imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

D. 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. EPA's approval action today maintains conditional approval status, granted by EPA in January 1997. Approval of a SIP submittal under section 110 and subchapter I, part D of the CAA does not create any new requirements but simply approves requirements that a 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 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)).

E. Unfunded Mandates

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 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 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.

F. 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).

G. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this direct final approval action for Pennsylvania's enhanced I/M SIP revision must be filed in the United States Court of Appeals for the appropriate circuit by November 16, 1998. Filing a petition for reconsideration by the Administrator of this interim final determination does not affect the finality of this rule pertaining to the Pennsylvania enhanced I/M SIP 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, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. §§ 7401–7671q.

Dated: August 28, 1998.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 98–24731 Filed 9–15–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 122–4078a; FRL–6160–6]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania; Enhanced Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action approves an August 21, 1998 State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania to supplement its enhanced motor vehicle emissions inspection and maintenance (I/M) program SIP. The August 21, 1998 SIP revision submittal addresses the seven remaining minor, or *de minimus*, deficiencies cited in EPA's January 28, 1997 conditional interim approval of Pennsylvania's enhanced I/M program. In addition, Pennsylvania submitted a demonstration of the effectiveness of its decentralized network required under the National Highway Systems Designation Act of 1995 (NHSDA). The intended effect of this action is to remove all remaining de minimus conditions imposed by EPA in its January 28, 1997 conditional interim approval of Pennsylvania's March 1996 enhanced I/M SIP revision, and to approve the Commonwealth's decentralized network effectiveness demonstration. EPA is hereby removing the interim approval status of the Commonwealth's I/M SIP, granted under the NHSDA. However, as Pennsylvania must still provide specific information related to one condition of the January 28, 1997 approval of its enhanced I/M program, the

Commonwealth's enhanced I/M SIP remains conditionally approved under the Clean Air Act.

DATES: This direct final rule is effective on November 16, 1998, without further notice, unless EPA receives adverse comment by October 16, 1998. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments should be mailed to Marcia Spink, Associate Director, Office of Air Programs, Mailcode 3AP20, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street—14th Floor, Philadelphia, Pennsylvania 19103; and at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Brian Rehn, (215) 814–2176, or by e-mail at rehn.brian@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On January 28, 1997, EPA published in the **Federal Register** a final rulemaking action (62 FR 4004) granting conditional interim approval to Pennsylvania's enhanced I/M program SIP revision, submitted March 22, 1996, under the authority of both the NHSDA and the Clean Air Act as amended in 1990. The NHSDA established key changes to previous EPA I/M requirements. Under the NHSDA, EPA could not disapprove, or automatically discount the effectiveness of, a state's I/M program solely because it utilized a decentralized testing network. Instead, on the basis of a ''good faith estimate'' by a state, the NHSDA allowed for presumptive equivalency of such decentralized networks to the benchmark of centralized programs. Under section 348 of the NHSDA, EPA was required to grant ''interim'' approval to such decentralized programs, for an 18-month period, at the end of which each affected state must submit an evaluation of the actual effectiveness of the enhanced program.

In Pennsylvania's case, EPA granted interim approval of the enhanced I/M program SIP, pursuant to Section 348 of the NHSDA, but also conditioned approval of that SIP upon the satisfaction of five major deficiencies and fourteen *de minimus* deficiencies. EPA's January 28, 1997 conditional interim approval stipulated that the five major conditions must be corrected within one year of final interim approval, and that the *de minimus* conditions be addressed within eighteen months of final interim approval. On January 9, 1998, EPA published (63 FR 1362) a final rule amending federal I/M requirements for ongoing evaluation methodologies for state I/M programs—one of the major deficiencies of Pennsylvania's program identified by EPA in its January 1998 interim conditional approval. EPA's I/M requirements rule change also served to amend the related condition of the Commonwealth's approval. As a result, the deadline for the Commonwealth to satisfy this condition was extended from February 28, 1998 to November 30, 1998.

Pursuant to EPA's January 28, 1997 rulemaking action, in order for the Commonwealth's SIP to be eligible for full approval, all *de minimus* conditions placed by EPA upon the Commonwealth's SIP must be remedied by the end of the 18-month interim approval period. The Commonwealth's NHSDA program effectiveness demonstration was due to be completed and submitted to EPA within the same time frame. The interim approval period for Pennsylvania expires August 28, 1998.

On September 2, 1998, EPA published a direct final rulemaking action (DFR), which is separate from today's action. The purpose of that rulemaking action is to approve two Pennsylvania SIP revisions, which addressed four major and seven de minimus rulemaking conditions from EPA's January 28, 1997 conditional interim approval. EPA anticipates that the DFR published on September 2, 1998 will become effective (barring adverse comment) within 60 days of its publication date. The subject of today's rulemaking action is the Commonwealth's August 21, 1998 SIP revision which addresses the remaining seven de minimus conditions and the network design effectiveness demonstration.

II. Summary of Pennsylvania's August 21, 1998 SIP Revision Submittal

On August 21, 1998, the Commonwealth of Pennsylvania submitted a revision to its SIP. In addition, on August 21, 1998 the Commonwealth submitted its I/M program network effectiveness demonstration. The SIP revision submittal also consists of contractual materials related to enhanced I/M oversight and program management services contract. These include the program oversight contract with the Commonwealth's I/M program manager, MCI Telecommunications Corporation (MCI) in addition to portions of the Commonwealth's request for proposal (RFP) and portions of the contractor and subcontractor proposal responses. The SIP submittal also includes certain contract exhibits, relevant to the satisfaction of federal requirements applicable to the remaining de minimus conditions set forth in 40 CFR 52.2026. Finally, the SIP submittal contains some Pennsylvania state government procedures and other miscellaneous forms and documents.

Also on August 21, 1998, the Commonwealth submitted its demonstration of the effectiveness of its decentralized program network (pursuant to the requirements of section 348 of the NHSDA) in order to qualify for the full ''credits'' claimed by Pennsylvania for the decentralized testing format of its enhanced I/M program. Such a demonstration is required (from states that chose to submit SIPs in March of 1996 to take advantage of NHSDA flexibility granted for decentralized I/M programs) at the end of the 18-month NHSDA interim approval period. The NHSDA demonstration is to be based upon the results of data collected during operation of the enhanced I/M program.

The Commonwealth's August 21, 1998 SIP submittal is meant to address those seven remaining *de minimus* deficiencies identified by EPA in its January 28, 1997 interim conditional approval, which the Commonwealth had not yet addressed in any other I/M-related SIP revisions previously submitted to EPA.

III. EPA's Review of Pennsylvania's August 21, 1998 SIP Revision Submittal

EPA views the Commonwealth's August 21, 1998 SIP revision as a separate, independent SIP amendment from all previous enhanced I/M SIP revisions—including the Commonwealth's original, March 22, 1996 NHSDA SIP revision. While Pennsylvania's August 21, 1998 SIP revision is related to the March 1996 submittal, as well as to other later Pennsylvania enhanced I/M-related SIP revisions submitted by the Commonwealth, it serves to supplement the Commonwealth's enhanced I/M program SIP—not to replace it. Therefore, EPA has placed this revision in a separate rulemaking docket from all previous Pennsylvania enhanced I/M SIP revisions, and EPA is today acting only upon the August 21, 1998 SIP

revision. In doing so, EPA is not reopening its January 27, 1997 final rulemaking granting conditional interim approval of the Commonwealth's enhanced I/M SIP.

A. National Highway Systems Designation Act Demonstration

1. Summary of Pennsylvania's Demonstration

Pursuant to section 348 of the NHSDA, in June of 1996 Pennsylvania submitted a ''good faith estimate'' to support its claims for 100% of the credit for its decentralized, test-and-repair program, when compared to a centralized, test-only network. EPA approved the Commonwealth's ''good faith estimate'', under authority of the NHSDA, on January 28, 1997 (62 FR 4004). Pennsylvania commenced its enhanced I/M program in October of 1997, and between October 1997 to April 1998, over 2,700 stations in the Pittsburgh and Philadelphia areas were brought into the enhanced I/M program. By the end of April of 1998, Pennsylvania's operating stations had successfully completed approximately 1.7 million enhanced emissions tests.

Section 348 of the NHSDA required Pennsylvania to submit a demonstration, based upon program data collected during the interim approval period, to support its good faith estimate and to demonstrate that the credits claimed for the decentralized program were appropriate. On August 21, 1998, Pennsylvania submitted a report to EPA, entitled ''National Highway Systems Designation Act Good Faith Estimate, Description of Program Effectiveness'', that describes the Commonwealth's efforts to ensure that the program is operating as effectively as originally proposed.

Pennsylvania's demonstration is partitioned into three sections. The first section describes the program implementation status. The second section reiterates the Commonwealth's NHSDA ''good faith estimate,'' originally submitted to EPA in June of 1996. The final section describes the steps Pennsylvania has made to implement the commitments made in the good faith estimate, and provides the program data that Pennsylvania has gathered during the interim approval period to support the good faith estimate.

In general, the Commonwealth's demonstration supplies data to substantiate its emission reduction credit claims, including: an overview of number the stations conducting tests; information of individual emissions inspectors; a comparison of bar-coded vs. manual VIN entry methods as a database quality assurance measure; a summary of the state's overt and covert audit efforts; a summary of remedial activities triggered by audits; examples of the automated station record auditing performed monthly by the state and sorted by various relevant parameters; and program summary data from the start-up period of the program.[1]

As described above, Pennsylvania's demonstration contains program summary data for the period between October 1997 and April 1998. The data includes a summary of test results (stratified by vehicle model year) from inspection stations in both program areas. Specifically, this includes: the number of tailpipe tests performed using acceleration simulation mode (ASM) test method and the number performed using the two-speed idle test method, the number of vehicles initially passing and failing the applicable tailpipe test, the number of vehicles initially failing the gas cap test, and the number of vehicles initially failing the visual inspection. For vehicles initially failing the ASM tailpipe test, the results are further segregated by those failing for excessive hydrocarbon or carbon monoxide emissions versus those failing for nitrogen oxides (NO_x) emissions. Finally, the Commonwealth's demonstration contains similar data for the first retest performed on vehicles that failed the initial test. The resultant data indicates that, for the period from October of 1997 to April of 1998, the overall Pennsylvania program failure rate for that period was approximately 10%. For that period, approximately 31% of all 1970s model year vehicles, 21% of all 1980s vehicles, and 5% of all 1990s vehicles failed the applicable ASM or two-speed idle tailpipe, or the gas cap check and visual inspection. Of the approximately 160,000 vehicles that initially failed testing during that period, approximately 36% passed a retest within 30 days.

The demonstration also contains data on the Commonwealth's quality assurance efforts to maintain the integrity of the decentralized testing network, for the period from October 1997 to April of 1998. This information includes the results of over 2,900 overt audits performed by Pennsylvania's program manager contractor, MCI—1,625 for the Philadelphia program area and 1,286 for the Pittsburgh program area. Overt audits may include such checks as: checks of station/inspector compliance with administrative/record keeping requirements, oversight of inspector testing, and/or reference gas analyzer calibration (referred to hereafter as overt audits). Every emissions inspection station in Pennsylvania has received at least one overt audit. In addition, five-point gas audits are performed at least semi-annually upon every emission analyzer at every licensed test station. The Commonwealth also performs regular, monthly record audits of every licensed station, which entail a computerized review of a station's and/or inspector's testing records/results. This information is sorted to focus on station performance related to certain testing elements, and then analyzed for trends that would warrant an overt or a covert audit. These record audits can be done without the station even knowing, through the Commonwealth's computerized test record database. The Commonwealth also encourages consumers to request a referee test to double check tests performed by inspectors.

The Commonwealth also provided information on the results of over 1,000 covert audits conducted over this period—567 in Philadelphia and 482 in Pittsburgh. Covert audits entail an undercover visit to a station by a program compliance officer, in an unmarked car, to witness how testing is actually performed at testing stations. The results of the Commonwealth's overt and covert audits are included in the demonstration, and constitute a summary of specific violations of state requirements, as noted by state auditors. Information on the Commonwealth's use of this audit information is also included in the demonstration. Violations identified during record review audits or overt or covert audits are addressed by the Commonwealth either through compliance assistance or through formal enforcement actions. For the period from January 1, 1998 to July of 1998, 742 potential violations were referred for enforcement action. Of those, 406 were remedied through mandatory, 3-hour training classes to educate inspectors on conducting proper testing. Through July, Pennsylvania conducted over 220 hearings, with 129 pending adjudication. As a result of hearings, 97 stations were provided compliance assistance by the Commonwealth, six received written warnings, and 23

[1] Pennsylvania cautions that this data used in support its program effectiveness was gathered during start-up and phase-in period of the program. The data is based upon less-stringent phase-in test standards, and is affected by other aspects of the program that are being phased in over the first program cycle, such as: repair technician training requirements, phased-in limits for the cost of testing waivers, and program enforcement that is directed heavily towards the use of compliance assistance as a means to educate inspectors and repair technicians.

stations were assessed compliance points, fines, and/or suspensions. The Commonwealth intends to hold over 90 hearings in the next several months to deal with outstanding violations. As a result of the Commonwealth's compliance assistance effort in response to I/M program violations, the Commonwealth intends to extend its use to all inspectors participating in the enhanced I/M program.

2. EPA's Analysis of Pennsylvania's NHSDA Demonstration

The Commonwealth's good faith estimate from June 10, 1996 indicated the Commonwealth's commitment to design and operate a program with safeguards in place to limit improper testing in its test-and-repair network. Pennsylvania's ''good faith estimate'' listed numerous program elements which would be developed and implemented to ensure that its decentralized enhanced I/M program would achieve the predicted results. These enhancements to Pennsylvania's existing basic I/M program were designed to ensure the proper testing and repair of vehicles, and to discourage the circumvention of program requirements by inspectors. These measures included: a stringent oversight program making extensive use of overt and covert audits, the use of State Police for more visible station/inspector enforcement, the ability to collect and to analyze real-time data from decentralized stations, and improvements to automate station data input activities (e.g., through the use of bar code readers). EPA believes that these measures do provide a means to deter improper testing in the Commonwealth's enhanced program, in comparison to the Commonwealth's previously existing decentralized I/M program.

EPA believes that the demonstration proves that the Commonwealth's qualitative assessment of its program can serve as a means for EPA to determine whether the decentralized program deserves the full credits associated with a similar centralized program. EPA therefore believes that the Commonwealth's data collected during the interim approval period, and compiled in the state's August 1998 NHSDA demonstration, indicate that the credits claimed by the Commonwealth for its decentralized program network are appropriate.

EPA believes that the variety of data supplied encompasses those implementation issues that most significantly impact program effectiveness. The summary of test results also will allow EPA to determine whether the Commonwealth's experience deviates greatly from that of other, comparable I/M programs. Using its experience with such programs—and taking into consideration the fact that Pennsylvania's program is less than a year old and therefore is still in the process of correcting the sort of start-up problems that all new programs experience—EPA concludes that approval of the Pennsylvania's I/M program is appropriate at this time.

B. Review of the SIP for Satisfaction of the Remaining De Minimus Deficiencies

The conditions that EPA has placed upon its interim approval of Pennsylvania's SIP are codified at 40 CFR 52.2026. On September 2, 1998, EPA published a DFR approving two Pennsylvania SIP revisions (63 FR 46664)—submitted on November 13, 1997 and February 24, 1998. Barring adverse public comment, the DFR will be effective sixty days from its publication date. Once effective, this action will strike four of the major conditions and seven of the de minimus conditions at 40 CFR 52.2026 (a) and (b). Specifically it will eliminate conditions (1), (3), (4), and (5), currently codified at 40 CFR 52.2026(a) and de minimus deficiencies (2), (3), (4), (6), (11), (12), and (13), currently codified at 40 CFR 52.2026(b).

The deficiencies addressed by the Commonwealth's August 21, 1998 SIP revision [ordered below as they appear at 40 CFR 52.2026(b)], include the following de minimus conditions:

(1) The final I/M SIP submittal must detail the number of personnel and equipment dedicated to the quality assurance program, data collection, data analysis, program administration, enforcement, public education and assistance, on-road testing and other necessary functions as per 40 CFR 51.354;

(5) The final I/M SIP submittal must provide quality control requirements for one-mode ASM (or two-mode ASM if the Commonwealth opts for it);

(7) The final I/M SIP submittal must include the RFP, or other legally binding document, which adequately addresses how the private vendor selected to perform motorist compliance enforcement responsibilities for the Commonwealth's program will comply with the requirements as per 40 CFR 51.362;

(8) The final I/M SIP submittal must include the RFP that adequately addresses how the private vendor will comply with 40 CFR 51.363, a procedures manual which adequately addresses the quality assurance program and a requirement that annual auditing of the quality assurance auditors will occur as per 40 CFR 51.363(d)(2);

(9) The final I/M SIP submittal must include provisions to maintain records of all warnings, civil fines, suspensions, revocations, violations and penalties against inspectors and stations, per the requirements of 40 CFR 51.364;

(10) The final I/M SIP submittal must include the RFP, or other legally binding document, which adequately addresses how the private vendor selected by the Commonwealth to perform data collection and data analysis and reporting will comply with all the requirements of 40 CFR 51.365 and 40 CFR 51.366; and

(14) The final I/M SIP submittal must contain sufficient information to adequately address the on-road test program resource allocations, methods of analyzing and reporting the results of the on-road testing and information on staffing requirements for both the Commonwealth and the private vendor for the on-road testing program.

The Commonwealth's August 21, 1998 submittal contains contractual materials that address and remedy all of the approval conditions listed above. EPA's detailed analysis of the August 21, 1998 SIP revision and its rationale for determining that these conditions have been satisfied is provided in a technical support document (TSD) prepared by EPA in support of this action. That document is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this action.

III. EPA's Rulemaking Action

EPA has reviewed the Commonwealth's August 21, 1998 SIP revision and has determined that this SIP revision adequately remedies the seven de minimus rulemaking conditions listed in the above section of this action. EPA is approving the Commonwealth's August 21, 1998 SIP submittal as having satisfied those de minimus conditions set forth previously in this document. The purpose of this approval action is to remove those de minimus conditions (codified at 40 CFR 52.2026(b)) imposed by EPA's January 28, 1997 conditional interim approval of the Commonwealth's enhanced I/M SIP. This action also serves to approve Pennsylvania's demonstration of the effectiveness of its decentralized vehicle emissions testing program. EPA believes that the Commonwealth's data and supporting information to bolster its ''good faith estimate'' measures demonstrate that the emissions reductions credits claimed by the Commonwealth for its enhanced I/M SIP are appropriate.

EPA imposed fourteen de minimus conditions in its January 28, 1997 interim conditional approval of the Pennsylvania enhanced I/M SIP revision, submitted by Pennsylvania to EPA in March of 1996. As previously stated, EPA published a DFR on September 2, 1998 approving I/M-related SIP revisions submitted by the Commonwealth on November 13, 1997 and February 24, 1998. That DFR removes seven of those de minimus conditions, while today's direct final rulemaking action (approving the Commonwealth's August 21, 1998 SIP) serves to remove the seven remaining *de minimus* conditions. As indicated in EPA's January 1997 interim conditional approval, Pennsylvania needed to satisfy all the de minimus deficiencies by the end of the interim approval period (i.e., by August 28, 1998). Today's direct final rulemaking action, coupled with the direct final rulemaking published on September 2, 1998, serves to remove all of the de minimus conditions. EPA is also approving, by today's action, the Commonwealth's program network effectiveness demonstration, as required under the NHSDA. Because the Commonwealth has submitted an approvable demonstration and remedied all de minimus requirements, EPA is acting today to remove the interim approval status of the Commonwealth's I/M SIP.

However, as Pennsylvania must still provide specific information by November 30, 1998 to address one of the conditions imposed by EPA's January 28, 1997 conditional approval under the Clean Air Act (i.e., the Commonwealth's choice of an EPA-approved methodology for conducting an on-going I/M program evaluation), the Commonwealth's enhanced I/M SIP remains conditionally approved under the Clean Air Act.

As a result of the above actions, EPA is today granting final conditional approval to the Pennsylvania enhanced I/M program SIP, under the authority granted under section 110 of the Clean Air Act.

Today's action removes interim approval status from the Commonwealth's enhanced I/M SIP. With the exception of the condition requiring the Commonwealth to provide specific information, by November 30, 1998 (with regard to its chosen methodology for performing its on-going enhanced I/M program evaluation) both today's DFR and EPA's September 2, 1998 DFR serve to approve SIP revision submittals which address the conditions imposed in EPA's January 28, 1997 conditional approval of the Commonwealth's enhanced I/M SIP under the Clean Air Act.

Final Action

EPA is approving the Commonwealth's August 21, 1998 SIP submittal as having fully satisfied seven de minimus conditions identified by EPA in its January 28, 1997 interim conditional approval of the Pennsylvania enhanced I/M SIP (62 FR 4004). EPA is also approving the Commonwealth's demonstration, submitted for the purpose of proving that the credits granted for the Commonwealth's decentralized I/M program testing network were appropriate, based upon data collected from operation of the Commonwealth's enhanced I/M program. On the basis of the data contained in the Commonwealth's demonstration, EPA believes that Pennsylvania has sufficiently demonstrated that its decentralized program is capable of achieving emissions reductions similar to those associated with a similarly designed, centralized program.

On September 2, 1998, EPA published a DFR approving I/M-related SIP revisions. Once effective, it removes four conditions placed upon the Commonwealth's enhanced I/M program SIP (as codified at 40 CFR 52.2026), as well as seven de minimus conditions. Today's direct final rulemaking action to approve the Commonwealth's August 1998 SIP revision removes the seven remaining *de minimus* conditions imposed upon the Commonwealth's enhanced I/M program SIP (as codified at 40 CFR 52.2026).

If EPA receives adverse comments related to the removal of these *de minimus* deficiencies, during either the comment period provided in today's DFR action or that of the September 2, 1998 DFR action, EPA will publish a timely withdrawal of today's direct final rule and will inform the public that the rule will not take effect. All public comments received on both rulemaking actions will then be addressed in a subsequent rule based upon the proposed rule. Again, EPA will not institute a second public comment period upon either this, or the September 2, 1998 rule.

Today's action removes the interim status of the Commonwealth's enhanced I/M SIP approval. Pennsylvania must provide specific information to address one remaining Clean Air Act condition, set forth at 40 CFR 52.2026(a)(2), the Pennsylvania enhanced I/M SIP continues to be conditionally approved under section 110 of the Clean Air Act.

For the purpose of clarity and to avoid confusion over the remaining conditions upon interim approval of Pennsylvania's plan, EPA is removing those *de minimus* conditions from 40 CFR 52.2026 which have been satisfied by the Commonwealth's August 21, 1998 SIP revision. EPA is reserving the sections of 40 CFR 52.2026 that correspond to these conditions, so as not to renumber any potentially outstanding conditions of approval listed in that section.

IV. Administrative Requirements

Nothing in EPA's rulemaking 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 SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

A. Executive Orders 12866 and 13045

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 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.

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of

section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

D. 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. EPA's approval action today maintains conditional approval status, granted by EPA in January 1997. Approval of a SIP submittal under section 110 and subchapter I, part D of the CAA does not create any new requirements but simply approves requirements that a 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 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)).

E. Unfunded Mandates

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 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 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.

F. 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).

G. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this direct final approval action for Pennsylvania's enhanced I/M SIP revision must be filed in the United States Court of Appeals for the appropriate circuit by November 16, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule pertaining to the Pennsylvania enhanced I/M SIP 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: August 28, 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 NN—Pennsylvania

2. Section 52.2026 is amended by revising the introductory paragraph to read as set forth below.

3. Section 52.2026 is further amended by removing and reserving paragraphs (b) (1), (5), (7), (8), (9), (10), and (14).

§ 52.2026 Conditional approval

The Commonwealth of Pennsylvania's March 27, 1996 submittal of its enhanced motor vehicle emissions inspection and maintenance (I/M) program; as amended on June 27, 1996, July 29, 1996, November 1, 1996, November 13, 1997, February 24, 1998, and August 21, 1998; is conditionally approved pending satisfaction of paragraph (a)(2) of this section.

* * * * *

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