"; and
  - In paragraph (b)(1)(v) add an "s" to "ascertain".

Dated: April 19, 2002.

**Mary A. Ryan,**

*Assistant Secretary for Consular Affairs,  
Department of State.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[PA 182-4196a; FRL-7224-8]

#### Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Motor Vehicle Inspection and Maintenance Program—Request for Delay in the Incorporation of On-Board Diagnostics Testing

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve a revision to the Pennsylvania State Implementation Plan (SIP). Pennsylvania has requested a one-year extension of the Federal deadline to incorporate electronic checks of on-board diagnostic (OBD) computer systems of 1996-and-newer vehicles into the Commonwealth's motor vehicle emissions inspection and maintenance (I/M) program. EPA's rules governing I/M programs required states to add OBD checks to their I/M programs by January 1, 2002. However, EPA's same rule provides states the option to submit a request for delay of this deadline by up to one additional year, provided each state making such a request demonstrates to EPA that such a delay was necessary. Pennsylvania has

requested the maximum delay provided for by EPA's regulations (i.e., until January 1, 2003) in commencing OBD checks as part of its I/M program. EPA has reviewed Pennsylvania's request, and is proposing through this action to grant Pennsylvania's request for a one year extension of the OBD testing deadline in accordance with the requirements of the Clean Air Act.

**DATES:** This rule is effective on August 5, 2002, without further notice, unless EPA receives adverse written comment by July 8, 2002. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Written comments should be mailed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mail code 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of these relevant documents are also available from the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Brian Rehn, (215) 814-2176, or by e-mail at [rehn.brian@epa.gov](mailto:rehn.brian@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On April 5, 2001, EPA's revised I/M program requirements rule was published in the **Federal Register** (Amendments to Vehicle Inspection and Maintenance Program Requirements Incorporating the Onboard Diagnostics Check; Final Rule (66 FR 18156)). The revised I/M requirements rule requires that electronic checks of the on-board diagnostics system of applicable 1996-and-newer motor vehicles (OBD) be conducted as part of states' motor vehicle I/M programs. This revised I/M requirements rule applies only to those areas required to implement an I/M program under the Clean Air Act of 1990. This rule establishes a deadline of January 1, 2002 for states to begin performing OBD checks on 1996-and-newer model OBD-equipped vehicles, and to require repairs to be performed on those vehicles with malfunctions identified by the OBD check. However, the revised I/M rule also provides

several options to states to delay implementation of OBD testing, under certain circumstances, beyond the prescribed January 1, 2002 deadline. One such option provides for a one-time, 12-month extension of the deadline for states to begin conducting mandatory OBD checks (to as late as January 1, 2003) provided the state making the request can show just cause to EPA for a delay and that the revised implementation date represents "the best the state can reasonably do".

EPA's final rule identifies factors that may serve as a possible justification for states considering making a request to EPA to delay implementation of OBD I/M program checks beyond the January 2002 deadline. Potential factors justifying such a delay request that are listed in EPA's rule include: contractual impediments, hardware or software deficiencies, data management software deficiencies, the need for additional training for the testing and repair industries, and the need for public education or outreach.

Pennsylvania has submitted a SIP revision to formally request an extension of the OBD I/M test deadline, per EPA's I/M requirement rule. Pennsylvania's SIP revision lists many of the same factors that are listed in EPA's I/M rule in order to justify the Commonwealth's request for extension of the OBD testing deadline in Pennsylvania.

##### Summary of SIP Revision

On December 14, 2001, Pennsylvania submitted a formal revision to its State Implementation Plan (SIP), which constitutes a request to delay the addition of on-board diagnostic system checks of 1996-and-newer vehicles to the Commonwealth's adopted and SIP-approved I/M program.

Pennsylvania's SIP revision to request a delay in adding OBD testing to its I/M program lists several factors that effect the Commonwealth's ability to conduct OBD testing at this time. The Commonwealth's justification for its request of a one-year delay includes the following factors:

(1) Hardware and software deficiencies associated with the OBD testing equipment and its ability to communicate with Pennsylvania's Vehicle Inspection Information Database (VIID), as well as the commercial availability of equipment meeting the Commonwealth's specifications and requirements,

(2) Software deficiencies related to Pennsylvania's VIID, pertaining to communications between testing stations and the program oversight contractor and the VIID,

(3) The need for additional and updated training of Pennsylvania's sizable I/M testing and vehicle repair communities,

(4) The need for additional public outreach and public education in order to increase public acceptance of OBD testing,

(5) The Commonwealth's desire to conduct a small-scale, pilot OBD test program prior to the widespread launch of mandatory OBD testing as an element of the broader I/M program,

(6) The time frame associated with the completion of the regulatory adoption process in Pennsylvania necessary to add OBD checks to the I/M program regulations,

(7) The time frame associated with public notice/public participation related to the Commonwealth's regulatory process, and

(8) The time frame for submitting an OBD I/M SIP to EPA upon adoption of such Pennsylvania OBD I/M regulations.

The Commonwealth's request lists several activities that Pennsylvania has performed (prior to the date of this request for a testing deadline extension) to facilitate the addition of OBD testing to the Pennsylvania I/M program. The preparation activities listed in the Commonwealth's SIP include:

(1) The formation of the Pennsylvania Enhanced Emissions Inspection Policy Review Group to consider, among other things, the inclusion of OBD checks as part of Pennsylvania's I/M program. This group recommended that the Commonwealth petition EPA for a one-year extension of the January 1, 2002 OBD testing deadline.

(2) The continuation of meetings of the Pennsylvania Department of Transportation's I/M Working Group to consider issues related to OBD-based I/M testing and repair.

## II. Final Action

EPA is granting the Commonwealth's request for a one-year extension of the OBD testing deadline, per the guidelines established by EPA in its amended Vehicle Inspection and Maintenance Program Requirements Rule, published in the April 5, 2001 edition of the **Federal Register** (66 FR 18156). The Commonwealth has adequately justified a one-year extension of the January 1, 2002 Federal OBD I/M testing deadline. EPA therefore proposes to grant a one-year extension of the deadline to commence OBD testing as part of the Pennsylvania I/M program to January 1, 2003. EPA has determined that this delayed implementation schedule represents the timeliest implementation schedule that the Commonwealth can

perform, and is "the best the state can reasonably do".

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial request and anticipates no adverse comment as EPA's I/M program requirements regulations allow the Administrator to grant such an extension request if a state provides a justification that meets the factors set forth in EPA's I/M regulations (66 FR 18156). However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the Commonwealth's SIP revision in the event that adverse comments are filed with EPA. This rule will be effective on August 5, 2002, without further notice unless EPA receives adverse comment by July 8, 2002. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

## III. Administrative Requirements

### A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal

Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### B. Submission to Congress and the Comptroller General

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

“major rule” as defined by 5 U.S.C. 804(2).

### C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action to extend the deadline for incorporation of on-board diagnostics checks to the Pennsylvania I/M program by one year must be filed in the United States Court of Appeals for the appropriate circuit by August 5, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Nitrogen dioxide, Ozone.

Dated: May 29, 2002.

**William C. Early,**

*Acting Regional Administrator, Region III.*

40 CFR part 52 is amended as follows:

### PART 52—[AMENDED]

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

**Authority:** 42 U.S.C. 7401 *et seq.*

### Subpart NN—Pennsylvania

2. Section 52.2022 is amended by adding paragraph (f) to read as follows:

#### § 52.2022 Extensions

\* \* \* \* \*

(f) The Administrator hereby extends by 12 months the deadline by which Pennsylvania must incorporate mandatory testing of second generation on-board diagnostics (OBD-II) equipped motor vehicles as part of its inspection and maintenance (I/M) program. As a result of this deadline extension, Pennsylvania must now incorporate mandatory OBD-II checks (for 1996-and-newer OBD-II-equipped vehicles) as an element of the Commonwealth's I/M program in all enhanced I/M program areas by January 1, 2003.

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## GENERAL SERVICES ADMINISTRATION

### 41 CFR Parts 101-9 and 102-192

[FPMR Amendment A-58]

RIN 3090-AH13

### Mail Management

**AGENCY:** Office of Governmentwide Policy, GSA.

**ACTION:** Interim rule.

**SUMMARY:** The anthrax crisis has made the health and security of Federal employees the primary concerns of the General Services Administration's (GSA's) mail communications policy program. GSA published a proposed rule in the **Federal Register** on May 29, 2001 (66 FR 29067) to solicit opinions from the mail community on changes to the mail regulation. GSA is publishing this interim rule now because it is critical that we provide updated mail security requirements and guidance as quickly as possible.

This is an interim rule because we recognize that the security and financial requirements in this rule will continue to evolve. Before formulation of the final rule, we will solicit agencies for comment. We are allowing time for agencies to gain experience with this interim rule prior to obtaining input for the final rule.

**DATES:** This interim rule is effective June 6, 2002.

**ADDRESSES:** Send written comments to: Rodney Lantier, Regulatory Secretariat, Acquisition Policy Division (MVP), General Services Administration, 1800 F Street, NW., Washington, DC 20405. Send comments by e-mail to: *RIN.3090-AH13@gsa.gov*.

**FOR FURTHER INFORMATION CONTACT:** Henry Maury, Mail Communications Policy Division (MTM) or *henry.maury@gsa.gov*.

### SUPPLEMENTARY INFORMATION:

#### A. Background

The purposes of this interim rule are to update and clarify FPMR part 101-9, Federal Mail Management, and move it into the Federal Management Regulation (FMR). This interim rule is written in a plain language, question and answer format. This style uses the active voice, shorter sentences, and pronouns. A question and its answer combine to establish a rule; that is, Federal agencies and Federal employees must follow the language contained in both the question and its answer.

Section 2 of Public Law 94-575, the Federal Records Management

Amendments of 1976, as amended, directs the Administrator of General Services to provide guidance and assistance to Federal agencies on records management, including the processing of mail by Federal agencies, and this interim rule implements that direction. In doing so, this interim rule establishes four requirements for all agencies and four additional requirements for agencies that mail over \$1 million annually. These requirements are described in sections 102-192.50 and 102-192.55 respectively.

### Agency Comments on the Proposed Rule

In response to the proposed rule, we received comments from nineteen agencies, two boards and one from the private sector. All comments were considered in the formulation of this interim rule.

Several comments concerned the proper definition of “user level”. The concept here is that Federal mailers, or users, will better manage their mailing expenses if they are charged for the actual cost of their mailings. The definition of “user level” was deliberately vague to allow agencies to define users in a way that best fit their organizations. For instance, an agency could define “user” as an organizational entity, program, or location. To make the concept clearer, we have changed the term to “program level”.

Many respondents were also unclear how we defined “system” in the proposed regulation. We have added a definition in section 102-192.35 to explain the term.

To reduce the confusion over agency requirements, we have reorganized the interim rule to separate required actions from recommended actions.

The most frequent comment was that providing GSA with volumetric and cost data from users at all levels within the agency would be prohibitively expensive, would adversely impact mail delivery, and would not provide a benefit to the agencies or GSA. This interim rule alters the requirement by allowing agencies to gather the needed data by any method they deem appropriate. When more agencies have availed themselves of automated tools for gathering data on mail operations, this requirement will be revisited.

The proposed regulation required that agencies' financial accountability systems capture costs associated with mailing. So that we may address agencies' security concerns quickly, we are temporarily foregoing the financial accountability component of the proposed regulation. We plan to implement this requirement when