ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 211–0127c; FRL–6356–1]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; El Dorado County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This action redesignates the number of a paragraph in Title 40 of the Code of Federal Regulations that appeared in a direct final rule published in the **Federal Register** on March 30, 1999.

EFFECTIVE DATE: This action is effective on June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, Rulemaking Office, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1184.

SUPPLEMENTARY INFORMATION: On March 30, 1999 at 64 FR 15129, EPA published a direct final rulemaking action approving El Dorado County Air Pollution Control District (EDCAPCD), Rule 239 of the California State Implementation Plan (SIP). This action contained amendments to 40 CFR part 52, subpart F. The amendments which incorporated material by reference into § 52.220, Identification of plan, paragraph (c)(256)(i)(D) are being redesignated as (c)(256)(i)(E) in this action.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and, is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

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 this rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: May 25, 1999.

Laura Yoshii,

Acting Regional Administrator, Region IX.

Part 52, 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 *et seq.*

Subpart F—California

2. Section 52.220 is amended by redesignating paragraph (c)(256)(i)(D) as (c)(256)(i)(E).

[FR Doc. 99–14352 Filed 6–7–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 122–4086; FRL–6355–2]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Enhanced Inspection and Maintenance Program Network Effectiveness Demonstration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision supplement submitted by the Commonwealth of Pennsylvania on August 21, 1998. This supplement consists of a demonstration of the effectiveness of the Pennsylvania SIP's enhanced motor vehicle emissions inspection and maintenance (I/M) program.

It includes a demonstration of the effectiveness of Pennsylvania's I/M testing network to satisfy the requirements of the National Highway Systems Designation Act of 1995 (NHSDA). The effect of this action is to approve the Commonwealth's demonstration of the effectiveness of its I/M program testing network, and to remove all *de minimus* conditions related to EPA's approval of Pennsylvania's program under the NHSDA. There is one remaining major condition of EPA's January 28, 1997 approval of Pennsylvania's I/M program related to the methodology for conducting on-going evaluation of the enhanced I/M program. Pennsylvania addressed that condition in a separate SIP submittal made to EPA on November 26, 1998. EPA will take separate action upon that submittal.

EFFECTIVE DATE: This final rule is effective on July 8, 1999.

ADDRESSES: 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, 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 via e-mail at Rehn.Brian@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On September 16, 1998, EPA published a notice of direct final rulemaking (DFR) to approve the Commonwealth of Pennsylvania's August 21, 1998 I/M program SIP supplement (see 63 FR 49436). Pennsylvania's August 21, 1998 SIP supplement included the Commonwealth's enhanced I/M program network effectiveness demonstration, as required by the NHSDA. It also addressed seven *de minimus* I/M program deficiencies EPA identified in its January 28, 1997 interim conditional approval of Pennsylvania's I/M program SIP (see 62 FR 4004).

Opportunity for comment was provided, however, as EPA also published a proposed rule (63 FR 49517) in the same volume of the **Federal Register** in which the DFR appeared, proposing to approve the Commonwealth's August 21, 1998 SIP submission. The preamble of the DFR

stated that in the event EPA received adverse comments, the DFR would be withdrawn and public comments would be considered pursuant to the proposed rule. Because EPA received four letters of adverse comment, it withdrew the DFR on October 21, 1998 (53 FR 56086). The public comments submitted relevant to the September 16, 1998 proposed rule (63 FR 49517) are addressed in the ''Summary of Public Comments/Response to Public Comments'' section of this document.

The rationale and the specifics of EPA's proposed action were explained in the September 16, 1998 DFR referenced in the accompanying notice of proposed rulemaking (NPR) and will not be restated.

II. Summary of the Public Comments/ Response to the Public Comments

This section discusses and summarizes the comments submitted during the comment period for the NPR published in the September 16, 1998 **Federal Register**. This section also contains EPA's formal response to those comments. Comments were submitted by the Clean Air Council, Gordon-Darby, Inc., the New Jersey Department of Environmental Protection (DEP), and by Francis W. Jackson (a private citizen of Pennsylvania). Only those comments relevant to EPA's September 16, 1998 proposed action to approve the Commonwealth's August 21, 1998 SIP supplement are addressed in today's rulemaking. Copies of the comment letters are available at the EPA Regional Office listed in the **ADDRESSES** section of this final rule. Comments have been summarized and grouped by commenter, and EPA's response directly follows each summarized comment.

New Jersey Department of Environmental Protection

Comment: The commenter states that any action by EPA to approve Pennsylvania's submittal weakens efforts by other states to implement cost-effective and environmentally defensible programs.

Response: EPA granted states flexibility to develop their respective enhanced I/M programs through its 1992 I/M Rule. This flexibility was further expanded in 1995 with passage of the NHSDA. This flexibility was intended to allow states to tailor programs unique to their needs, and to provide for cost-effective programs, while still achieving the desired emissions reduction benefits. EPA does not believe that approval of Pennsylvania's August 1998 SIP supplement jeopardizes efforts by other states to implement their chosen programs. EPA believes that the data submitted by Pennsylvania adequately supports the network effectiveness demonstration for the Commonwealth's chosen network. Other states are free to submit whatever data they believe is appropriate to support a network effectiveness demonstration for their chosen network.

Comment: The commenter states that given the national implications of EPA's approval action, it is incumbent upon EPA to seek all information supporting its action and to allow interested parties sufficient time to comment on Pennsylvania's program.

Response: At the request of a commenter, EPA extended the comment period on its proposed action to approve Pennsylvania's NHSDA demonstration SIP submittal to November 16, 1998, a full 30 days beyond the original deadline of October 16, 1998 specified in the September, 16 1998 NPR. EPA believes that this extended comment period was adequate to allow all interested parties to review the relevant materials and to submit their comments. EPA has taken into consideration all comments received during the extended comment period in its decisions related to this final rule.

Comment: The commenter states that Pennsylvania's NHSDA demonstration provides no qualitative or quantitative, incremental assessment of the program subsequent to implementation. The commenter further states that Pennsylvania's decision not to submit a program evaluation per the guidelines developed by the Environmental Council of States (or ECOS) would establish a precedent allowing other NHSDA states to follow suit and not to submit specific qualitative assessment information to either the participating ECOS or to EPA. The commenter further states that approval of Pennsylvania's demonstration would make it difficult for other states to retain the resources and support necessary to develop and submit meaningful, qualitative program evaluation information. Finally, the commenter states that EPA's approval of Pennsylvania's demonstration will not result in a meaningful quantitative ongoing program evaluation, as required by 40 CFR 51.353(c) and amended in 63 FR 1362.

Response: The Conference Report to the NHSDA directed EPA to approve, on an interim basis, any state program utilizing a decentralized test network, if the emissions reductions claimed by the state were based upon available information about actual effectiveness. Final approval of the proposed credit estimates would then be granted if the interim program demonstrated that the credits were appropriate.

The NHSDA does not require Pennsylvania to provide an incremental assessment of its program since the inception of the enhanced program. What is provided by the Commonwealth's program effectiveness demonstration is a description of the steps taken to implement the commitments contained in its ''Good Faith Estimate''—submitted in 1996 as a basis for interim approval of its program under the NHSDA. That ''Good Faith Estimate'' served as Pennsylvania's justification of its credit claims for its decentralized program. The August 1998 ''NHSDA Description of Program Effectiveness'' document describes Pennsylvania's efforts to ensure its program is operating as effectively as intended and supplies enhanced program operating data to substantiate Pennsylvania's claims for emission reduction credits from its program. The data program summary is based upon data gathered during the first year of operation, and includes: an overview of participating test stations, information on individual emissions inspectors, a summary of overt and covert audit efforts, a summary of remedial activities triggered by audits, and examples of the computerized record audit process.

EPA has not mandated the use of the guidelines developed by ECOS for NHSDA demonstrations. EPA made clear during the development of those guidelines that it could not bind states to comply with such voluntary guidelines. The Commonwealth has made it known to the participants of the ECOS process from the outset that it would not be bound by ECOS's guidelines. EPA believes that the Commonwealth's ''NHSDA Description of Program Effectiveness'' provides a reasonable assessment of its program to serve as the basis for EPA to determine that it demonstrates equivalency with a centralized program, per the requirements for such demonstrations in Section 348 of the NHSDA. The data is credible in that it provides actual data from the operation of the enhanced program. EPA believes this data supports approval of the Commonwealth's demonstration under section 348(c)(3) of the NHSDA.

With regard to the comment that Pennsylvania's approach to a NHSDA demonstration sets a precedent for future demonstrations, by this point in time most states with decentralized I/M programs developed pursuant to the NHSDA have already selected the methods for evaluation of their programs, and in most cases should have already submitted their

demonstrations to EPA. EPA finds that the Commonwealth's demonstration provides actual data on the program elements found in its 1996 Good Faith Estimate. Moreover, EPA will review each affected state's NHSDA demonstration, individually, and render an objective finding based upon each state's submittal. Contrary to the notion that this demonstration allows other states to submit demonstrations that do not quantitatively evaluate incremental program benefits, EPA believes the statute does not expressly require or prohibit that type of demonstration in all cases.

Finally, EPA does not agree that approval of the Commonwealth's NHSDA demonstration will undermine efforts by Pennsylvania and other states to conduct meaningful ongoing evaluations of I/M programs and their benefits as required by 40 CFR 51.351(c). EPA revised those requirements on January 9, 1998 (see 63 FR 1362), and on October 30, 1998, EPA published guidance to provide options for states in choosing scientifically sound ongoing program evaluation methodologies. EPA fully expects states to comply with the revised requirements by selecting an approved methodology for conducting the ongoing program evaluations. On November 26, 1998, Pennsylvania submitted a SIP revision supplement consisting of its chosen methodology from the list of options published by EPA to comply with the ongoing I/M program evaluation requirements of 40 CFR 51.351(c). EPA will take separate action, in the near future, upon that submittal.

Comment: The commenter believes that states should not be allowed to avoid submitting meaningful information to demonstrate the effectiveness of their I/M programs—even in light of recent flexibility granted to states in designing and implementing I/M programs.

Response: EPA believes that the ongoing program evaluation, required by 40 CFR 51.351(c), in conjunction with the data analysis and reporting requirements of 40 CFR 51.366, will provide meaningful information about enhanced I/M program effectiveness. By approving Pennsylvania's NHSDA demonstration, EPA has in no way reduced or eliminated the Commonwealth's obligation to conduct ongoing enhanced I/M program evaluations under 40 CFR 51.351. Neither does the fact that EPA has provided states with flexibility in adopting and implementing enhanced I/M programs reduce those states' obligation to conduct ongoing enhanced I/M program evaluations under 40 CFR 51.351.

Clean Air Council

Comment: The commenter believes EPA should wait to approve Pennsylvania's I/M program because there is insufficient data to support finding that Pennsylvania's program should receive full credit. The Council recommends EPA withhold final rulemaking on the adequacy of Pennsylvania's program for at least six months, until the program can be better evaluated.

Response: The NHSDA established timeframes for the development and implementation of I/M programs by states, and the Clean Air Act establishes timeframes for EPA to take rulemaking action upon such programs. Pennsylvania submitted a redesigned I/M program SIP on March 22, 1996, under the authority granted by the NHSDA. EPA's January 28, 1998 rulemaking action to grant conditional interim approval of that SIP revision started an eighteen month interim approval period, under the authority of the NHSDA. During that period, the Commonwealth was to adopt final regulations, to commence operation of the enhanced I/M program, and to submit a demonstration of actual network effectiveness based upon data collected during the interim approval period.

Pennsylvania's interim approval period expired on August 28, 1998. The NHSDA provides for no extension of this interim approval period. Under the timeframes set forth by the NHSDA, EPA was therefore compelled to take expeditious action upon the Commonwealth's August 21, 1998 SIP amendment to prevent the lapsing of the interim approval under the NHSDA, which could result in the imposition of sanctions. EPA believes that it has enough information in the data submitted by Pennsylvania to determine the effectiveness of the Pennsylvania program.

Comment: Clean Air Council expresses concern that Pennsylvania is overemphasizing compliance assistance at the expense of program enforcement, thus jeopardizing the integrity of the program. The Clean Air Council is also concerned that Pennsylvania had not yet selected its methodology for performing the required ongoing program evaluations.

Response: EPA's I/M rule (40 CFR part 51, subpart S) requires the establishment of minimum penalties for violations of program rules and procedures that can be imposed against stations, contractors, and inspectors. Pennsylvania's regulation includes a penalty schedule which provides for minimum penalties against both enhanced I/M stations and inspectors. This schedule meets the minimum limits set forth in EPA's I/M rule, at 40 CFR 51.364. Pennsylvania also has the authority to temporarily suspend station and inspector licenses immediately upon discovery of program rule violations.

Use of auditing and follow-up enforcement serve to further ensure the integrity of the I/M program. Pennsylvania, through its oversight contractor MCI, uses professionals to conduct both overt and covert audits. Pennsylvania's ''NHSDA Description of Program Effectiveness'' document indicates that the Commonwealth conducted over 2,000 overt and covert audits between October, 1997 and August, 1998. Pennsylvania routinely conducts computerized record audits. Through these audits, Pennsylvania has uncovered violations stemming from activities classified as fraudulent, improper, and careless. While the Commonwealth has focused heavily on compliance assistance during the early stage of implementation, EPA finds that Pennsylvania has sufficient enforcement resources to oversee its decentralized network of testing stations and inspectors in a capable manner. The Commonwealth has acknowledged that it has been judicious in its use of its punitive enforcement authority during this early stage of enhanced program implementation. While a long-term strategy that relied too heavily upon compliance assistance versus more the punitive enforcement mechanisms available to the Commonwealth could jeopardize its program's integrity, there is no basis to find that Pennsylvania intends to so implement the enforcement of its enhanced I/M program once the program is fully established. Moreover, EPA does not agree with the commenter that Pennsylvania's enforcement history for the first year of program operation limits that program's network effectiveness with respect to requirements for the NHSDA demonstration. EPA believes the state should provide technical/remedial training assistance in the early stages to ensure smooth operation of the new program.

The commenter stated that Pennsylvania had not selected a methodology for its ongoing program effectiveness evaluation at the time of its August 1998 submittal, and that such information would be useful in evaluating network effectiveness. EPA's conditional interim approval of Pennsylvania's SIP did not require the

submission of an ongoing program evaluation methodology until November 30, 1998, as codified at 40 CFR 52.2026(a)(2). At the time Pennsylvania submitted its network effectiveness demonstration, EPA had not yet issued guidance on alternative methods to conduct an ongoing program evaluation. Therefore, EPA cannot base its approval of Pennsylvania's NHSDA demonstration upon a lack of data from the Commonwealth's ongoing program evaluation. On October 30, 1998, EPA did publish guidance to provide options for states in choosing scientifically sound ongoing program evaluation methodologies. Pennsylvania submitted its choice of evaluation methodology to EPA on November 25, 1998. EPA will take separate action, in the near future, upon that submittal.

Gordon Darby

Comment: The Environmental Council of States (ECOS) has developed a program evaluation process that includes both qualitative and quantitative measures. State participation in this process is voluntary. The purpose of the ECOS process was to provide a framework to ensure consistent, technically credible state submittals. Pennsylvania participated in the ECOS group and helped develop the process, but decided it was not bound by the process. The commenter fears this decision may undermine other NHSDA states' efforts to submit qualitative, and subsequently, quantitative demonstrations of program effectiveness pursuant to the ECOS recommendations.

Response: This comment is similar to a comment submitted by the New Jersey DEP. See EPA's response to that comment for further information. Pennsylvania's participation in the ECOS process to develop demonstration guidelines does not mean that the Commonwealth was bound to follow the resulting ECOS guidelines. EPA does not support the commenter's position that failure by a state to abide by the non-binding peer criteria jeopardizes the credibility of that state's NHSDA demonstration. EPA cannot disapprove a state's SIP submission on the basis that it failed to meet voluntary procedures developed by a group of peer states. EPA's approval decision is based upon the merits of the Commonwealth's demonstration. EPA believes that the Commonwealth's submittal is adequate to serve as its program effectiveness demonstration.

Comment: The commenter states that, in the past, EPA has attempted to assist states in determining program effectiveness through audits and other technical assistance. The commenter then states that since passage of the NHSDA in 1995, EPA has largely allowed states to implement whatever type of program they want, with the provision that each state would need to later demonstrate the projected effectiveness. The commenter then states that EPA's proposal to approve Pennsylvania's NHSDA demonstration instead appears to allow Pennsylvania to avoid having to submit meaningful information regarding program effectiveness.

Response: Since the passage of the revised Clean Air Act in 1990 and the NHSDA in 1995, EPA has provided considerable assistance to states in order to secure the adoption and implementation of effective enhanced I/M programs in accordance with federal law. EPA does not find that applicable federal law mandates a ''one size fits all'' approach to the design of states' enhanced I/M programs. EPA does not interpret the NHSDA to require states to determine overall program effectiveness, since EPA has already determined the effectiveness of the model program supporting the performance standard. Rather, states must merely demonstrate that the unique flexibility options they have selected, with particular emphasis on test network type, have not adversely impacted the credits claimed for their programs in relation to the model program.

Comment: The commenter states that Pennsylvania's ''Good Faith Estimate'' ignores the repair side of the I/M equation, and that all of the data in its demonstration focuses on vehicle inspection results, with no data presented on even basic repair results. The commenter asserts, therefore, that it is not possible to verify that the ''enhanced'' Pennsylvania program is significantly reducing vehicle emissions beyond its previously enacted basic I/M program.

Response: Pennsylvania chose to study repair effectiveness indirectly, through comparison of initial and retest data on the number of vehicles that passed and failed. That analysis indicates that approximately 35% of vehicles that failed initial testing passed their first retest within 30 days of initial testing. This data seemingly indicates the percentage of vehicles getting effective repairs prior to their first retest. EPA does not interpret the NHSDA to specifically require states to directly study repair effectiveness, and to include such data in their NHSDA demonstrations.

Comment: The commenter takes exception to Pennsylvania's approach to evaluation of the program based upon MOBILE5 modeling because Pennsylvania has stated, in the past, that the current version of the MOBILE emissions estimation model does not reflect reality, particularly with relation to the model's 50% credit discount for test-and-repair programs. The commenter also states that the use of the MOBILE5 model to evaluate the program overlooks substantial recent data which suggests that MOBILE5 overpredicts I/M benefits, and that EPA is consequently working on major I/M credit changes for use in a future version of the model—MOBILE6. The commenter, therefore, believes that it does not make sense to evaluate any state's I/M program at this time using MOBILE5.

Response: Although EPA is in the process of updating the MOBILE emissions model, until EPA completes that process MOBILE5 remains an accepted program evaluation tool in its current version for use in determining compliance with the I/M performance standard, per the requirements of 40 CFR 51.351. States must correctly evaluate their programs under the NHSDA and cannot wait for EPA to complete its revision of the MOBILE model to begin program evaluation. Further, EPA believes that the commenter took Pennsylvania's statement in its ''NHSDA Description of Program Effectiveness'' out of context. EPA believes that Pennsylvania meant to state, as background information, that MOBILE5 was the tool used to determine Pennsylvania's credit presumptions for the program, prior to implementation of the program. EPA did not take the modeling of the performance standard into consideration in its deliberation upon Pennsylvania's NHSDA network effectiveness demonstration. EPA expects the ongoing program demonstration, required by 40 CFR 51.353, to serve as an additional program effectiveness evaluation tool. Additionally, information from the data analysis to be conducted and submitted to EPA under the requirements of 40 CFR 51.366 may also help to serve that role.

Comment: The commenter states that in the program effectiveness demonstration, Pennsylvania asserted that its program was unique and was still being phased-in, and therefore could not be compared to another state's test-only program. The commenter goes on to state that all inspection programs are different in various ways, but regardless of program design, states can be held to the same ultimate criterion—the degree of reduction achieved in average emissions. The commenter

believes the [ECOS] concept of analyzing average emissions levels of vehicles having gone through the inspection program is fundamentally sound. The commenter states that Pennsylvania either does not understand or has misinterpreted the ECOS approach.

Response: Neither the statutes nor EPA's regulations mandate the use of ECOS's approach in conducting the demonstration required by the NHSDA. Pennsylvania chose not to utilize the ECOS model for such a demonstration, and whether or not the ECOS criteria is a sound approach is not an issue for decision under this rulemaking. Thus, whether all programs could be evaluated through an analysis of average emission reductions is not relevant to this rulemaking. The only issue is whether the data submitted supports Pennsylvania's program effectiveness claims. EPA has concluded that it does.

Comment: The commenter alleges that the Commonwealth's submittal cannot be justified on technical grounds, and takes exception to EPA's comment in the direct final rule that ''the variety of data supplied encompasses those implementation issues that most significantly impact program effectiveness.'' Moreover, the commenter feels that since no emissions data was included, it is impossible to determine to what degree vehicles are being repaired.

Response: EPA has analyzed the program data submitted as part of the Commonwealth's ''NHSDA Program Effectiveness Demonstration''. The data is set forth in detailed summaries of emissions test and retest results, and stratified by model year and test type. The data is separated by vehicles that undergo a retest, those that passed a retest, and those that failed a retest. Given that Pennsylvania's enhanced program had been implemented for less than one year at the time it was required to submit this demonstration under the NHSDA, EPA believes the Commonwealth has made a reasonable showing of data towards meeting NHSDA demonstration requirements, and that approval of Pennsylvania's program is warranted.

Comment: The commenter asserts that Pennsylvania's phase-in hydrocarbon (HC) and carbon monoxide (CO) standards for the Acceleration Simulation Mode (ASM) test are less stringent than the standards used in the previous basic idle test program, and that this is demonstrated by comparing the initial HC/CO fail rates of the two-speed idle (TSI) and ASM tests; the TSI rate is 6.0% while the ASM rate is 3.4%. The commenter goes on to state that while phase-in standards for nitrogen oxides, and final standards for all three pollutants represent increased test stringency, given other problems identified in the submittal, it appears that an increased failure rate is no guarantee of a more effective program.

Response: The initial phase-in ASM standards being used during the first phase of implementation of the Commonwealth's I/M program are based upon EPA's recommendation, to allow states time to phase in repair technician training and better overall repair effectiveness during the first cycle of program operation. EPA expected the use of these standards to result in relatively low failure rates. EPA agrees that pass/fail results do not, in and of themselves, guarantee an effective program. However, the purpose of the demonstration required under the NHSDA was not to compare the failure rates of the new enhanced I/M program to that of Pennsylvania's previously existing ''basic'' program. EPA approved Pennsylvania's use of phase-in standards in a separate rulemaking and those standards are not the subject of a today's rulemaking. Given all the differences between the design and implementation of the Philadelphia five-county area's previous idle program and its current phase-in ASM testing program, there is little value in comparing direct failure rates between the two. EPA believes it is too early in the life cycle of Pennsylvania's enhanced I/M program to make a judgement on the impacts of low failure rates.

Comment: The commenter states that no data are presented on whether the new test produces larger HC and CO emission reductions, on average, for vehicles that are repaired compared to repairs that occurred under the previous basic program. The commenter feels that failure rate data provides no insight into the degree of emissions reductions being achieved.

Response: While this type of evaluation would be beneficial in determining the quantitative benefits from an enhanced I/M program, the Agency does not believe such an analysis is required to satisfy the requirements of the NHSDA. While Pennsylvania's 1996 ''Good Faith Estimate'' is based upon specific improvements to Pennsylvania's existing basic I/M program, EPA did not evaluate the Commonwealth's ''NHSDA Program Demonstration'' on the basis of the level of improvement over the existing basic program. EPA believes that the enhanced program data submitted by the Commonwealth stands on its own for purposes of this demonstration, and supports the credit claims requested by the state.

Comment: Pennsylvania's test summary data indicate extremely low visual failure rates. Out of 1.6 million tests performed for the demonstration, only 0.1% failed for one of the five visual checks performed. Low failure rates are often an indication of poor or fraudulent inspector performance.

Response: EPA agrees that the visual inspection failure rates cited in the Commonwealth's ''NHSDA Description of Program Effectiveness'' are low. Pennsylvania's own NHSDA demonstration confirms, through state audit summaries, that visual inspections were often not done or not done properly. Pennsylvania is addressing this program implementation issue (versus NHSDA demonstration approval issue) of low visual failure rates through use of covert and overt audits, and stronger enforcement.

Comment: The commenter states that the data shows high retest failure rates, with roughly 38% of vehicles failing the post-repair retest. The commenter goes on to state that a high retest failure rate may indicate ineffective repairs. It is unknown how many of these vehicles received repair waivers, continued to try to pass the test, or ''disappeared'' from the program.

Response: The Commonwealth is still in the process of ramping up the program. EPA expects relatively low repair effectiveness for a newly enacted enhanced I/M program that employs a different test method. The Agency will further evaluate first and subsequent retest results, along with waiver issuance results, when it reviews the Commonwealth's ongoing program evaluation reports, per the requirements of 40 CFR 51.366.

Comment: The commenter states that Pennsylvania's data shows that a high number of vehicles ''disappear'' after failing an initial test (i.e., roughly 45% of all initially failing vehicles), and that it is unclear if this data might have been influenced by the improper categorization of initially tested vehicles versus retested vehicles, or vehicles that were waived (but not counted as such) prior to retest. Notwithstanding, the commenter asserts, the data suggests the program is not causing repair of nearly as many vehicles as the initial failure rates suggest. The commenter then states that Pennsylvania's submittal indicates that roughly 36% of vehicles that failed were repaired and retested within 30 days, which seems contrary to the expectation that the majority of vehicles in a test-and-repair program would receive repairs at the same station soon after the initial test.

Response: According to Pennsylvania's I/M regulations, if a vehicle does not have a valid emissions sticker, it cannot be operated within the I/M program area. It is expected that during the first year of implementation of an enhanced I/M program some vehicles will ''disappear'' because there is a culling out of the gross polluters from the fleet. Eventually, the road-side testing could assist in identifying legally registered vehicles operating in the area without valid emissions credentials.

Comment: The commenter expressed concern that EPA has accepted Pennsylvania's conclusions regarding the program summary data at face value without performing an independent analysis of the summary or raw test data. Also the commenter is troubled that EPA did not perceive issues with the Commonwealth's demonstration that could be garnered through a simple analysis of the presented summary data. The commenter believes there is a fundamental problem in trying to perform such a program evaluation in the total absence of vehicle-specific emissions data.

Response: EPA does not agree with the commenter that vehicle-specific emissions data is necessary to perform the demonstration required under section 348 of the National Highway Systems Designation Act. Summary data showing the results, on average, of the entire tested fleet can be used to perform such an analysis. We have reviewed the Commonwealth's demonstration and have determined that the program has met the spirit of the law in proving its program effectiveness. While we do not dispute the commenter's assertions that vehicle specific data is necessary to analyze the benefits of the program, such an analysis is not necessary to satisfy the requirements of the NHSDA for demonstration of the effectiveness of a decentralized testing network.

Francis W. Jackson

Comment: Mr. Jackson submitted comments relevant to the effectiveness of Pennsylvania's program in helping to attain the ozone standard, the cost-effectiveness of an ASM compared to 2-speed idle testing, as well as the cost-effectiveness of decentralized I/M to centralized I/M. Additionally, the commenter reflects upon Pennsylvania's selection of a method to conduct an ongoing program evaluation, to quantify the actual emissions benefits of the program, as required under 40 CFR 51.353(c). Finally, Mr. Jackson criticizes the choice of a decentralized I/M program, in light of other available control measures and based upon the contribution of highway mobile sources to total future ozone precursor emission inventories.

Response: Many of the comments submitted by Mr. Jackson were not the subject of EPA's September 16, 1998 proposed approval of Pennsylvania's SIP supplement to satisfy the program effectiveness requirements of the NHSDA. Many of his comments deal with issues associated with approval of Pennsylvania's enhanced I/M SIP, which was granted conditional interim approval on January 28, 1997 (see 62 FR 4004) and was not subject to further comment in this rulemaking. That previous conditional interim approval action was not subject to further comment in this rulemaking.

The NHSDA does not require states to demonstrate the absolute performance of their program, but instead requires a state to demonstrate that its decentralized program would achieve all or some of the benefits achieved by a model, centralized program, which Pennsylvania has done. The cost and the cost-effectiveness of Pennsylvania's program are not the subject of this rulemaking action. As previously noted, Pennsylvania has selected a methodology to conduct the required ongoing program evaluation to quantify the program's benefits. Pennsylvania submitted its choice of evaluation methodology to EPA on November 25, 1998. EPA will take separate action, in the near future, upon that submittal.

Comment: The commenter contends that Pennsylvania's demonstration supports effectiveness of program implementation, not program effectiveness. He goes on to state that program effectiveness is a measure of how well it cleans the air, the most important of which is how ASM contributes to Philadelphia's attainment of the 1-hour ozone National Ambient Air Quality Standard (NAAQS) by 2005—and at what cost.

Response: The Commonwealth's ''NHSDA Description of Program Effectiveness'' focuses upon Pennsylvania's implementation of those measures contained in its 1996 ''Good Faith Estimate'' which was submitted to and granted interim approval by EPA on January 28, 1997 (see 62 FR 4004) under the authority of the NHSDA. The Commonwealth's summaries of program data and program oversight data were submitted to show the results of the operation of the program during that interim approval period. In terms of the programs's effectiveness in continuing to achieve the expected emission reductions, that analysis must be analyzed in the biennial program evaluations required to be performed by 40 CFR 51.353. However, it is important to remember that the enhanced I/M program is only one of many control measures implemented to reduce ozone precursors, and it is not possible to monitor directly the benefits of any single emissions control strategy such as the I/M program in reducing ambient ozone levels.

Comment: The commenter cites Pennsylvania's ''Program Effectiveness Description'' (p. 1, para. 2) which states that its program achieves reductions equal to EPA's model program. He comments that Pennsylvania has not proved this assertion. The commenter further contends that the big issue is proving Pennsylvania has overcome the decentralized test-and-repair credit reductions that past (non-PA) decentralized and /or test-and-repair programs have demonstrated. The commenter also cites Pennsylvania's ''Program Effectiveness Description'' (p.1, para. 3) which indicates that captured program data clearly demonstrates that the program is achieving Pennsylvania's claimed benefits, and asserts that Pennsylvania's collected data is inadequate to directly compute achieved emissions reductions.

Response: EPA agrees with the commenter that the purpose of the NHSDA demonstration is to show that a State's decentralized program is as effective in achieving the emissions reduction benefits associated with a centralized or test-only program. However, the NHSDA did not set forth binding guidelines for how such a demonstration should be performed. Pennsylvania chose an approach to demonstrate the credibility of its program's design through implementation of measures in their ''Good Faith Estimate'' and through submission of data gathered from the first year of operation of the program. EPA believes it satisfies the statutory requirements for such demonstrations, as required by section 348(c)(3) of the NHSDA.

Comment: The commenter contends that ASM testing does little toward achieving the ozone standard for the Philadelphia area. Pennsylvania's demonstration indicates a failure rate of 11%, including gas cap and visual inspection failures. Very few cars fail the expensive ASM test.

Response: The period of evaluation took place during the start-up period of the program, and the results are based upon the use of phase-in standards for the ASM test. It is not unexpected for the failure rates to be low during such a period. EPA expects the ongoing program evaluation to show increased failure rates upon implementation of

final tailpipe and evaporative testing standards. Again, the enhanced I/M program is only one of many control measures implemented to reduce ozone precursors, and it is not possible to monitor directly the benefits of the I/M program alone in reducing ambient ozone levels.

III. Final Action

EPA is approving Pennsylvania's August 21, 1998 SIP supplement as a revision to the Pennsylvania SIP. By doing so, EPA is approving the demonstration of the effectiveness of its decentralized program testing format submitted by Pennsylvania, entitled ''National Highway Systems Designation Act Good Faith Estimate Description of Program Effectiveness''. EPA's approval of this mandated demonstration, is being done pursuant to section 348 of the NHSDA and section 110(k) of the Clean Air Act. This approval removes the interim status of EPA's conditional interim approval of the Pennsylvania enhanced I/M SIP promulgated on January 28, 1997 (see 62 FR 4004). EPA's approval also serves to approve contractual materials and state documents that were submitted by Pennsylvania as part of its August 21, 1998 SIP supplement, for the purpose of remedying seven *de minimus* deficiencies identified by EPA in its January 28, 1997 interim conditional approval of Pennsylvania's I/M program SIP. For a detailed description of these submitted materials, see EPA's September 16, 1998 direct final rule (63 FR 49436). EPA received no adverse comments related to approval of these materials to remedy the related *de minimus* SIP deficiencies.

IV. Administrative Requirements

A. Executive Orders 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled ''Regulatory Planning and Review.''

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 EPA complies by consulting, E.O. requires EPA to 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 13045

E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is ''economically significant,'' as defined under E.O. 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This final rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. 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 EPA complies by consulting, Executive Order 13084 requires EPA to 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, Executive Order 13084 requires EPA to develop an effective process permitting elected and other 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. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) 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 SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, 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).

F. 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 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.

EPA has determined that the approval action promulgated 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 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.

G. Submission to Congress and the Comptroller General

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).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this Pennsylvania I/M approval action must be filed in the United States Court of Appeals for the appropriate circuit by August 9, 1999. 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, Carbon monoxide, Hydrocarbons, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: May 27, 1999.

W. Michael McCabe,

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 follows:

§ 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 subsection.

* * * * *

(a) * * *

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

[FR Doc. 99–14357 Filed 6–7–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6355–5]

RIN 2060–AH47

National Emission Standards for Hazardous Air Pollutants Emissions: Group IV Polymers and Resins

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; extension of compliance.

SUMMARY: The EPA is taking direct final action to extend certain compliance dates contained in National Emissions Standards for Hazardous Air Pollutants Emissions: Group IV Polymers and Resins. The revisions concern extending the compliance dates specified in 40 CFR 63.1311(b) and (d)(6) for polyethylene terephthalate (PET) affected sources. We are approving these compliance extensions pursuant to Clean Air Act section 301(a)(1) to complete reconsideration of equipment leaks provisions and any necessary revision to the rule.

DATES: The direct final rule is effective on August 9, 1999, without further notice, unless the EPA receives adverse comment by July 8, 1999. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–92–45 (see docket section below), Room M–1500, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. The EPA requests that a separate copy also be sent to the contact person listed below. Comments and data may also be submitted electronically by following the instructions provided in the **SUPPLEMENTARY INFORMATION** section. No Confidential Business Information (CBI) should be submitted through electronic mail.

Docket. The official record for this rulemaking has been established under docket number A–92–45 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments and data, which does not include any information claimed as CBI, is available for inspection between 8 a.m. and 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address in the **ADDRESSES** section. Alternatively, a docket index, as well as individual items contained within the docket, may be obtained by calling (202) 260–7548 or (202) 260–7549. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Keith Barnett, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5605.

SUPPLEMENTARY INFORMATION:

Electronic Filing

Electronic comments and data can be sent directly to the EPA at: a-and-r-docket@epamail.epa.gov. Electronic comments and data must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on diskette in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number A–92–45. Electronic comments may be filed online at many Federal Depository Libraries.

Electronic Availability

This document is available in docket number A–92–45 or by request from the