

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 (Pub. L. 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 must be filed in the United States Court of Appeals for the appropriate circuit by March 17, 2003. 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, approving revisions to Pennsylvania's control of VOCs from solvent cleaning operations, 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, Incorporation by reference, Ozone, Reporting and recordkeeping requirements.

Dated: December 31, 2002.

**Thomas C. Voltaggio,**

*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 52.2020 is amended by adding paragraph (c)(195) to read as follows:

#### § 52.2020 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(195) Revisions to the Pennsylvania Regulations regarding VOC control requirements for solvent cleaning operations, submitted on February 13, 2002, by the Pennsylvania Department of Environmental Protection:

(i) Incorporation by reference.

(A) Letter of February 13, 2002, from the Pennsylvania Department of Environmental Protection transmitting the revisions to VOC control

requirements for solvent cleaning operations.

(B) Revisions to 25 PA Code, chapter 121 and chapter 129, effective December 22, 2001.

(1) Additions and Revisions of definitions for terms in chapter 121, General Provisions, section 121.1, Definitions.

(i) Addition of the following terms: Airless cleaning system, Airtight cleaning system, Batch vapor cleaning machine, Carbon adsorber, Cold cleaning machine, Dwell, Dwell time, Extreme cleaning service, Freeboard refrigeration device, Idling mode, Immersion cold cleaning machine, In-line vapor cleaning machine, Reduced room draft, Remote reservoir cold cleaning machine, Solvent/air interface, Solvent cleaning machine, Solvent cleaning machine automated parts handling system, Solvent cleaning machine down time, Solvent vapor zone, Superheated vapor system, Vapor cleaning machine, Vapor cleaning machine primary condenser, Vapor pressure, Vapor up control switch, Working mode cover.

(ii) Revision of the term "freeboard ratio."

(2) Revisions to chapter 129, Standards for Sources, Sources of VOCs, section 129.63, VOC Cleaning Operations replacing the current section 129.63.

(ii) Additional Material. Remainder of the State submittal pertaining to the revisions listed in paragraph (c)(195)(i) of this section.

[FR Doc. 03-851 Filed 1-15-03; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[MD 137-3093a; FRL-7436-9]

### Approval and Promulgation of Air Quality Implementation Plans; Maryland; 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 revisions to the Maryland State Implementation Plan (SIP). Maryland has requested a six-month extension of the Federal deadline to incorporate electronic checks to of On-board Diagnostic (OBD) computer systems of 1996-and-newer vehicles into

Maryland'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 for delay demonstrates to EPA that such a delay was necessary. Maryland has requested a six-month delay provided for by EPA's regulations (*i.e.*, until July 1, 2002) in commencing OBD checks as part of its I/M program. EPA has reviewed Maryland's request, and is proposing through this action to grant Maryland's request for a six-month extension of the OBD testing deadline in accordance with the requirements of the Clean Air Act.

**DATES:** This rule is effective on March 17, 2003 without further notice, unless EPA receives adverse written comment by February 18, 2003. 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 Robert Kramer, Acting Chief, Air Quality Planning and Information Services Branch, Mailcode 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 Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

**FOR FURTHER INFORMATION CONTACT:** Janet C. Kremer, (215) 814-2147, or by e-mail at [kremer.janet@epa.gov](mailto:kremer.janet@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 On-board 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 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.

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

#### *Summary of SIP Revision*

On July 9, 2002, Maryland submitted a formal revision to its SIP, which constitutes a request to delay the addition of on-board diagnostic system checks of 1996-and-newer vehicles to Maryland's adopted and SIP-approved I/M program.

Maryland's SIP revision to request delay in adding OBD testing to its I/M program list several factors that effect the State's ability to conduct OBD testing at this time. Maryland's justification for its request of a 6-month delay includes the following factors:

(1) Hardware and software issues pertaining to the transition to new hardware and testing equipment, installation of new communications network, and construction of a new data management system. Also, the time to

develop a new formal acceptance testing procedures for equipment and develop quality assurance specifications and procedures for the OBD test equipment that will be incorporated into the State's ongoing assurance audit inspections of the Vehicle Emissions Inspection Program (VEIP) stations,

(2) evaluation of various programmatic options, and the design of an OBD program that will be compatible with the current VEIP program design,

(3) the need to train the contractor inspection, operational, and management personnel, so that all of these personnel have a thorough knowledge of all aspects of the final OBD program design and operation,

(4) the need for additional education and training of the vehicle repair community in the new OBD test procedures as well as the repair of OBD-failed vehicles,

(5) the need for additional outreach and public education in order to increase public acceptance of OBD testing.

### II. Final Action

EPA is granting the state of Maryland's request for a six-month 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). Maryland has adequately justified a six-month extension of the January 1, 2002 Federal OBD I/M testing deadline. EPA therefore proposes to grant a six-month extension of the deadline to commence OBD testing as part of the Maryland I/M program to July 1, 2002. EPA has determined that this delayed implementation schedule represents the timeliest implementation schedule that Maryland 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 amendment 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 SIP revision if adverse comments are filed. This rule will be effective on March 17, 2003 without further notice unless EPA receives adverse comment

by February 18, 2003. 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. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

### 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 (Pub. L. 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 Maryland I/M program by six-months must be filed in the United States Court of Appeals for the appropriate circuit by March 17, 2003. 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, Incorporation by reference, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: December 23, 2002.

Judith M. Katz,

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 V—Maryland

2. Section 52.1070 is amended by adding paragraph (c)(179) to read as follows:

##### § 52.1070 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(179) Revisions to the Code of Maryland Administrative Regulation (COMAR) 11.14.08 pertaining to the request for delay in the incorporation of On-board Diagnostics testing in the state's Vehicle Inspection and Maintenance Program submitted on July 9, 2002 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of July 9, 2002 from the Maryland Department of the Environment transmitting amendments to Regulations .03, .06, .09, .12, and .16 under COMAR 11.14.08, Vehicle Emissions Inspection Program.

(B) Additions and revisions to COMAR 11.14.08.03, .06, .09, .12, and .16, effective June 10, 2002:

(1) Added COMAR 11.14.08.03E.

(2) Revised COMAR 11.14.08.06A(3)(r), .09F, .12C(1) through (3) inclusive, and .16D.

(ii) Additional Material.—Remainder of the State submittal(s) pertaining to the revisions listed in paragraph (c)(179)(i) of this section.

3. Section 52.1078 is amended by designating the existing text as paragraph (a) and adding paragraph (b) to read as follows:

##### § 52.1078 Extensions.

\* \* \* \* \*

(b) The Administrator hereby extends by six-months the deadline by which Maryland 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, Maryland 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 July 1, 2002.

[FR Doc. 03-855 Filed 1-15-03; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[OH155-1a; FRL-7425-8]

#### Approval and Promulgation of Air Quality Implementation Plans; Ohio; Oxides of Nitrogen Regulations

**AGENCY:** United States Environmental Protection Agency (USEPA).

**ACTION:** Direct final rule.

**SUMMARY:** On July 11, 2002, Ohio submitted a plan which contained rules to control emissions of oxides of nitrogen (NO<sub>x</sub>) from electric generating units (EGU), non-EGUs and Portland Cement Kilns. The plan and associated rules represent a strategy submitted by the Ohio Environmental Protection Agency (Ohio EPA) in response to USEPA's October 27, 1998, NO<sub>x</sub> State Implementation Plan (SIP) Call and subsequent technical amendments. This direct final rule addresses the adequacy and acceptability of the Ohio plan, which we believe will have a major impact in reducing NO<sub>x</sub> and ozone in Ohio and in areas downwind from major sources of NO<sub>x</sub> emissions. USEPA believes the State's plan, which includes a NO<sub>x</sub> trading program, an energy efficiency/renewable energy feature and accommodates innovative technology projects, adequately addresses the requirements of the NO<sub>x</sub> SIP Call and meets the budget prescribed for Ohio. USEPA is taking final action today to approve the Ohio EPA plan.

**DATES:** This rule is effective on March 17, 2003, unless USEPA receives relevant adverse written comments by February 18, 2003. If USEPA receives adverse comment, we will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Send written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air and Radiation Division (AR-18J) Region 5, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604. You may obtain a copy of the State Implementation Plan revision request at the above address. Please telephone John Paskevicz at (312) 886-6084 if you intend to visit the Region 5 office.

You may inspect copies of Ohio's submittal at: Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** John Paskevicz, Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Chicago, Illinois, 60604. E-Mail Address: [paskevicz.john@epa.gov](mailto:paskevicz.john@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document, the terms "you" refer to the reader of this proposed rule and/or to sources subject to the State rule, and the terms "we", "us", or "our" refers to USEPA.

#### Table of Contents

- I. Background
  - A. What Requirements Led to the State's Submittal of the NO<sub>x</sub> Emission Control Plan?
  - B. What Requirements Must Ohio Meet?
  - C. What Have Been the Court Rulings Regarding USEPA's NO<sub>x</sub> Emission Control Rule?
- II. Summary of the State Submittal
  - A. When Was the Ohio EPA NO<sub>x</sub> Plan Submitted to the USEPA?
  - B. What Are the Basic Components of the Ohio EPA NO<sub>x</sub> Plan?
  - C. Does the Ohio EPA NO<sub>x</sub> Plan Meet the Federal NO<sub>x</sub> Statewide Emissions Budget?
  - D. What Public Review Opportunities Were Provided?
  - E. What Guidance Did USEPA Use to Evaluate Ohio's NO<sub>x</sub> Control Program?
  - F. Does the Ohio Plan Meet Federal NO<sub>x</sub> SIP Call Requirements?
  - G. What Deficiencies Were Noted in the Ohio EPA NO<sub>x</sub> Plan?
- III. USEPA Action
- IV. Administrative Requirements

#### I. Background

##### *A. What Requirements Led to the State's Submittal of the NO<sub>x</sub> Emission Control Plan?*

On October 27, 1998, the USEPA promulgated a regulation known as the NO<sub>x</sub> SIP Call for numerous States, including the State of Ohio. The NO<sub>x</sub> SIP Call requires the subject States to develop NO<sub>x</sub> emission control regulations sufficient to provide for a prescribed NO<sub>x</sub> emission budget in 2007.

Preceding the promulgation of USEPA's NO<sub>x</sub> SIP Call, there had been extensive discussions by Federal, State, and local environmental agencies, industry, and environmental groups regarding the transport of ozone in the eastern United States. The Environmental Council of States (ECOS) recommended the formation of a national workgroup to assess the problem and to develop a consensus approach to addressing the transport problem. As a result of ECOS' recommendation and in response to a March 2, 1995, USEPA memorandum, the Ozone Transport Assessment Group (OTAG) was formed to conduct regional ozone transport analyses and to develop a recommended ozone transport control strategy. OTAG was a partnership among USEPA, the 37 eastern States and the District of Columbia, and industrial, academic, and environmental groups. OTAG was given the responsibility of conducting the two years of analyses envisioned in the March 2, 1995, USEPA memorandum.

OTAG conducted a number of regional ozone data analyses and regional ozone modeling analyses using photochemical grid modeling. In July 1997, OTAG completed its work and made recommendations to the USEPA concerning the regional emissions reductions needed to reduce transported ozone as an obstacle to attainment in downwind areas. OTAG recommended a possible range of regional NO<sub>x</sub> emission reductions to support the control of transported ozone. Based on OTAG's recommendations and other information, USEPA issued the NO<sub>x</sub> SIP Call rule on October 27, 1998. 63 FR 57356.

In the NO<sub>x</sub> SIP Call, USEPA determined that sources and emitting activities in 23 jurisdictions<sup>1</sup> emit NO<sub>x</sub> in amounts that "significantly contribute" to ozone nonattainment or interfere with maintenance of the 1-hour ozone national ambient air quality standards (NAAQS) in one or more downwind areas in violation of Clean Air Act (CAA) section 110(a)(2)(D)(I)(i). USEPA identified NO<sub>x</sub> emission reductions by source sector that could be achieved using cost-effective measures and set state-wide NO<sub>x</sub> emission budgets for each affected jurisdiction for 2007 based on the

<sup>1</sup> Alabama, Connecticut, Delaware, District of Columbia, Georgia, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin.