

advising any small governments that may be significantly or uniquely impacted 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*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### *E. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action to approve revisions to COMAR 26.11.13 relating to RACT for sources that store and handle jet fuel into the Maryland SIP must be filed in the United States Court of Appeals for the appropriate circuit by October 26, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Ozone, Reporting and recordkeeping requirements.

Dated: August 5, 1998.

**Thomas C. Voltaggio,**

*Acting Regional Administrator, Region III.*

40 CFR part 52 is amended as follows:

#### **PART 52—[AMENDED]**

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

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

#### **Subpart V—Maryland**

2. Section 52.1070 is amended by adding paragraph (c)(130) to read as follows:

##### **§ 52.1070 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(130) Revisions to the Maryland State Implementation Plan submitted on March 31, 1998 by the Maryland Department of the Environment.

(i) Incorporation by reference.

(A) Letter of March 31, 1998 from the Maryland Department of the Environment transmitting revisions to Maryland's air quality regulation COMAR 26.11.13, pertaining to the control of VOC emissions from sources that store and handle jet fuel adopted by the Secretary of the Environment on March 28, 1997 and effective August 11, 1997.

(B) Revisions to COMAR 26.11.13.01(B)(4) the definition of "gasoline."

(ii) Additional Material: Remainder of March 31, 1998 Maryland State submittal pertaining to COMAR 26.11.13 control of VOCs from sources that store and handle jet fuel.

[FR Doc. 98-22795 Filed 8-25-98; 8:45 am]

BILLING CODE 6560-50-P

#### **ENVIRONMENTAL PROTECTION AGENCY**

##### **40 CFR Part 52**

[Region II Docket No. NJ28-1-162-3; FRL-6151-2]

#### **Approval and Promulgation of Air Quality Implementation Plans; State of New Jersey; Disapproval of the 15 Percent Rate of Progress Plan**

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

**ACTION:** Notification of final rule.

**SUMMARY:** EPA hereby gives notification that pursuant to its authority under Clean Air Act (the Act), section 110(k)(4), in a December 12, 1997 letter, EPA notified New Jersey that the conditional interim approval of the New Jersey 15 Percent Rate of Progress Plan

had been converted to a disapproval. The letter triggered the 18-month time clock for the mandatory application of sanctions under section 179(a) of the Act and the 24-month time clock for the Federal Implementation Plan (FIP) under section 110(c)(1). This also serves to amend Title 40, part 52 to note the conversion of the conditional interim approval to a disapproval.

**EFFECTIVE DATE:** This action is effective as of December 12, 1997.

**ADDRESSES:** Copies of New Jersey's original submittals and EPA's Technical Support Document are available at the following addresses for inspection of them during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866;

New Jersey Department of Environmental Protection, Office of Air Quality Management, Bureau of Air Quality Planning, 401 East State Street, CN418, Trenton, New Jersey 08625.

**FOR FURTHER INFORMATION CONTACT:** Paul R. Truchan, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-4249.

**SUPPLEMENTARY INFORMATION:** On April 30, 1997 (62 FR 23410), EPA proposed a conditional interim approval of New Jersey's December 31, 1996 and February 25, 1997 SIP submittals pertaining to New Jersey's 15 Percent Rate of Progress (ROP) Plan as well as taking action on other Clean Air Act requirements. On June 30, 1997, an interim final rule was published in the **Federal Register** (62 FR 35100) which granted a conditional interim approval of New Jersey's 15 Percent ROP Plan.

EPA's conditional interim approval of the 15 Percent ROP Plan was based on, among other things, the State starting the enhanced inspection and maintenance program component of the 15 Percent ROP Plan in sufficient time to achieve the 15 percent reduction in volatile organic compounds (VOC) emissions that the State relied upon to fulfill the 15 percent requirement. EPA granted the conditional interim approval of the 15 Percent ROP Plan based on New Jersey achieving the emission reductions from the enhanced inspection and maintenance program. Based on New Jersey's schedule and due to New Jersey's delays in starting the enhanced inspection and maintenance program, New Jersey cannot achieve the required 15 percent emission reductions.

As a result, EPA notified New Jersey by a December 12, 1997 letter that the

conditional interim approval of the New Jersey 15 Percent ROP Plan had been converted to a full disapproval pursuant to section 110(k) of the Clean Air Act (the Act), 42 U.S.C. 7410(k). This action taken on December 12, 1997 started a mandatory sanctions clock for the 15 Percent ROP Plan. Unless this clock is stopped, starting 18 months from December 12, 1997, increased emissions from new or modified major sources of VOCs and nitric oxides must be offset at a rate of two tons of reduction for every one ton of increased emissions, pursuant to section 179(b)(2) of the Act, 42 U.S.C. 7509(b)(2). Starting six months thereafter, restrictions on New Jersey's receipt of federal highway funds will also begin, pursuant to section 179(b)(1), 42 U.S.C. 7509(b)(1).

In addition, two Federal Implementation Plan (FIP) clocks began as a result of EPA's December 12, 1997 notification. First, a statutory 24-month 15 Percent ROP Plan FIP clock began for the New Jersey portion of the New York-Northern New Jersey-Long Island ozone nonattainment area, pursuant to section 110(c) of the Act, 42 U.S.C. 7410(c). Second, pursuant to a consent decree entered on March 26, 1997 in *American Lung Association of Northern Virginia, et al. v. Carol M. Browner*, Civ. No. 1:96CV01388, in the United States District Court for the District of Columbia, an expedited 15 Percent ROP Plan FIP clock began for the New Jersey portion of the Philadelphia-Wilmington-Trenton ozone nonattainment area. This clock requires that EPA propose a 15 Percent ROP Plan FIP by January 15, 1999 and adopt it by August 15, 1999. In order to stop the sanctions and FIP clocks, New Jersey must submit a new 15 Percent ROP Plan SIP and EPA must take rulemaking approval action on the submittal.

EPA's approval of New Jersey's enhanced inspection and maintenance program remains in effect. However, the December 12, 1997 letter began a sanctions clock for New Jersey's failure to implement its enhanced inspection and maintenance program, in accordance with section 179(a)(4) of the Act. Unless New Jersey begins implementation of its enhanced inspection and maintenance program, starting 18 months from December 12, 1997, increased emissions from new or modified major sources of VOCs and nitric oxides must be offset at a rate of two tons of reduction for every one ton of increased emissions. Starting six months thereafter, restrictions of New Jersey's receipt of federal highway funds will also begin.

The enhanced inspection and maintenance SIP approval was a

separate action and the delayed start date has different consequences for the 15 Percent ROP Plan SIP than for the enhanced inspection and maintenance SIP. Specifically, the New Jersey enhanced inspection and maintenance program remains an approved part of the applicable implementation plan for New Jersey; therefore, no FIP requirements are triggered. This is because the start date was significant only for purposes of taking credit for reductions under the National Highway System Designation Act. However, the 15 Percent ROP Plan SIP was converted to a disapproval because the 15 Percent ROP Plan SIP was not viable without the reductions from enhanced inspection and maintenance that the State had projected based upon the start date.

#### **Effective Date Under the Administrative Procedures Act**

EPA has issued this action as a rulemaking because EPA has treated this type of action as rulemaking in the past. However, EPA believes that it would have the authority to issue this action in an informal adjudication, and is considering which administrative process—rulemaking or informal adjudication—is appropriate for future actions of this kind. Because EPA has issued this action as a rulemaking, the Administrative Procedures Act (APA) applies.

Today's action was effective on December 12, 1997. Under the APA, 5 U.S.C. 553(d)(3), agency rulemaking may take effect sooner than 30 days after the date of publication in the **Federal Register** if the Agency finds and publishes good cause to mandate an earlier effective date. Today's action concerns SIP deadlines that have already passed; and EPA previously cautioned the affected state that the SIP submission was overdue and that EPA was considering the action it is taking today. In addition, today's action simply provides notice of a "clock" that was initiated on December 12, 1997, which will not result in sanctions against the state for 18 months after December 12, 1997, and that the state may "turn off" through the submission of a complete and approvable SIP submittal meeting EPA policy and guidance. These reasons support an effective date prior to 30 days after the date of publication.

EPA believes that the good cause exception to the notice and comment rulemaking requirement applies to this rulemaking action. (Administrative Procedure Act (APA) section 553(a)(B)). Section 553(a)(B) of the APA provides that the Agency need not provide notice and an opportunity for comment if the

Agency, for good cause, determines that notice and comment are "impracticable, unnecessary, or contrary to the public interest." In the present circumstance, notice and comment are unnecessary. The conversion of the conditional interim approval to a disapproval does not require any judgment on the part of the Agency. The issue is clear that the Agency must convert the conditional interim approval to a disapproval based upon the 15 Percent ROP Plan notice, the enhanced inspection and maintenance plan notice and the consent decree entered on March 26, 1997 in *American Lung Association of Northern Virginia, et al. v. Carol M. Browner*, Civ. No. 1:96CV01388. No substantive review is required to determine that the state did not start the program. There is no dispute about the fact that the state did not start the enhanced inspection and maintenance program. Because there is nothing on which to comment, notice and comment rulemaking are unnecessary. In addition, EPA is obligated by Court Order to take these actions and the Court Order has previously been subject to notice in the **Federal Register** pursuant to section 113(g) of the Act, 42 U.S.C. 7413(g).

#### **Remodeling Condition**

EPA's June 30, 1997 conditional interim approval contained a remodeling condition (see 40 CFR 52.1580(b)(1)). On July 30, 1998, New Jersey satisfied the condition by submitting this remodeling. Therefore, section 1580(b)(1) is removed from the CFR.

#### **Administrative Requirements**

##### *Executive Order (E.O.) 12866 and 13045*

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review entitled, "Regulatory Planning and Review." The final rule is not subject to E.O. 13045, entitled "Protection of Children From Environmental Health Risks and Safety Risks," because it is not an "economically significant" action under E.O. 12866.

##### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA), 5 U.S.C. 600 *et seq.* generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small

governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because EPA's disapproval of the state's 15 Percent Plan under section 110 and subchapter I, part D of the Clean Air Act does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect state-enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements at this time. Any new Federal requirements will be subject to separate notice and comment rulemaking at which time any impact on small entities will be determined. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

#### *Unfunded Mandates and E.O. 12875*

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 annual 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. E.O. 12875 states that no federal executive department or agency shall promulgate any regulation not required by statute that creates an unfunded mandate on any state, local or tribal government.

EPA has determined that this disapproval action does not include a federal mandate that may result in estimated annual costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This federal action disapproves the State's 15 Percent ROP Plan, but does not affect any specific state or local control measures nor imposes any new requirements. Any new Federal requirements will be subject to separate notice and comment rulemaking at which time any costs will be determined. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. For these reasons, E.O. 12875 also does not apply.

#### *Congressional Review Act—Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended 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. However, section 808 provides that any rule for which the issuing agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule) that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of December 12, 1997. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### *Paperwork Reduction Act*

This rule does not contain any information collection requirements which require OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

#### *National Technology Transfer and Advancement Act of 1995*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub. L. 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

#### **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 October 26, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

Environmental protection, Air pollution control, Ozone.

Dated: August 14, 1998.

**William J. Muszynski,**

*Deputy Regional Administrator, Region 2.*

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 FF—New Jersey**

2. Section 52.1580 is amended by revising paragraph (b) as follows:

##### **§ 52.1580 Conditional approval.**

\* \* \* \* \*

(b) 9 Percent Ozone Plan. New Jersey's December 31, 1996 and February 25, 1997 submittals for the 9 Percent Reasonable Further Progress Plan (9 Percent Plan) for the Northern New Jersey (New York, Northern New Jersey, Long Island Area) nonattainment area and the Trenton (Philadelphia, Wilmington, Trenton Area) nonattainment area, is conditionally approved for an interim period as referenced in paragraph (a) of this section. The condition for approvability is as follows: New Jersey must demonstrate by December 14, 1998 that the 9 percent emission reduction is still achievable in the Northern New Jersey and Trenton nonattainment areas as required by sections 182(b)(1) and 182(c)(2)(B) of the Clean Air Act and in accordance with EPA's policies and guidance.

3. New § 52.1581 is added to read as follows:

##### **§ 52.1581 Part D approval status.**

The conditional interim approval of the New Jersey 15 Percent ROP Plan (62 FR 35100) submitted on December 31, 1996 and February 25, 1997 by the New

Jersey Department of Environmental Protection was converted to a disapproval by a December 12, 1997 letter from EPA to New Jersey.

4. Section 52.1582 is amended by adding new paragraph (e) as follows:

**§ 52.1582 Control strategy and regulations: Ozone (volatile organic substances) and carbon monoxide.**

\* \* \* \* \*

(e) The State of New Jersey's March 27, 1996 submittal for an enhanced motor vehicle inspection and maintenance (I/M) program, as amended on November 27, 1996 and April 1997, is approved pursuant to section 110 of the Clean Air Act, 42 U.S.C. 7410. However, since New Jersey failed to start its program by November 15, 1997, the interim approval granted under the provisions of Section 348 of the National Highway Systems Designation Act of 1995 (NHSDA), 23 U.S.C. 348, which allowed the State to take full credit in its 15 Percent ROP Plan for all the emission reduction credits in its proposal, converted to a disapproval when EPA sent finding letters to the State on December 12, 1997. The finding letters also informed the state that the underlying enhanced I/M program approval, pursuant to Section 110 of the Act, remained in effect as part of the federally enforceable SIP.

[FR Doc. 98-22791 Filed 8-25-98; 8:45 am]

BILLING CODE 6560-50-U

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[Region II Docket No. NJ30-184; FRL-6151-4]

**Approval and Promulgation of Implementation Plans; New Jersey; Motor Vehicle Inspection and Maintenance Program**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of New Jersey changing the inspection frequency of the current inspection and maintenance (I/M) program from annual to biennial and adding a gas cap inspection.

**DATES:** This approval becomes effective on September 25, 1998.

**ADDRESSES:** Copies of the documents relevant to this action are available for public inspection during normal business hours at the following

locations: Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866 and New Jersey Department of Environmental Protection, East State Street, Trenton, New Jersey 08625.

**FOR FURTHER INFORMATION CONTACT:**

Richard Graciano, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-4249.

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**SUPPLEMENTARY INFORMATION:**

**I. Background**

On February 26, 1998 New Jersey submitted a proposed revision to its State Implementation Plan (SIP) changing the inspection frequency, from annual to biennial, of its existing basic automobile inspection and maintenance (I/M) program during the transition period to a biennial enhanced I/M program. On June 5, 1998, the State submitted the final SIP revision providing analysis that quantifies the emission reduction loss as a result of switching to biennial testing, as well as the net benefit resulting from the addition of the gas cap test. Switching to biennial testing during the transition period will allow the State to accommodate decreased availability at the test-only stations while they are being retrofitted to conduct the new enhanced test.

New Jersey has had a basic I/M program in place since 1974. This program, in its current form, was subject to its most recent amendment on January 21, 1985, which was approved by EPA and incorporated into the SIP on September 17, 1992 (57 FR 42893). EPA conditionally approved New Jersey's enhanced I/M program on May 14, 1997 (62 FR 26405). On January 30, 1998, the State submitted performance standard modeling to EPA, fulfilling the remaining condition required by EPA in its approval notice.

Under provisions of sections 182, 184, and 187 of the Clean Air Act (Act), New Jersey is required to implement an enhanced I/M program throughout the entire State. In its July 10, 1995 and March 27, 1996 SIP submittals, the State indicated that the enhanced I/M program would require biennial inspections, and suggested that early implementation of biennial testing may be necessary to facilitate system upgrades.

Pursuant to section 193 of the Act, such a change could not be approved if it results in increased emissions of volatile organic compounds (VOCs)

and/or carbon monoxide (CO), which could be the case if biennial testing is implemented under the current I/M program without other offsets. In order to offset the increased VOC emissions that could occur by going biennial, New Jersey is adding a test that checks the functional operation of vehicle gas caps. The gas cap checks will be implemented during the transition period from the existing program to the enhanced program rather than at the start of the enhanced program. New Jersey expects that this strategy will offset the increase in VOCs resulting from the conversion to biennial testing and has submitted modeling results that support this. New Jersey estimates that the resulting VOC emissions increase from changing the program frequency to biennial will be about 0.026 grams per mile. The VOC emissions reduction associated with the functional gas cap test are estimated to be about 0.033 grams per mile, resulting in a net benefit of 0.007 grams per mile.

New Jersey also estimates that CO emissions will increase about 0.365 grams per mile as a result of the change in inspection frequency. EPA acknowledges that the most efficient means to achieve significant carbon monoxide reduction and ultimate attainment is through the speedy implementation of the State's enhanced I/M program. Specifically, EPA expects that the State's enhanced I/M implementation will result in excess carbon monoxide benefits beyond the required performance standard. These are approximately 0.526 grams per mile.

These air quality benefits cannot be achieved without accommodating the practical obstacles associated with retrofitting test-only stations, which include transitional biennial testing.

Since the State was proceeding with a construction and operation contract process for its approved enhanced program (and recently awarded this contract), at New Jersey's request, EPA agreed to proceed with an expedited decision process for this revision to the existing program. As a result, approval of this revision was proposed on May 13, 1998, under a procedure called parallel processing, whereby EPA can propose rulemaking action concurrently with the State's procedures for amending its regulations (63 FR 26562). If the State's proposed revision had substantially changed, EPA would have been obligated to evaluate those changes and publish another notice of proposed rulemaking. This final rulemaking action by EPA is taking place because New Jersey's SIP revision has been adopted, as proposed, by the State and submitted formally to EPA for incorporation into the SIP.