

balance held in such account for purposes of determining required-reserve deficiencies, imposing or waiving charges for deficiencies in required reserves, and for other reserve maintenance purposes. A charge for a deficiency in the aggregate level of the required reserve balance will be imposed by the Reserve Bank on the correspondent maintaining the account.

(ii) Each correspondent is required to maintain detailed records for each of its respondents in a manner that permits Reserve Banks to determine whether the respondent has provided a sufficient required reserve balance to the correspondent. A correspondent passing through a respondent's required reserve balance shall maintain records and make such reports as the Board or Reserve Bank requires in order to ensure the correspondent's compliance with its responsibilities for the maintenance of a respondent's reserve balance. Such records shall be available to the Reserve Banks as required.

(iii) The Federal Reserve Bank may terminate any pass-through agreement under which the correspondent is deficient in its recordkeeping or other responsibilities.

(iv) Interest paid on supplemental reserves (if such reserves are required under § 204.10) held by a respondent will be credited to the account maintained by the correspondent.

(e) Any excess or deficiency in an institution's required reserve balance shall be carried over and applied against the balance maintained in the next maintenance period as specified in this paragraph. The amount of any such excess or deficiency that is carried over shall not exceed the greater of:

(1) The amount obtained by multiplying .04 times the sum of depository institution's required reserves and the depository institution's contractual clearing balance, if any, and then subtracting from this product the depository institution's clearing balance allowance, if any; or

(2) \$50,000, minus the depository institution's clearing balance allowance, if any. Any carryover not offset during the next period may not be carried over to subsequent periods.▶

6. Section 204.6 is redesignated as § 204.10, and a new § 204.6 is added to read as follows:

▶ **§ 204.6 Charges for reserve deficiencies.**

(a) Deficiencies in a depository institution's required reserve balance, after application of the carryover provided in § 204.5(e) are subject reserve-deficiency charges. Federal Reserve Banks are authorized to assess

charges for deficiencies in required reserves at a rate of 1 percentage point per year above the primary credit rate, as provided in § 201.51(a) of this chapter, in effect for borrowings from the Federal Reserve Bank on the first day of the calendar month in which the deficiencies occurred.—Charges shall be assessed on the basis of daily average deficiencies during each maintenance period. Reserve Banks may, as an alternative to levying monetary charges, after consideration of the circumstances involved, permit a depository institution to eliminate deficiencies in its required reserve balance by maintaining additional reserves during subsequent reserve maintenance periods.

(b) Reserve Banks may waive the charges for reserve deficiencies except when the deficiency arises out of a depository institution's gross negligence or conduct that is inconsistent with the principles and purposes of reserve requirements. If a depository institution has demonstrated a lack of due regard for the proper maintenance of required reserves, the Reserve Bank may decline to exercise the waiver privilege and assess all charges regardless of amount or reason for the deficiency.

(c) In individual cases, where a federal supervisory authority waives a liquidity requirement, or waives the penalty for failing to satisfy a liquidity requirement, the Reserve Bank in the District where the involved depository institution is located shall waive the reserve requirement imposed under this part for such depository institution when requested by the federal supervisory authority involved.

(d) Violations of this part may be subject to assessment of civil money penalties by the Board under authority of Section 19(1) of the Federal Reserve Act (12 U.S.C. 505) as implemented in 12 CFR part 263. In addition, the Board and any other Federal financial institution supervisory authority may enforce this part with respect to depository institutions subject to their jurisdiction under authority conferred by law to undertake cease and desist proceedings.◀

**PART 209—ISSUE AND CANCELLATION OF FEDERAL RESERVE BANK CAPITAL STOCK (REGULATION I)**

7. The authority citation for part 209 continues to read as follows:

**Authority:** 12 U.S.C. 2222, 248, 282, 286–288, 321, 323, 327–328, 333, and 466.

8. Section 209.2 is amended by revising paragraph (c)(1) to read as follows:

**§ 209.2 Banks desiring to become member banks.**

\* \* \* \* \*

(c) \* \* \*

(1) *General rule.* For purposes of this part, a national bank or a state bank is located in the Federal Reserve District that contains the location specified in the bank's charter or organizing certificate,▶ or as specified by the institution's primary regulator,◀ or if no such location is specified, the location of its head office, unless otherwise determined by the Board under paragraph (c)(2) of this section.

\* \* \* \* \*

By order of the Board of Governors of the Federal Reserve System, February 7, 2008.

**Jennifer J. Johnson,**  
*Secretary of the Board.*

[FR Doc. E8–2558 Filed 2–11–08; 8:45 am]

**BILLING CODE 6210–01–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA–R03–OAR–2007–0185; FRL–8528–2]

**Approval and Promulgation of Air Quality Implementation Plans; Virginia; Incorporation of On-Board Diagnostic Testing and Other Amendments to the Motor Vehicle Emission Inspection Program for the Northern Virginia Program Area**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve three State Implementation Plan (SIP) revisions submitted by the Commonwealth of Virginia. These revisions pertain to the Commonwealth's motor vehicle inspection and maintenance (I/M) program for the Northern Virginia area, which had previously been SIP-approved by EPA. These revisions incorporate several changes made by the Commonwealth since EPA last approved the I/M program as part of the SIP in 2002. The most significant change to the program is the incorporation of on-board diagnostic computer checks of 1996 and newer model year vehicles as an element of the emission inspection process for the Northern Virginia program area. In addition, Virginia has also made numerous minor changes to the program, including several changes to test procedures and standards, as well as changes to its roadside testing regimen. The I/M program helps to

ensure that highway motor vehicles operate as cleanly as possible, by requiring vehicles to be periodically tested and by identifying vehicles having high emissions due to malfunctioning emission control systems. Such vehicles must then be repaired and retested by their owners, to the standards set by the Commonwealth's program. Vehicle I/M programs address nitrogen oxide and volatile organic compound emissions, both of which are precursors to formation of ground level ozone pollution, as well as the pollutant carbon monoxide. This action is being taken under the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before March 13, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R03-OAR-2007-0185 by one of the following methods:

A. <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

B. *E-mail:*

[fernandez.cristina@epa.gov](mailto:fernandez.cristina@epa.gov).

C. *Mail:* EPA-R03-OAR-2007-0185, Cristina Fernandez, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-R03-OAR-2007-0185. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you

submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

**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:**

Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

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**I. What Action Is EPA Proposing To Take?**

On December 18, 2002, the Commonwealth of Virginia formally submitted a revision to its prior approved enhanced I/M program SIP for the Northern Virginia inspection and maintenance program. On April 2, 2003, the Virginia Department of Environmental Quality (VA DEQ) submitted a SIP technical amendment to the December 18, 2002 SIP revision. On June 18, 2007, VA DEQ submitted another SIP revision, which contained updated I/M program regulations made since the time of the last SIP submittal.

The Northern Virginia I/M program area is comprised of the following localities: the counties of Arlington, Fairfax, Loudoun, Prince William, and Stafford; and the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park. It is designated by EPA as a moderate 8-hour ozone nonattainment area. The Commonwealth's revised program satisfies federal requirements under sections 182 and 184 of the Clean Air Act applicable to enhanced I/M programs, and EPA is, therefore, proposing to approve the Commonwealth's revisions to the SIP approved I/M program.

**II. Background**

On December 18, 2002, the VA DEQ submitted a formal request to EPA to revise the Commonwealth's SIP in relation to its motor vehicle enhanced I/M program. The Commonwealth later submitted two other SIP revisions related to the enhanced I/M program—on April 2, 2003 and on June 18, 2007. These latest revisions serve to amend the Commonwealth's prior, EPA-approved enhanced I/M SIP, which was published as a final rulemaking action in the September 1, 1999 edition of the **Federal Register** (64 FR 47670).

The Commonwealth's December 18, 2002 SIP revision consists of a revised emissions inspection program regulation published in the June 17, 2002 edition of the *Virginia Register of Regulations* (Volume 18, Issue 20), which amended a 1999 version of that regulation. Virginia's regulation, codified at Title 9, Chapter 91 of the Virginia Administrative Code (VAC), is entitled "Regulations for the Control of Motor Vehicle Emissions in the Northern Virginia Area," but is also referred to here as the Virginia I/M regulation. The Commonwealth amended its emissions inspection program regulations to reflect technical changes that Virginia DEQ deemed necessary for continued program operation since the inception of its enhanced emission inspection program. Some of these regulatory amendments were made by Virginia to reflect changing federal requirements and policies that apply to enhanced emission inspection programs, and some updates were to address changes made to relevant Virginia law since the inception of the enhanced I/M program.

The most significant of the changes comprised within the December 18, 2002 SIP revision is the incorporation of on-board diagnostic checks of 1996 and newer vehicles subject to emissions testing. Virginia also updated its testing procedures to stay abreast of changes

needed based upon past operation of the program, and modified applicability of the program to address the changing dynamic of the vehicle fleet operating in the program area. Finally, Virginia also amended its regulation to enhance the Commonwealth's ability to effectively enforce the emission inspection program.

Virginia later submitted a SIP revision on April 2, 2003, which makes a technical correction to the emission inspection program regulation for Northern Virginia. This latter amendment corrects a technical error in Virginia's prior emission inspection program regulation concerning emission inspector identification numbers.

Virginia's June 18, 2007 SIP revision contains newer regulatory amendments made by Virginia since the June 2002 version of the regulation contained in the December 18, 2002 SIP revision.

The June 18, 2007 SIP revision revised provisions related to on-road testing of vehicles (i.e., remote sensing) operating primarily in Northern Virginia to ensure motorist compliance and to supplement State enforcement activities.

EPA is taking a single rulemaking action today upon the December 18, 2002, the April 2, 2003, and the June 18, 2007 SIP revisions.

### III. Summary of the Commonwealth's SIP Revisions

#### A. Virginia's December 18, 2002 SIP Revision

In 2002, Virginia issued a final rule revising the inspection and maintenance of motor vehicles. This revised regulation was published in the June 17, 2002 edition of the *Virginia Register of Regulations* (Volume 18, Issue 20), and was submitted to EPA as part of the December 18, 2002 SIP revision. The program was revised to update the regulations to reflect changes made in the operation of emissions testing in Virginia since the last major update of the I/M regulation in 1999. The regulation was also changed to reflect changes in Federal requirements applicable to I/M programs since the enhanced I/M program was SIP-approved by EPA. The program was also amended to reflect changes in Virginia law relevant to the I/M program since the inception of the enhanced I/M program.

Among the most significant of the Commonwealth's regulatory amendments was the incorporation and implementation of on-board diagnostic testing as a mandatory testing element for 1996 and newer vehicles equipped with second generation on-board

diagnostics systems. Other June 2002 State I/M regulatory amendments reflect changes in the way the program was being operated since the regulations had previously been amended in 1999. As was stated earlier, Virginia incorporated regulatory updates to reflect changes in Federal and State law relevant to the I/M program. Finally, some changes were made to improve the Commonwealth's ability to oversee the program and to aid in enforcement of the program.

Virginia submitted its revised regulation as a formal SIP revision to EPA on December 18, 2002, with a technical correction amendment submitted on April 2, 2003. Below is a summary of the most significant changes to the Commonwealth's vehicle emission inspection program regulations submitted as part of the December 18, 2002 SIP revision:

1. Incorporates on-board diagnostic testing for OBD-II compliant vehicles and subjects OBD-II equipped 1997 and newer diesel-powered vehicles to the program for the first time.

2. Program coverage revised to exempt vehicles 25 years old and older at the time of testing, in lieu of the previous exemption of 1968 and older model vehicles.

3. Revision of acceleration-simulation mode (ASM) emission standards and removal of ASM test procedure pre-screening requirements.

4. Tightening of two-speed idle emission test standards, to reflect advanced technology and related lower emission levels of 1990 and newer vehicles.

5. Relaxation of roadside remote sensing standards, and greater flexibility for VA DEQ in use of various pollutants as roadside screening criteria.

6. Repeal of requirement for evaporative system purge testing.

7. Revision of requirements for Federal and private fleet testing and reporting, and addition of "sensitive mission vehicle" fleet emission inspection station permit category.

8. Revision of visible emissions standard to include a standard for diesel-powered vehicles now subject to OBD testing.

9. Elimination of deadlines for waiver limit increases that have already passed; and requirement for vehicles that received a waiver in another State to be tested if subject to Virginia's I/M program.

10. Repeal of requirements limiting warranty eligibility for certain emissions short tests.

11. Modification of penalty schedule for major violations related to emissions inspections.

12. Revision of a number of definitions to reflect related regulatory changes, and repeal of others that are no longer needed to support the Commonwealth's regulations.

A more detailed summary of each of these June 2002 regulatory changes is detailed below, with additional information provided in the technical support document prepared by EPA in support of this rulemaking action.

#### 1. Addition of On-Board Diagnostics Inspections

Subject 1996 and newer subject vehicles equipped with second generation on-board diagnostics systems (OBD-II) will receive electronic checks of their on-board diagnostics systems in lieu of other emissions tests. An OBD check consists of a visual check of the dashboard indicators and an electronic examination of the OBD computer for potential stored fault information. OBD-equipped 1997 and newer light duty diesel vehicles are also required to be OBD tested.

Virginia's I/M regulation established a start date of October 2002 to commence mandatory OBD checks of gasoline-powered vehicles under its I/M program, with the option to delay testing if the VA DEQ determined its OBD test equipment was unavailable or not ready. After the occurrence of such an equipment-related delay, Virginia began mandatory OBD testing on gasoline-powered vehicles in November 2005. For the first time, Virginia's June 2002 regulation requires the addition of mandatory OBD checks for light duty diesel-powered vehicles, to begin no later than October 2006. However, in practice VA DEQ delayed diesel-powered OBD checks and instead began diesel OBD checks as part of the I/M program in May 2007 (for vehicles with registrations expiring July 2007).

For most vehicles subject to OBD checks under Virginia's program, an OBD check will be performed in lieu of tailpipe testing (i.e., ASM or 2-speed idle tests). However, VA DEQ may also perform exhaust tests on a limited basis, in addition to an OBD check, for quality control or program evaluation purposes. Some vehicles that are known to have OBD system problems may be exempted by VA DEQ from an OBD check and instead be given tailpipe tests. Vehicles whose OBD system is determined to be "not ready" to be checked, as defined by Virginia regulation, will be rejected from testing.

## 2. Model Year Coverage Revised to Exempt 25-Year-Old and Older Vehicles From Testing

Virginia revised its I/M program model year coverage, moving to a rolling exemption for vehicles 25 years and older at the time of inspection, in place of its previous age-based exemption for 1968 and older vehicles. Virginia statute required this change, and DEQ has implemented this practice since July 2002. The change results in a decrease in the number of cars being tested under the I/M program, as each year another model year is exempted. In 2004, the last year Virginia provided data, VA DEQ estimated this model year coverage change would result in the testing of approximately 19,400 fewer vehicles. Virginia estimates that this will result in an increase of volatile organic compound (VOC) emissions of approximately 0.55 tons per day in 2002, or about 3.5% of the total VOC emissions reductions associated with the I/M program. No nitrogen oxide (NO<sub>x</sub>) penalty has been associated with this change, as the vehicles affected would have been tested with idle testing (in the 2002 and 2005 evaluation timeframes for which I/M programs were required to be evaluated under the Federal I/M rule). Virginia did not calculate carbon monoxide (CO) impacts from this change, as the Northern Virginia region is classified as CO attainment, and a CO emissions inventory for this timeframe was unavailable. Virginia has modeled the 25-year rolling exemption in the attainment demonstration and reasonable further progress plans for the Metropolitan Washington DC 1-hr ozone nonattainment area.

## 3. Revision of ASM Test Standards/ Removal of ASM Test Procedure Pre-Screening Requirements

Virginia's June 2002 I/M regulation revised the testing standards, or cutpoints, for determining whether vehicles pass or fail Virginia's 2-mode ASM 5015/2525 tailpipe emissions test. Virginia had previously required that start-up standards were to be used for one year after program implementation, per EPA's ASM technical guidance document entitled "Acceleration Simulation Mode Test Procedures, Emissions Standards, Quality Control Requirements, and Equipment Specifications" (draft dated July 2000, final dated July 2004). Virginia's 2002 revised rule applies final ASM standards, unless VA DEQ determines that phase-in standards or interim standards (i.e., less stringent than final, but more stringent than phase-in

standards) should be used. Such a determination would be based upon results of emissions inspections from ASM tests performed under the program and after consultation with vehicle manufacturers, EPA, and appropriate research organizations. Virginia also removed ASM test standards for those model year vehicles no longer subject to testing, due to its age-based exemption for vehicles older than 25 years.

## 4. Revision of 2-Speed Idle Test Standards

Under the June 2002 I/M rule revision, Virginia enacted more stringent emissions test standards, or cutpoints, for 2-speed idle tailpipe emissions testing conducted on some 1990 and newer vehicles. VA DEQ determined that more stringent 2-speed idle testing was justified, based upon an analysis of failure rates for these vehicles subject to 2-speed idle testing and also by reviewing standards and fail rates from other programs that use 2-speed idle testing. Previously, 1990 and newer vehicles having advanced technology needed only to meet standards applicable to 1981 and older vehicles. Some of these newer, advanced technology vehicles with known faults were able to pass the test under the previous, less stringent standard for 1981 and older vehicles. The revised 2-speed idle cutpoints are 110 parts per million (ppm) of hydrocarbon (HC) and 0.75% carbon monoxide (CO), where they had been 220 ppm HC and 1.2% CO. Virginia has been testing under these more stringent cutpoints since October 2002. As part of the SIP, VA DEQ estimated the number of additional vehicles that would fail with the more stringent standards in place. For 2004, which was the latest year for which Virginia provided an estimate, about 800 additional vehicles were expected to fail than would have if the less stringent standards had remained in place.

## 5. Relaxation of Roadside Remote Sensing Standards and Flexibility for VA DEQ To Use Various Pollutants for Roadside Screening Criteria

Roadside remote sensing program requirements were revised by Virginia in its June 2002 revised I/M program rule. Remote sensing is used to ensure motorist compliance with the program. Remote sensing reads a vehicle as it passes by a roadside sensor, after which the vehicle's emissions are checked against standards set by the state. In the case of Virginia's remote sensing program, if the vehicle is checked twice in a 90-day period and has emissions beyond the standards, the owner may be

required to undergo an out-of-cycle emissions test. Virginia relaxed its remote sensing emissions standards as part of the June 2002 I/M rule revision to avoid the potential for false failures of the remote sensing test (i.e., to avoid failing vehicles using remote sensing that would otherwise pass regular tailpipe emissions or OBD checks). Putting aside differences between Virginia's regular tailpipe tests versus a remote sensing test, there is a level of uncertainty when comparing vehicles in a station tailpipe testing environment versus roadside remote sensing. Virginia revised its remote sensing test standards to ensure an adequate margin of error to avoid subjecting motorists to unnecessary out-of-cycle emissions tests. Virginia also revised its remote sensing test criteria to allow VA DEQ to use HC or CO, or a combination of both, as criteria for remote sensing pass or fail.

At the time of the December 2002 SIP revision, Virginia had not yet performed mandatory remote sensing testing as part of its I/M program. Virginia subsequently conducted a pilot remote sensing program to evaluate potential problems with remote sensing prior to use of remote sensing as a mandatory element of the I/M program, and as a result subsequently revised its remote sensing program. Those changes, as well as others related to remote sensing as a tool to ensure ongoing motorist compliance were submitted as part of the June 18, 2007 SIP revision, and are discussed below, in the portion of this rulemaking related to that SIP submittal. EPA is taking action on both the December 18, 2002 SIP revision, and the later, June 18, 2007 SIP revisions, which updated the December 18, 2002 provisions. Where the same regulatory provisions are included in both SIP submittals, EPA is proposing to take action on the most recent version of the regulatory provisions.

## 6. Revision of Requirements for Evaporative System Pressure and Purge Testing

As part of its June 2002 regulatory revisions, Virginia removed the requirement to conduct evaporative system purge testing from the I/M program. Purge testing was a means to measure the instantaneous purge flow from the vehicle's evaporative canister to the engine's intake manifold, in order to ensure proper operation of the evaporative system. The purge test was to have been performed in conjunction with ASM testing beginning in 1999. In a November 5, 1996 policy memo, EPA determined purge testing to be intrusive and potentially damaging, and therefore

did not enforce the implementation of this requirement. A suitable alternative test has never materialized, and the latest version of EPA's emission factor model, MOBILE6, has eliminated any HC emissions benefit associated with purge testing. Virginia never implemented purge testing as part of its I/M program, and EPA has never acted to enforce that SIP provision of Virginia's prior approved SIP. Given this reality, Virginia removed purge testing as an element of the I/M program in its June 2002 revised rule.

Implementation of evaporative pressure testing has been left to the discretion of VA DEQ. The evaporative pressure test is a test to measure levels of evaporated fuel between the fuel tank and the engine to ensure the system is not compromised and releasing these emissions to the ambient air. Virginia's prior approved SIP required evaporative emissions testing to have begun in 1998, but such testing was delayed due to technical limitations of the pressure test. EPA acknowledged difficulties with evaporative canister-based pressure testing in a November 5, 1996 policy memo (as well as discussing a potential fill pipe-based alternative in conjunction with gas cap testing). Virginia revised its I/M rule in June 2002 to indefinitely delay implementation of pressure testing as an element of Virginia's I/M program, to a date to be determined the director of the VA DEQ (with at least one year notification to station owners in the event the test is to be implemented).

It should be noted that modern OBD systems have sensors to detect leaks in the evaporative system, and to monitor the purge system, so 1996 and newer vehicles will be have their evaporative systems monitored via an OBD check as part of the program. The MOBILE model now reflects emissions benefits from this check of newer vehicles.

#### 7. Revision of Requirements for Federal and Private Fleet Testing and Reporting

Virginia made several changes with respect to the testing of federal fleet vehicles in its December 2002 SIP revision. Under the prior approved SIP, federal fleets had been required to submit compliance reports to VA DEQ, while private fleets were not subject to compliance reporting. Virginia revised its I/M program rule in June 2002 to rescind the requirement that administrators of federal fleets submit reports to VA DEQ to demonstrate fleet compliance, thus treating federal and private fleets equally. At the same time, Virginia repealed a related requirement for federal fleets to remit a \$2 annual fee

for each vehicle not registered with the Virginia Department of Motor Vehicles.

Virginia also added "sensitive mission vehicle emissions fleet inspection station" to the list of qualified applicants who can apply to VA DEQ for inspection station permits. This change allows agencies such as the Central Intelligence Agency and Federal Bureau of Investigation to establish inspection stations, in order to avoid potential exposure of their sensitive mission vehicles (as defined under Virginia's I/M rule) when undergoing emissions testing.

#### 8. Revision of Visible Emissions Standard To Include a Standard for Diesel-Powered Vehicles Subject to OBD Testing

Virginia added a standard for visible air pollutant emissions for diesel-powered vehicles that are now subject to OBD testing as part of Virginia's I/M program in its June 2002 rule revision. The standard limits emission of visible air pollutants from the tailpipe of a subject diesel vehicle to a density of no more than 20% opacity for longer than 10 consecutive seconds (after the engine reaches operating temperature), per Reference Method 9.

#### 9. Elimination of Deadlines for Waiver Limit Increases That Have Already Passed and Established Criteria for Issuance by VA DEQ of Temporary Waiver If Necessary Repair Parts Are Not Available

Repair waivers are a form of I/M program compliance that allow the motorist to comply with an I/M program without meeting the applicable test standard. A waiver may be issued if the vehicle fails an inspection, undergoes qualifying repairs up to a program-designated repair cost waiver limit, and then fails its retest. EPA rules allowed programs to phase-in waiver limits to a statutory limit of \$450, adjusted by the Consumer Price Index (CPI). Virginia removed phase-in deadlines for full waiver cost compliance under the June 2002 I/M rule revision, instead stating that beginning January 2003 waiver eligibility shall be \$450 adjusted to reflect the increase in the CPI.

Virginia amended its June 2002 I/M rule to include criteria for issuance of a temporary waiver due to unavailability of components necessary to complete repairs to pass the test or to qualify for a waiver. To obtain a temporary waiver, the motorist must provide a signed statement from an owner of a parts supplier stating that needed parts are unavailable, including a description and part number(s) of said parts.

#### 10. Repeal of Requirements Limiting Warranty Eligibility for Certain Emissions Short Tests

Virginia repealed its short test standards for warranty eligibility (9 VAC 5-91-470) in its June 2002 rule revision. In the past, this language had served to ensure that short test emissions results did not exceed 220 ppm of HC and 1.2% CO. However, with the June 2002 revision of Virginia's 2-speed idle test standards and the change in I/M program model year coverage to vehicles 25 years and newer, there are no longer any vehicles subject to I/M (and which are eligible for federal emissions warranty coverage) for which test cutpoints exceed the threshold of 220 ppm HC and 1.2% CO. Therefore, the warranty eligibility provisions of 9 VAC 5-91-470 are no longer relevant, and have thus been repealed by Virginia.

#### 11. Modification of Penalty Schedule for Major Violations Related to Emissions Inspections

In their June 2002 I/M rule revision, Virginia revised their list of regulatory provisions (9 VAC 5-91-620) of which a violation constitutes a major violation. Major violations are defined by Virginia as the most serious offenses resulting from unacceptable performance in conducting emissions inspections that would directly affect the credibility, integrity, and emissions reductions associated with the I/M program. Virginia indicated in the SIP revision that this revised list of provisions (of which a violation constitutes a major violation) is a reflection of the additional flexibility incorporated in the revised regulation for emission inspection procedures.

#### 12. Revision of a Number of Definitions To Reflect Related Regulatory Changes, and Repeal Others That Are No Longer Needed To Support the Commonwealth's Regulations

Virginia revised a number of its definitions of terms in 9 VAC 5-91-20, and repealed others altogether, in support of other changes made to the Commonwealth's I/M rule in June 2002. Some terms were also revised for improved clarity, while others were revised to correct cross-references to other revised regulatory sections.

Terms that were revised include: access code; actual gross weight; affected motor vehicle; air system; alternative fuel; certified enhanced analyzer system; chargeable inspection; curb idle; dedicated alternative fuel vehicle; emissions control systems; enhanced emissions inspection

program; evaporative system pressure test; flexible fuel vehicle; formal hearing; fuel filler cap pressure test; gross vehicle weight rating (GVWR); informal fact finding; inspection fee; motor vehicle; motor vehicle inspection report; on-board diagnostic system (OBD system); on-board diagnostic system test (OBD system test); on-board diagnostic vehicle (OBD vehicle); operated primarily; reinspection or retest; remote sensing; thermostatic air cleaner; two-speed idle test (TSI); and vehicle specific power (VSP).

Terms that were repealed include: aborted test; alternative evaporative system purge and pressure test; emissions repair facility; emissions repair technician; evaporative system purge test; federal employee; federal facility; gross weight; inspector access code; inspector number; original equipment manufacturer (OEM); state implementation plan; thermometer, certified; and Tier 1.

Terms that were newly added by Virginia include: aborted test; emissions control equipment; identification number; and implementation plan (replacing state implementation plan, which has been removed).

In addition to the items detailed above, Virginia made several other changes to the I/M rule as part of the December 18, 2002 SIP revision that are organizational in nature, or are otherwise minor in importance, and are not discussed in detail in this action. Please refer to the technical support document prepared in support of this action, or to this version of the Commonwealth's I/M regulation, which was published in the *Virginia Register of Regulations* on June 17, 2002 and can be found in the docket for this action.

#### B. Virginia's June 18, 2007 SIP Revision

Virginia again revised its I/M program regulations codified in Title 9, Chapter 91 of the Virginia Code in a final rule published in the *Virginia Register of Regulations* on May 30, 2005 (Volume 21, Issue 19). Virginia submitted this latest version of its I/M regulation (9 VAC 5-91) as part of a June 18, 2007 SIP revision submitted to EPA. The submitted portions of this more recent version of the Commonwealth's I/M regulation supersedes those portions of 9 VAC 5-91 published earlier that were submitted to EPA in the prior SIP submittal (i.e., the December 18, 2002 SIP revision). Where Virginia has submitted the same regulatory provisions in separate SIP revisions, EPA is proposing to act upon the later version of the regulation.

The Commonwealth's May 2005 regulation serves to make a number of

changes to Virginia's roadside testing program (i.e., remote sensing) provisions of the regulation. The remote sensing program is a roadside test to ensure that vehicles primarily operated in the I/M program area do not grossly exceed emissions limits set by the I/M program. The program serves both to identify high emitting vehicles subject to regular I/M checks, and to monitor vehicles that are not subject to traditional biennial emissions inspections in Virginia. Roadside testing can serve to identify subject vehicles that have become high emitters since their last regular biennial emission inspection, or that may have been high emitters at the time of their most recent inspection but passed that test in error. Roadside remote sensing observations may require motorists with vehicles identified as high emitters by roadside testing to undergo an additional "off cycle" I/M inspection, or in the alternative to pay a civil penalty.

In general, the Commonwealth amended the regulation to reflect new remote sensing emissions standards, and the criteria for conducting random, roadside "off-cycle" testing of motor vehicle emissions, as well as protocols for testing and procedures to notify owners of test results.

The Commonwealth's regulatory changes relate primarily to:

1. Changes in remote sensing model year applicability, relating to vehicles subject to remote sensing;
2. Protocols for determination of gross pollutants and clean car screening;
3. Changes to remote sensing test procedures;
4. Changes to remote sensing test standards;
5. Financial assistance provisions;
6. Changes in enforcement and compliance procedures; and
7. Changes to regulatory definitions.

A summary of these changes made by Virginia under the May 2005 final rule are detailed below:

#### 1. Changes in Remote Sensing Model Year Applicability

Virginia amended its regulation in order to comply with changes to the Code of Virginia. Model year coverage, with respect to remote sensing under 9 VAC 5-91-180, was expanded to include vehicles of model year 1968 and newer. Previously, applicability for remote sensing was limited to those "affected vehicles" subject to I/M testing (i.e., the 25 most recent model years). The Commonwealth also revised their definition of "operate primarily" (for purposes of remote sensing) to include a vehicle observed by roadside remote sensing equipment at least three

times in a two-month period (with no less than 30 days between the first and last readings). Vehicles exceeding the standards twice in any 120-day period (as opposed to the Commonwealth's previous requirement for 90-day observation period) will be determined to have violated the standards, and will require a confirmation test (ASM or OBD test) at an emission inspection station.

#### 2. Protocols for Determination of High Emitting Vehicles and Clean Screening

Virginia has amended its protocols for determining whether a vehicle is a gross polluter. Virginia's "high emitter index" is a means of categorizing probable emission failure rates of engine families. The index is determined by calculating the historical emissions inspection failure rate (by vehicle model year, make, model, and engine size) to the historical emissions inspection failure rate of all the engine families in that same group. Failure rates are based on the most recent full year of emissions inspection test data. Vehicles with a high emitter index of greater than 75 are deemed high emitters.

Beginning January 1, 2005, motor vehicles that exceed the Virginia's remote sensing emissions standards on two separate days in any 120-day period shall be considered to have violated the emissions standards. In addition, the department may use the high emitter index as a screening requirement. Beginning July 1, 2005, based on analysis of remote sensing failure rates and confirmation test results, the VA DEQ may determine that an affected vehicle is a high emitter if the vehicle exceeds remote sensing standards a single time and has a "high emitter index" of greater than 75.

Beginning July 1, 2005, clean screening will be used by Virginia to identify affected vehicles eligible for an exemption from their next scheduled emissions test. Up to five percent of the total vehicles measured by on-road testing (i.e., remote sensing) during any 30-day period may be identified as "clean screen vehicles". At the discretion of VA DEQ, vehicles identified as such may receive a "pass" for their next scheduled emissions test, without undergoing a regular, biennial emissions inspection.

#### 3. Changes to Remote Sensing Test Procedures

Virginia has amended its exhaust emissions standards for its remote sensing program. Beginning July 1, 2005, motor vehicles determined to exceed roadside remote sensing standards after two or more

measurements in any 120-day period, shall be considered to have violated emissions standards and shall be subject to an off-cycle, confirmation test. A vehicle exceeding the remote sensing standards a single time (which is also determined by the VA DEQ to have a "high emitter index" greater than 75) will be subject to an off-cycle, confirmation test.

Vehicles subject to confirmation testing may be subject to the applicable emissions test for their vehicle, and vehicles 1996 and newer may be subject to exhaust testing, in addition to an OBD system test. A failed confirmation inspection (ordered by VA DEQ due to a roadside, remote sensing test failure) will be a chargeable inspection, while a passing confirmation test will not result in a test fee.

#### 4. Changes to Remote Sensing Test Standards

Virginia has revised its remote sensing exhaust emission standards to establish separate standards for light-duty gasoline vehicles (i.e., passenger cars), light-duty gasoline trucks, and heavy-duty gasoline vehicles. Additionally, Virginia has established standards that apply in the case where two or more on-road, remote sensing measurements are gathered for an applicable vehicle over a 120-day period. Separate standards apply in the case of a single on-road measurement, where a vehicle is also determined by VA DEQ to have a "high emitter index" of 75 or more.

Virginia has for the first time established nitric oxide (NO) remote sensing standards, in addition to existing standards for HC and CO.

All remote sensing measurements are to be measured based upon vehicle specific power (VSP), which is a means of utilizing vehicle speed, drag coefficient, tire rolling resistance and roadway grade to characterize the load under which a vehicle is operating at the time a remote measuring measurement is taken. Only valid remote sensor measurements with a VSP between 3 and 22 shall be used to determine if a vehicle violates the remote sensing standards.

Finally, Virginia amended its 2-speed idle exhaust emissions test standards to add standards for 1968–1974 model year vehicles. These vehicles were no longer subject to regular, biennial emissions testing under Virginia's June 2002 regulatory amendments, but are now affected motor vehicles subject to roadside remote sensing tests, and, if necessary, follow-up, 2-speed idle confirmation testing.

#### 5. Financial Assistance Provisions

Virginia's amended regulation establishes a financial assistance program to subsidize repair costs of some vehicles determined to be in violation of roadside remote sensing standards. Qualified individuals may receive up to 50% of the cost of emission-related repairs or up to 50% of the waiver amount (after a co-payment of \$100). To qualify, an individual must be the registered owner of the vehicle (registered in the program area), have a household income less than 133% of federal poverty guidelines, and the vehicle must have a valid safety inspection. Only individual vehicle owners are eligible for assistance—commercial, non-profit, and government vehicles are ineligible.

Remote sensing roadside testing has been expanded to include vehicles previously not subject to remote sensing. These affected vehicles include those newer than model year 1968 (versus the previous coverage of vehicles 25 model years old, or newer).

#### 6. Changes to Enforcement and Compliance Procedures

Upon determination by VA DEQ that a roadside, remote sensing violation occurred, motorists will be informed in writing by that department of such failure. Motor vehicle owners that receive a notice of violation of roadside, remote sensing standards will be required to furnish proof that their vehicle passed a confirmation test or received a waiver within 30 days of a notice of violation of remote sensing standards. At that time, civil charges will be assessed (unless the vehicle is due for its regularly scheduled biennial emissions test within 3 months of the date of the measured violation of the remote sensing standard).

Civil charges assessed for failure to pass (or receive a waiver) from a confirmation test are to be based upon the degree by which the vehicle exceeds the remote sensing standards. Violations up to 150% of the applicable standard will result in a charge of no more than 50% of the cost of a program waiver (i.e., \$450, adjusted annually by the 1990 Consumer Price Index). Violations over 150% of the applicable remote sensing standard will result in a civil charge no more than 100% of a program waiver.

#### 7. Changes to Regulatory Definitions

Virginia revised several definitions in 9 VAC 5–91–120 in its May 30, 2005 regulatory amendment. The definitions of the following terms were revised: affected motor vehicle; light duty truck

(LDT); light duty truck (LDT1); light duty truck (LDT2); light duty vehicle; and operated primarily.

Definitions for the following terms were added to 9 VAC 5–91–120: confirmation test; heavy duty gasoline vehicle (HDGV); high emitter index (HEI); light duty gasoline vehicle (LDGV); light duty gasoline truck (LDGT1); light duty gasoline truck (LDGT2); and vehicle specific power (VSP).

#### IV. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by Federal law to maintain program delegation, authorization or approval," since Virginia must "enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts \* \* \*." The opinion concludes that

“[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.”

Virginia’s Immunity law, Va. Code Sec. 10.1–1199, provides that “[t]o the extent consistent with requirements imposed by Federal law,” any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General’s January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any federally authorized programs, since “no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.”

Therefore, EPA has determined that Virginia’s Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

## V. Proposed Action

EPA is proposing to approve Virginia’s revisions to the enhanced I/M program SIP for the Northern Virginia I/M program area. These SIP revisions were formally submitted to EPA by the Commonwealth on December 18, 2002, on April 2, 2003, and on June 18, 2007. EPA’s review of this material indicates that the Commonwealth’s revisions to the prior, SIP-approved I/M program continue to adhere to Federal requirements applicable to enhanced inspection and maintenance programs.

EPA reviewed the Commonwealth’s revisions to the enhanced I/M program in accordance with requirements for inspection and maintenance programs

in sections 182 and 184 of the Clean Air Act, and with Federal rule requirements for I/M programs, codified at 40 CFR part 51, subpart S.

Many of these changes made by the Commonwealth’s most recent SIP revisions have been in effect in Virginia’s program since October 1, 2002, with some state statutory-driven changes having taken effect earlier (e.g., model year coverage changes) and some changes phased in according to later state regulatory deadlines (e.g., separate provisions for mandatory OBD testing for gasoline-powered vehicles and diesel-powered vehicles). The Commonwealth’s revised roadside testing program (i.e., remote sensing) regulatory changes have a state effective date of June 2005. However, some of the provisions of these rules had delayed or phased-in implementation and began more recently, such as light duty diesel OBD testing.

These revisions to the Commonwealth’s I/M program have already taken effect at the state level, and implementation of these provisions has been noncontroversial at the state level. Virginia has relied upon the revised I/M program (including the 2002 regulatory changes to the program) as the basis for its modeling of the Greater Washington DC Metropolitan area 1-hour ozone attainment demonstration and rate-of-progress plans, and this most recent iteration of the program (i.e., the Commonwealth’s May 2005 version of the I/M regulations) is modeled as a control measure for Virginia’s attainment demonstration SIP for the Washington DC 8-hour ozone nonattainment plan. The revised I/M program continues to achieve VOC and NO<sub>x</sub> emissions reductions toward meeting the ozone national ambient air quality standard. For additional information concerning EPA’s review of Virginia’s SIP revisions, please refer to the Technical Support Document prepared by EPA in support of this rulemaking.

EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

## VI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve 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 proposed rule also does 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), nor will it 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), because it merely proposes to approve a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. 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 CAA. 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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the



necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This proposed rule to approve revisions to Virginia's enhanced I/M program SIP does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Environmental protection, Air pollution control, Carbon monoxide, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: February 6, 2008.

**William T. Wisniewski,**

*Acting Regional Administrator, Region III.*  
[FR Doc. E8-2552 Filed 2-11-08; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R06-OAR-2006-0665; FRL-8528-1]

#### Approval and Promulgation of Air Quality Implementation Plans; Texas; Texas Low-Emission Diesel Fuel Program

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a revision to the State Implementation Plan (SIP) for the state of Texas. This revision makes changes to the Texas Low-Emission Diesel (TXLED) Fuel program. The revision establishes a replicable procedure for the State to approve Alternative Emission Reduction Plans (AERPs), extends the date of state approvals, and brings marine diesel fuels under the TXLED program. The revision also refines and clarifies testing requirements. The changes being proposed for approval positively influence the reductions of oxides of nitrogen (NO<sub>x</sub>) to be achieved. As a result and in accordance with section 110(l) of the Clean Air Act, 42 U.S.C. 7410(l), this revision will not interfere

with attainment, reasonable further progress, or any other applicable requirement of the Clean Air Act.

**DATES:** Comments must be received on or before March 13, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R06-OAR-2006-0665, by one of the following methods:

*Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *U.S. EPA Region 6 "Contact Us" Web site:* <http://epa.gov/region6/r6coment.htm> Please click on "6PD" (Multimedia) and select "Air" before submitting comments.

- *E-mail:* Mr. Guy Donaldson at [Donaldson.guy@epa.gov](mailto:Donaldson.guy@epa.gov). Also cc the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

- *Fax:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), at fax number 214-665-7263.

- *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

- *Hand or Courier Delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. Such deliveries are accepted only between the hours of 8 am and 4 pm weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-R06-OAR-2006-0665. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov) your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you

include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 am and 4:30 pm weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at (214) 665-7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cents per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sandra Rennie, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone (214) 665-7367; fax number 214-665-7263; e-mail address [rennie.sandra@epa.gov](mailto:rennie.sandra@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever "we," "us," or "our" is used, we mean EPA. This document concerns control of air pollution of NO<sub>x</sub> and VOCs from mobile sources in 110 counties of East Texas where the rule applies. This low-emission diesel fuel program applies to both on-road and non-road vehicles in the affected area.