

Authority: 44 U.S.C. chs. 21, 29, and 33.

■ 2. In § 1228.24, revise paragraph (b)(3) to read as follows:

§ 1228.24 Formulation of agency records schedules.

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(b) * * *

(3) Records schedules submitted to NARA for approval on or after December 17, 2007, are media neutral, i.e., the disposition instructions apply to the described records in all media, unless the schedule identifies a specific medium for a specific series.

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Dated: September 25, 2008.

Adrienne C. Thomas,

Deputy Archivist of the United States.

[FR Doc. E8-23379 Filed 10-1-08; 8:45 am]

BILLING CODE 7515-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 12

[EPA-R05-OAR-2007-1100; FRL-8723-9]

Approval and Promulgation of Air Quality Implementation Plans; Ohio; Removal of Vehicle Inspection and Maintenance Programs for Cincinnati and Dayton

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Ohio which allows the State to discontinue the vehicle inspection and maintenance (I/M) program in the Cincinnati-Hamilton and Dayton-Springfield areas, also known as the E-Check program. The revision specifically requests that the E-Check program regulations be moved from the active control measures portion of the SIP to the contingency measures portion of the Cincinnati-Hamilton and Dayton-Springfield ozone maintenance plans. The Ohio Environmental Protection Agency (Ohio EPA) submitted this request on April 4, 2005, and supplemented it on May 20, 2005, February 14, 2006, May 9, 2006, October 6, 2006, and February 19, 2008. EPA is approving Ohio's request because the State has demonstrated that discontinuing the I/M program in the Cincinnati-Hamilton and Dayton-Springfield areas will not interfere with the attainment and maintenance of the 8-hour ozone National Ambient Air Quality Standard (NAAQS) and the fine particulate NAAQS or with the

attainment and maintenance of other air quality standards.

DATES: This final rule is effective on November 3, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2007-1100. All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information 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 or in hard copy at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. We recommend that you telephone Francisco J. Acevedo at (312) 886-6061 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT:

Francisco J. Acevedo, Environmental Protection Specialist, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6052.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What is the background for this action?
- II. What is our response to comments received on the notice of proposed rulemaking?
- III. What action is EPA taking?
- IV. Statutory and Executive Order Reviews

I. What is the background for this action?

The Cincinnati-Hamilton and Dayton-Springfield areas were required to implement "basic" I/M programs under section 182(b)(4) of the Clean Air Act (CAA) because they were originally designated as moderate 1-hour ozone nonattainment areas. In order to maximize nitrogen oxides (NO_x), volatile organic compound (VOC), and carbon monoxide (CO) emissions reductions from the I/M program, Ohio EPA chose to implement an "enhanced" program in those areas and incorporated an on-board diagnostic (OBD) component into the programs. EPA fully approved Ohio's I/M programs on April 4, 1995 (60 FR 16989). The E-Check programs began operation on January 2,

1996, to meet nonattainment area requirements for the ozone NAAQS effective at the time.¹ The Cincinnati ozone nonattainment area also includes three counties (Boone, Campbell, and Kenton Counties) in northern Kentucky.

Both the Cincinnati-Hamilton area and the Dayton-Springfield area have since been redesignated to attainment with respect to the 1-hour ozone NAAQS. The Cincinnati-Hamilton area was redesignated to attainment of the 1-hour ozone NAAQS on June 21, 2005 (70 FR 35946). The Dayton-Springfield area was redesignated to attainment of the 1-hour ozone NAAQS on May 5, 1995 (60 FR 22289). On August 13, 2007 (72 FR 45169), EPA approved the redesignation of the Dayton-Springfield area to attainment with respect to the 8-hour ozone NAAQS.

EPA approved maintenance plans for each of these areas in connection with these redesignations. These approved maintenance plans show that control measures in place in these areas are sufficient for overall emissions to remain beneath the attainment level of emissions until the end of the maintenance period. In both cases, the conformity budget in the maintenance plans reflects mobile source emissions without E-Check, and the maintenance plans demonstrate that the applicable standard will continue to be met without E-Check. In accordance with the CAA and EPA redesignation guidance, states are free to adjust control strategies in the maintenance plan as long as they can satisfy section 110(l). With such a demonstration of non-interference with attainment or other applicable requirements, control programs may be discontinued and removed from the SIP.

Ohio EPA submitted a revision to the Cincinnati-Hamilton and Dayton-Springfield portions of the Ohio SIP on April 4, 2005, and supplemented it on May 20, 2005, February 14, 2006, May 9, 2006, October 6, 2006, and February 19, 2008. This revision requested that the Ohio I/M programs in the Cincinnati-Hamilton and Dayton-Springfield areas be moved from the active control measures portion of the ozone SIP to the contingency measures portion of the Cincinnati-Hamilton and Dayton-Springfield Maintenance Plans.

As part of its submittal, Ohio EPA demonstrated continued maintenance of the 1-hour ozone standard without taking credit for reductions from the Cincinnati-Hamilton E-Check program,

¹ Although the E-Check program began on January 1, 1996, there was a vehicle I/M program operating in the Cincinnati-Hamilton area prior to that date, and prior to November 15, 1990.

and continued maintenance of the 1-hour and 8-hour ozone standards without taking credit for reductions from the Dayton-Springfield E-Check program.

In addition, Ohio adopted several measures to assure that the discontinuation of E-Check, which occurred starting January 1, 2006, does not interfere with timely attainment of the ozone air quality standard. All the replacement measures are currently in effect and establish obligatory requirements applicable to affected groups.

The various measures adopted by Ohio to reduce VOC emissions include a rule requiring use of lower emitting solvents in cold cleaner degreasers, a rule requiring the use of more efficient paint application techniques for auto refinishing, and a rule requiring that portable fuel containers be designed for less volatilization and fuel spillage. EPA approved these rules on March 30, 2007 (72 FR 15045).

Ohio also adopted a rule requiring use of low volatility gasoline in the Cincinnati-Hamilton and Dayton-Springfield areas. EPA approved Ohio's low vapor pressure gasoline rule on May 25, 2007 (72 FR 29269). Because of a delay in the implementation of Ohio's low vapor pressure gasoline program in 2006, Ohio adopted a further rule to provide the necessary reductions in 2006 and help compensate for the discontinuation of Ohio's E-Check program. This rule retired 240 allowances from the new source set aside for the "NO_x SIP Call" trading program and EPA approved this rule on February 13, 2008 (73 FR 8197).

EPA concludes that the combination of discontinuing E-Check and use of low volatility gasoline and the other control measures Ohio adopted will result in total emissions levels which will not interfere with attainment of the ozone standard. In addition, EPA believes that discontinuation of E-Check will clearly not interfere with the fine particulate NAAQS or with the attainment and maintenance of other air quality standards.

II. What is our response to comments received on the notice of proposed rulemaking?

The notice proposing to approve Ohio's request to discontinue operation of the I/M programs in the Cincinnati-Hamilton and Dayton-Springfield areas was published in the **Federal Register** on July 24, 2008, and the public comment period for this notice closed on August 25, 2008. EPA received comments from two parties on the proposal. The first set of comments were

sent by the Regional Air Pollution Control Agency of Dayton, Ohio fully supporting the proposal, and the second set of comments were from representatives of the Environmental Committee of the Ohio Utility Institute representing Buckeye Power, Inc., Columbus Southern Power Company, Dayton Power & Light Company, Duke Energy Ohio, Ohio Power Company, and Ohio Valley Electric Corporation. The utility comments do not contain objections to EPA's proposed approval of the shutdown request per se, but instead object to the statement that the retirement of 240 allowances from the utility oxides of nitrogen trading program helped in temporarily compensating for emission increases resulting from I/M discontinuation. The utilities reiterated objections raised during the approval process of an earlier EPA action approving the retirement of the 240 allowances, a notice that was approved by EPA on February 13, 2008 (73 FR 8197), and has been formally challenged by the utilities. Because EPA addressed these comments in this earlier rulemaking and the issues relating to the merits of the allowance rulemaking are currently being addressed through a separate petition for review process, and the utilities are not directly objecting to the merits of the I/M program shutdown, EPA is not elaborating further on its response to these comments.

III. What action is EPA taking?

EPA is approving Ohio's demonstration that eliminating the I/M programs in the Cincinnati-Hamilton and Dayton-Springfield areas will not interfere with the attainment and maintenance of the ozone NAAQS and the fine particulate NAAQS and with the attainment and maintenance of other air quality standards and requirements of the CAA. We are further approving Ohio's request to modify the SIP such that I/M is no longer an active program in these areas and is instead a contingency measure in these areas' maintenance plans.

As noted in the proposed notice, the Cincinnati area is currently designated nonattainment for ozone but is not classified. Pursuant to a decision of the Court of Appeals for the District of Columbia Circuit in the case of *South Coast Air Quality Management Dist. v. EPA* (472 F.3d 882 (D.C. Cir. 2006)), EPA will be reevaluating the classification of ozone nonattainment areas that were formerly classified as "basic" for the .08 parts per million (ppm) standard. One possible outcome could be the reestablishment of a requirement for I/M for the Cincinnati

area.² However, for the reasons stated in the proposed notice, EPA believes that Ohio has satisfied currently applicable criteria for discontinuing I/M in the Cincinnati and Dayton areas.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- 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);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

² Because the Dayton area is designated attainment for the 0.08 ppm 8-hour ozone standard, EPA's future classification rule for that standard would not apply to that area.

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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 action 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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

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 December 1, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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, Intergovernmental relations, Ozone, Particulate matter, Volatile organic compounds.

Dated: September 24, 2008.

Walter W. Kovalick Jr.,
Acting Regional Administrator, Region 5.

■ 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 KK—Ohio

■ 2. Section 52.1885 is amended by adding paragraph (gg) to read as follows:

§ 52.1885 Control strategy: Ozone.

* * * * *

(gg) Approval—EPA is approving requests submitted by the State of Ohio on April 4, 2005, and supplemented on May 20, 2005, February 14, 2006, May 9, 2006, October 6, 2006, and February 19, 2008, to discontinue the vehicle inspection and maintenance (I/M) program in the Cincinnati-Hamilton and Dayton-Springfield areas. The submittal also includes Ohio's demonstration that eliminating the I/M programs in the Cincinnati-Hamilton and Dayton-Springfield areas will not interfere with the attainment and maintenance of the ozone NAAQS and the fine particulate NAAQS and with the attainment and maintenance of other air quality standards and requirements of the CAA. We are further approving Ohio's request to modify the SIP such that I/M is no longer an active program in these areas and is instead a contingency measure in these areas' maintenance plans.

[FR Doc. E8-23245 Filed 10-1-08; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA-HQ-OAR-2005-0161; FRL-8723-3]

RIN 2060-AO80

Regulation of Fuels and Fuel Additives: Modifications to Renewable Fuel Standard Program Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on amendments to the Renewable Fuel Standard program requirements. Following publication of the final rule promulgating the Renewable Fuel Standard regulations, EPA discovered a number of technical errors and areas within the regulations that could benefit from clarification or modification. This direct final rule amends the regulations to make the appropriate corrections, clarifications and modifications.

DATES: This direct final rule is effective on December 1, 2008 without further notice, unless EPA receives adverse comment by November 3, 2008. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2005-0161, by one of the following methods:

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

- **E-mail:** a-and-r-docket@epa.gov, Attention Air and Radiation Docket ID No. EPA-HQ-OAR-2005-0161.

- **Mail:** Air and Radiation Docket, Docket No. EPA-HQ-OAR-2005-0161, Environmental Protection Agency, Mailcode: 6406J, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of 2 copies.

- **Hand Delivery:** EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460, Attention Air and Radiation Docket, ID No. EPA-HQ-OAR-2005-0161. 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-HQ-OAR-2005-0161. 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, 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 or e-mail. The 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, 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 defect or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly