

a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Conditional approvals of SIP submittals under section 110 and subchapter I, part D of the CAAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v US EPA*, 427 US 246, 256-66 (1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new federal requirement.

#### C. Unfunded Mandates

Under Sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under section 205, EPA must select the most cost effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and

advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the conditional approval action promulgated does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This federal action, conditionally approving Delaware 15% Rate of Progress Plan, approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to private sector, result from this action.

#### D. Submission to Congress and the General Accounting Office

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

#### E. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 18, 1997. Filing a petition for reconsideration by the Administrator of this final rule conditionally approving Delaware's 15% RPP does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action pertaining to the Delaware 15% RPP may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

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

Dated: April 29, 1997.

**William T. Wisniewski,**

*Acting Regional Administrator Region III.*

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

#### PART 52—[AMENDED]

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

**Authority:** 42 U.S.C. 7401-7671q.

#### Subpart I—Delaware

2. Section 52.424 is added to read as follows:

##### § 52.424 Conditional approval

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

(b) [Reserved].

[FR Doc. 97-12634 Filed 5-16-97; 8:45 am]

BILLING CODE 6560-50-P

#### ENVIRONMENTAL PROTECTION AGENCY

##### 40 CFR Part 52

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

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

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

**ACTION:** Interim final rule.

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

existing de-centralized I/M program for an interim period to last 18 months, based upon its good faith estimate of the program's performance. This action is being taken under section 110 of the Clean Air Act and section 348 of the National Highway Systems Designation Act.

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

**ADDRESSES:** Copies of the documents relevant to this action are available for public inspection during normal business hours at the Office of Air Quality, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Ave., Seattle, Washington 98101. They are also available for inspection at the Alaska Department of Environmental Conservation, 410 Willoughby, Suite 105, Juneau, Alaska 99801-1795.

**FOR FURTHER INFORMATION CONTACT:** Ed Jones, Office of Air Quality (OAQ-107), EPA, Seattle, Washington 98101, (206) 553-1743.

**SUPPLEMENTARY INFORMATION:**

- I. Background
- II. Public Comments/Response to Comments
- III. Final Rulemaking Action
- IV. Requirements for Permanent I/M SIP Approval
- V. Administrative Requirements
  - A. Executive Order 12866
  - B. Regulatory Flexibility Act
  - C. Unfunded Mandates Act
  - D. Submission to Congress and the General Accounting Office
  - E. Petitions for Judicial Review

**I. Background**

On October 10, 1996 (61 FR 53163), EPA published a notice of proposed rulemaking (NPR) for the State of Alaska. The NPR proposed interim approval of Alaska's credit claim for its existing de-centralized basic inspection and maintenance program, submitted to satisfy the applicable requirements of both the Clean Air Act (CAA) and the National Highway Safety Designation Act (NHDSA). The formal SIP revision submitted by the Alaska Department of Environmental Conservation was received on March 26, 1996. In that submittal the state proposed a number of modifications to the plan in addition to the request that the current de-centralized I/M program be allotted 85% of the credit of centralized programs. These additional modifications, noted in the NPR, have not been acted upon, and are therefore not approved. They will be acted upon in a future action by EPA.

As described in the earlier notice, the NHSDA directs EPA to grant interim approval for a period of 18 months to approvable I/M submittals under this Act. The NHSDA also directs EPA and

the states to review the interim program results at the end of that 18-month period, and to make a determination as to the effectiveness of the interim program. Following this demonstration, EPA will adjust any credit claims made by the state in its good faith effort, to reflect the emissions reductions actually measured by the state during the program evaluation period. The NHSDA is clear that the interim approval shall last for only 18 months, and that the program evaluation is due to EPA at the end of that period. Therefore, EPA believes Congress intended for program evaluations to start up as soon as possible, so that at least six months of operational program data can be collected to evaluate the programs' effectiveness before the end of the interim period.

The program evaluation to be used by the state during the 18-month interim period must be acceptable to EPA. The Environmental Council of States (ECOS) group has developed such a program evaluation process which includes both qualitative and quantitative measures, and this process has been deemed acceptable to EPA. The core requirement for the quantitative measure is that a mass emission transient test (METT) be performed on 0.1% of the subject fleet, as required for enhanced programs by the I/M Rule at 40 CFR 51.353 and 366. EPA believes METT evaluation testing is not precluded by the NHSDA, and, therefore, is still required to be performed by states implementing enhanced I/M programs under the NHSDA and the CAA.

The need for METT testing in states that have basic programs was apparently not included among the ECOS recommendations. The Agency favors the introduction of METT testing for de-centralized basic programs attempting to demonstrate that their programs are more effective than the 50% discount applied by EPA in the past. Since these tests are not required by regulation, however, the Agency can only recommend them as an appropriate tool for evaluating program effectiveness, and ask states who decide to reject the recommendation to design their evaluations in a way that the goals of METT auditing can be met adequately through another means.

Per the NHSDA requirements, this interim rulemaking will expire on November 19, 1998. A full approval of Alaska's final I/M SIP revision (which will include the state's program evaluation and final adopted state regulations) is still necessary under section 110 and under sections 182, 184 or 187 of the CAA. After EPA reviews

Alaska's submitted program evaluation and regulations, final rulemaking on the state's SIP revision will occur.

Specific information regarding Alaska's I/M credit claim, the justification presented by the state, the rationale for EPA's proposed action, and the specific proposed SIP revisions acted upon and not acted upon are explained in the October 10, 1996, NPR and will not be restated here.

**II. Public Comments/Response to Comments**

No comments were submitted to the docket during the comment period for the notice of proposed rulemaking, published in the October 10, 1996, **Federal Register**.

**III. Final Rulemaking Action**

EPA is granting interim approval of Alaska's claim for decentralized I/M program effectiveness as a revision to the SIP. The approval will cover a period of eighteen months, allowing the state to demonstrate the "actual" effectiveness of its program.

**IV. Requirements for Permanent I/M SIP Approval**

This approval is being granted on an interim basis for a period of 18 months, under the authority of section 348 of the National Highway Systems Designation Act of 1995. At the end of this period, this interim approval will lapse. After Alaska submits a request for approval, EPA will take final rulemaking action on the state's SIP revision, under the authority of section 110 of the Clean Air Act. Final approval of Alaska's plan will be granted based upon the following criteria:

(1) The state has complied with all the conditions of its evaluation commitment to EPA.

(2) EPA's review of the state's program evaluation confirms that the appropriate amount of program credit was claimed by the state and achieved with the interim program.

(3) Final program regulations are submitted to EPA, and

(4) The state's I/M program continues to meet all of the requirements of 40 CFR Part 51, Subpart S.

**V. Administrative Requirements**

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

relation to relevant statutory and regulatory requirements.

#### A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

#### B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Interim approvals of SIP submittals under section 110 and subchapter I, part D, of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

If the interim approval is converted to a disapproval under section 110(k), based on the state's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new federal requirement.

#### C. Unfunded Mandates Act

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate, or to the private sector, of \$100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted on by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of \$100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

#### D. Submission to Congress and the General Accounting Office

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

#### E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 18, 1997.

Filing a petition for reconsideration by the Administrator of this final rule to conditionally approve the Alaska I/M SIP, on an interim basis, does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section

307(b)(2) of the Administrative Procedures Act).

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

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: May 2, 1997.

**Charles Findley,**

*Acting Regional Administrator, Region 10.*

[FR Doc. 97-13038 Filed 5-16-97; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[PA 104-4059; FRL-5826-3]

#### Phase I Finding of Failure to Submit Required State Implementation Plans for the Philadelphia Ozone Nonattainment Area; Pennsylvania

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

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action in making a finding, under the Clean Air Act (ACT), that Pennsylvania failed to make a complete ozone nonattainment submittal required for the Philadelphia nonattainment area under the Act. Under certain provisions of the Act, as implemented consistent with a memorandum issued by EPA Assistant Administrator Mary D. Nichols, on March 2, 1995, Pennsylvania was required to submit SIP measures providing for certain percentage reductions in emissions of ozone precursors, termed "rate-of-progress" reductions; as well as SIP commitments to submit SIP measures providing for the remaining required rate-of-progress reductions and any additional emission reductions needed for attainment of the ozone ambient air quality standard in Philadelphia. This action triggers the 18 month time clock for mandatory application of sanctions in Pennsylvania under the Act. This action is consistent with the CAA mechanism for assuring SIP submittals.

**EFFECTIVE DATE:** This final rule is effective as of May 7, 1997.

**FOR FURTHER INFORMATION CONTACT:** General questions concerning this document should be addressed to Marcia Spink, Associate Director, Air Programs (3AT00), Air, Toxics and Radiation Division, U.S. EPA Region III,