

enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: September 20, 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 J—District of Columbia

2. In Section 52.470, the entry for GSA permit-to-operate fuel-burning equipment in the “EPA Approved District of Columbia Source-specific

requirements” table in paragraph (d) is added and the entry “None” is removed to read as follows:

§ 52.470 Identification of plan.

* * * * *

(d) EPA-Approved District of Columbia Source-Specific Requirements

EPA-APPROVED DISTRICT OF COLUMBIA SOURCE-SPECIFIC REQUIREMENTS

Name of Source	Permit number	State effective date	EPA approval date	Comments
General Services Administration Central Heating and Refrigeration Plant and West Heating Plant.	N/A—it is the operating permit issued to GSA by the District of Columbia on October 17, 1997.	Oct 17, 1997.	Sept 30, 1999 [page cite.].	The following portions of GSA's operating permit are not included in the SIP: The portion of Condition 3 referring to Table 1, Table 1, Condition 4, Table 3, and Condition 17.

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BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE039-1026; FRL-6449-2]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Enhanced Motor Vehicle Inspection and Maintenance (I/M) Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Delaware. This revision establishes and requires the implementation of an enhanced motor vehicle inspection and maintenance (I/M) program in the counties of Kent and New Castle. The intended effect of this action is to approve the Delaware enhanced motor vehicle I/M program as a SIP revision under the Clean Air Act (the Act).

EFFECTIVE DATE: This final rule is effective on November 1, 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 Delaware Department of Natural

Resources & Environmental Control, 89 Kings Highway, Dover, Delaware 19903.
FOR FURTHER INFORMATION CONTACT: Jill Webster, (215) 814-2033, or by e-mail at Webster.Jill@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On July 7, 1999 (64 FR 36635), EPA published a notice of proposed rulemaking (NPR) for the State of Delaware. The NPR proposed approval of revisions to the SIP for an enhanced motor vehicle I/M program. The formal SIP revision was submitted by the Delaware Department of Natural Resources and Environmental Control (DNREC) on June 16, 1998 and additional revisions were submitted on May 24, 1999. A description of Delaware's submittals and EPA's rationale for our proposed action were presented in the NPR and will not be restated here. No public comments were received on the NPR.

Additionally, EPA is not requiring the State of Delaware to implement section 40 CFR 51.356 (a)(4) dealing with federal installations within I/M areas at this time. The Department of Justice has recommended to EPA that these provisions of the federal I/M regulation be revised since it appears to grant states authority to regulate federal installations in circumstances where the federal government has not waived sovereign immunity. Federally owned vehicles operated in Delaware are required to meet the same requirements as Delaware registered vehicles, but it would not be appropriate to require compliance with this regulation if it is not constitutionally authorized. EPA

will be revising these provisions in the future. EPA will review state I/M SIPs with respect to this issue when the revised rule is final. EPA is neither approving nor disapproving requirements which apply to federal facilities at this time.

EPA believes that approval of Delaware's I/M program was sufficiently proposed in the rulemaking process and that omitting its requirements pursuant to section 40 CFR 51.356(a)(4) from this approval would not warrant further comment, because responsibility for compliance with those requirements rests with the Federal government. For this reason, EPA invokes the “good cause” clause of the Administrative Procedure Act section 553(b)(B) to make this change in this final notice. It would be contrary to the public interest to take final action on these provisions which may be unconstitutional and which EPA is currently revising.

II. Final Action

EPA is approving Delaware's low enhanced I/M program as a revision to the Delaware SIP, with the exception of its provisions for federal facilities.

III. 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 Orders on Federalism

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.

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132, (64 FR 43255 (August 10, 1999)), which will take effect on November 2, 1999. In the interim, the current Executive Order 12612, (52 FR 41685 (October 30, 1987)), on federalism still applies. This rule will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 12612. The rule affects only one State, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

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 action must be filed in the United States Court of Appeals for the appropriate circuit by November 29, 1999. Filing a petition for reconsideration by the Administrator of this final rule to approve the Delaware enhanced I/M SIP 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, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: September 20, 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 I—Delaware

2. In Section 52.420, the table in paragraph (c) entitled "EPA-Approved Regulations in the Delaware SIP" is amended by revising the entry for Regulation 26—Motor Vehicle Emissions Inspections Program, and adding an entry for Regulation 31—Low Enhanced Inspection and Maintenance Program.

§ 52.420 Identification of plan.

* * * * *

(c) EPA approved regulations.

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP

State citation	Title subject	State effective date	EPA approval date	Comments
*	*	*	*	*
Regulation 26 MOTOR VEHICLE EMISSIONS INSPECTION PROGRAM				
Section 1	Applicability and Definitions	4/1/90	1/06/92	Regulation 26 provisions apply to Sussex County only, effective November 1, 1999.
			57 FR 351	
Section 2	General Provisions	4/1/90	1/06/92	
			57 FR 351.	
Section 3	Registration Requirement	5/9/85	12/08/86	
			51 FR 44068	
Section 4	Exemptions	4/1/90	01/06/92	
			57 FR 351	
Section 5	Enforcement	7/6/82	10/17/83	
			48 FR 46986	
Section 6	Compliance, Waivers, Extensions of Time, and Repairs.	4/1/90	01/06/92	
			57 FR 351	
Section 7	Inspection Facility Requirements	7/6/82	10/17/83	
			48 FR 46986	
Section 8	Certification of Motor Vehicle Officers	7/6/82	10/17/83	
			48 FR 46986	
Section 9	Calibration and Test Procedures and Approved Equipment.	7/6/82	10/17/83	
			48 FR 46986	
Technical Memo- randum 1.	Motor Vehicle Inspection and Maintenance Program Vehicle Test Procedure and Machine Calibration.	4/1/90	01/06/92	
			57 FR 351	
*	*	*	*	*

Regulation 31 Low Enhanced Inspection and Maintenance Program

Section 1	Applicability	8/13/98	9/30/99	Provisions apply to New Castle and Kent Counties
Section 2	Low Enhanced I/M performance standard	8/13/98	9/30/99	
Section 3	Network type and program evaluation	6/11/99	9/30/99	
Section 4	Test Frequency and Convenience	6/11/99	9/30/99	
Section 5	Vehicle Coverage-except paragraph (4) which applies to federal facilities.	6/11/99	9/30/99	
Section 6	Test Procedures and Standards	6/11/99	9/30/99	
Section 7	Waivers and Compliance Via Diagnostic Inspection.	8/13/98	9/30/99	
Section 8	Motorist Compliance Enforcement	8/13/98	9/30/99	
Section 9	Enforcement Against Operators and Motor Vehicle Technicians.	8/13/98	9/30/99	
Section 10	Improving Repair Effectiveness	8/13/98	9/30/99	
Section 11	Compliance with Recall Notices	8/13/98	9/30/99	
Section 12	On-Road Testing	8/13/98	9/30/99	

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP—Continued

State citation	Title subject	State effective date	EPA approval date	Comments
Section 13	Implementation Deadlines	6/11/99	9/30/99	
Appendix 1(d)	Commitment to Extend the I/M Program to the Attainment Date Letter from Secretary Tulou to EPA Administrator, W. Michael McCabe.	8/13/98	9/30/99	
Appendix 3 (a)(7)	Exhaust Emission Limits According to Model Year.	8/13/98	9/30/99	
Appendix 3(c)(2)	VMAS™ Test Procedure	6/11/99	9/30/99	
Appendix 4(a)	Sections from Delaware Criminal and Traffic Law Manual.	8/13/98	9/30/99	
Appendix 5(a)	Division of Motor Vehicles Policy on Out-of-State Renewals.	8/13/98	9/30/99	
Appendix 5(f)	Clean Screening Vehicle Exemption	6/11/99	9/30/99	
Appendix 6(a)	Idle Emissions Test Procedures	6/11/99	9/30/99	
Appendix 6(a)(5)	Vehicle Emission Repair Report Form	8/13/98	9/30/99	
Appendix 6(a)(8)	Evaporative System Integrity (Pressure) Test.	8/13/98	9/30/99	
Appendix 7(a)	Emission Repair Technician Certification Process.	8/13/98	9/30/99	
Appendix 8(a)	Registration Denial System Requirements Definition.	8/13/98	9/30/99	
Appendix 9(a)	Enforcement Against Operators and Inspectors.	8/13/98	9/30/99	
*	*	*	*	*

§ 52.424 [Amended]

3. In section 52.424, paragraph (b) is removed and reserved.

[FR Doc. 99-25424 Filed 9-29-99; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[TN 222-1-9928a; FRL-6448-3]

Approval and Promulgation of State Plans For Designated Facilities and Pollutants: Tennessee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The United States Environmental Protection Agency (EPA) is approving the section 111(d) Plan submitted by the Tennessee Department of Environment and Conservation (DEC) for the State of Tennessee on January 8, 1999, for implementing and enforcing the Emissions Guidelines (EG) applicable to existing Municipal Solid Waste (MSW) Landfills.

DATES: This direct final rule is effective on November 29, 1999 without further notice, unless EPA receives significant, material, and adverse comment by November 1, 1999. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final

rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You should address comments on this action to Steven M. Scofield at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of documents related to this action are available for the public to review during normal business hours at the locations below. If you would like to review these documents, please make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file TN 222-1-9928a. The Region 4 office may have additional documents not available at the other locations.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Steven M. Scofield, 404/562-9034.

Tennessee Department of Environment and Conservation, Division of Air Pollution Control, 9th Floor L & C Annex, 401 Church Street, Nashville, Tennessee 37243-1531, 615/532-0554.

FOR FURTHER INFORMATION CONTACT: Scott Davis at 404/562-9127 or Steven M. Scofield at 404/562-9034.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 111(d) of the Clean Air Act (Act), EPA has established

procedures whereby States submit plans to control certain existing sources of “designated pollutants.” Designated pollutants are defined as pollutants for which a standard of performance for new sources applies under section 111, but which are not “criteria pollutants” (i.e., pollutants for which National Ambient Air Quality Standards (NAAQS) are set pursuant to sections 108 and 109 of the Act) or hazardous air pollutants (HAPs) regulated under section 112 of the Act. As required by section 111(d) of the Act, EPA established a process at 40 CFR part 60, subpart B, which States must follow in adopting and submitting a section 111(d) plan. Whenever EPA promulgates a new source performance standard (NSPS) that controls a designated pollutant, EPA establishes EG in accordance with 40 CFR 60.22 which contain information pertinent to the control of the designated pollutant from that NSPS source category (i.e., the “designated facility” as defined at 40 CFR 60.21(b)). Thus, a State, local, or tribal agency’s section 111(d) plan for a designated facility must comply with the EG for that source category as well as 40 CFR part 60, subpart B.

On March 12, 1996, EPA published EG for existing MSW landfills at 40 CFR part 60, subpart Cc (40 CFR 60.30c through 60.36c) and NSPS for new MSW Landfills at 40 CFR part 60, subpart WWW (40 CFR 60.750 through 60.759). (See 61 FR 9905-9944.) The