

Dated: April 19, 2005.

**Richard Kampf,**

*Acting Regional Administrator, Region III.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[R03-OAR-2004-PA-0001; FRL-7903-3]

#### Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Revision to the Vehicle Inspection and Maintenance Program for the South Central and Northern Regions and New Safety Inspection Program Enhancements for Non-I/M Areas

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This SIP revision amends Pennsylvania's prior, Federally approved enhanced vehicle inspection and maintenance (I/M) SIP, in particular to the I/M test type to apply to sixteen counties (Berks, Blair, Cambria, Centre, Cumberland, Dauphin, Erie, Lancaster, Lackawanna, Lebanon, Lehigh, Luzerne, Lycoming, Mercer, Northampton and York). Pennsylvania had previously adopted (but did not commence) a different form of testing for these counties, which EPA previously SIP-approved. Pennsylvania's revised SIP: Incorporates onboard diagnostic computer system checks for vehicles equipped with second generation onboard diagnostic systems (OBD-II) in the 8-county South Central Region (comprised of Berks, Dauphin, Cumberland, Lancaster, Lebanon, Lehigh and York Counties); applies different I/M test requirements for the South Central Region versus the 8-county Northern Region (comprised of Blair, Cambria, Centre, Erie, Lackawanna, Luzerne, Lycoming and Mercer Counties) in order to address the different air pollution concerns and vehicle fleets of those regions; revises Pennsylvania's motor vehicle safety inspection program (as it applies to forty-two counties not subject to Federal I/M program requirements) to include a visual inspection of safety-subject vehicles for the presence of certain emissions-related components, consistent with visual inspections performed under the I/M program in I/M-subject counties; revises the prior

approved I/M SIP to incorporate miscellaneous program changes made by Pennsylvania since commencement of the enhanced I/M program in 1997 in the Pittsburgh and Philadelphia Regions; removes references in the prior approved SIP to the now defunct basic inspection program, which operated in the Allentown/Bethlehem/Easton program area until 1999. EPA proposes to approve Pennsylvania's I/M program revision submitted December 1, 2003, as amended April 24, 2004. This action is being taken under the authority of the Clean Air Act.

**DATES:** Written comments must be received on or before May 26, 2005.

**ADDRESSES:** Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03-OAR-2004-PA-0001 by one of the following methods:

A. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

B. *Agency Web site:* <http://www.docket.epa.gov/rmepub/> RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

C. *E-mail:* [campbell.dave@epa.gov](mailto:campbell.dave@epa.gov).

D. *Mail:* R03-OAR-2004-PA-0001, Dave Campbell, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to RME ID No. R03-OAR-2004-PA-0001. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at <http://www.docket.epa.gov/rmepub/>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, [regulations.gov](http://regulations.gov) or e-mail. The EPA RME and the Federal [regulations.gov](http://regulations.gov) Web sites are an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an

e-mail comment directly to EPA without going through RME or [regulations.gov](http://regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption and be free of any defects or viruses.

**Docket:** All documents in the electronic docket are listed in the RME index at <http://www.docket.epa.gov/rmepub/>. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available 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](mailto:rehn.brian@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Clean Air Act (CAA) as amended in 1990 requires states to adopt an enhanced motor vehicle emissions inspection and maintenance program for selected areas. An I/M program is required based upon an area's air quality (i.e., whether areas violate national ambient air quality standards), the population of its metropolitan centers and whether or not the state lies within the Ozone Transport Region established by the CAA. EPA set forth regulatory requirements to guide states in adoption of I/M programs in November 1992, subsequently revising those regulations on several occasions. These regulatory requirements, hereafter referred to as EPA's I/M requirements

rule, are codified at 40 CFR Part 51, Subpart S.

#### *A. Pennsylvania's Prior Enhanced I/M SIP and EPA's SIP Approval Actions*

Pennsylvania adopted several iterations of enhanced I/M during the 1990s, culminating in the publication of a final I/M regulation in the September 27, 1997 edition of the *Pennsylvania Bulletin* (Vol. 27, No. 39), codified in Chapter 177 of the Pa Code. Pennsylvania submitted its adopted program to EPA as a SIP revision. That program utilized a decentralized I/M testing network comprised of privately owned stations for operation of the program.

Through a series of rulemakings, EPA subsequently approved the Commonwealth's I/M program as part of the Pennsylvania SIP, culminating in a final rule granting full SIP approval published in the June 17, 1999 edition of the **Federal Register** (64 FR 32411). That prior I/M SIP approval action is hereafter referred to as EPA's June 1999 SIP approval, or simply as the June 1999 SIP approval. Pennsylvania subsequently made a minor modification to the approved SIP in July of 2003 to revise its Acceleration Simulation Mode (or ASM) testing methodology and test standards that apply to the Philadelphia area program. EPA approved that revision on August 15, 2003 (68 FR 48803).

#### *B. Federal On-Board Diagnostic Testing Requirements*

The Clean Air Act as amended in 1990 requires states to incorporate checks of light-duty motor vehicle on-board diagnostic (OBD) systems as part of their I/M programs. These OBD checks are to be performed on vehicles having second generation OBD systems, referred to as OBD-II. Vehicles equipped with OBD-II systems were first introduced beginning in the 1994 model year, but not every car sold was fully compliant with OBD-II standards for light-duty vehicles until the 1996 model year. Since engines in these newer vehicles are largely electronically controlled (with their operation overseen by computerized control unit) the operation of the engine and its supporting systems can be monitored with proper software. The vehicle's OBD-II computer can detect malfunctions in the operation of critical systems and components, storing information related to any malfunction in its memory and simultaneously triggering a dashboard warning light to alert the driver of a problem. OBD-monitored malfunctions may impact air pollution emissions from the vehicle,

therefore, Congress required OBD checks as a mandatory element of I/M programs under the Clean Air Act. An additional benefit of OBD testing is that diagnostic information provided by these systems provides for more accurate diagnosis of emission-related malfunctions than can otherwise be obtained from tailpipe emissions testing or from visual inspection of the vehicle emissions system.

When EPA originally adopted its I/M requirements rule in 1992, Federal OBD-II certification standards had not yet been developed. EPA later amended its I/M requirements rule in August 1996 to establish testing standards for I/M checks of OBD-II-equipped vehicles. On May 4, 1998 and again on April 5, 2001, EPA amended its I/M requirements rule specifically to address requirements for OBD checks to be performed as part of I/M programs. In order for the Commonwealth to implement these new OBD test requirements as part of its SIP's I/M program, Pennsylvania needed to amend its regulations and to submit those amendments to EPA as SIP revisions. The Commonwealth submitted two SIP revisions to EPA to incorporate OBD testing into its I/M program—one on December 1, 2003 and one on January 30, 2004. EPA is proposing rulemaking action here only upon the December 1, 2003 SIP revision. EPA is proposing a rulemaking action on the January 30, 2004 SIP revision in a separate rulemaking action. Together these SIP revisions amend the Commonwealth's prior approved I/M SIP, which EPA approved on June 17, 1999 (64 FR 32411).

#### **II. Summary of Pennsylvania's December 2003 SIP Revision—Description of the Revised Emissions and Safety Inspection Programs**

On December 1, 2003, Pennsylvania submitted a revision to its enhanced I/M SIP approved by EPA on June 17, 1999 (64 FR 32411). The Commonwealth submitted a technical correction to the December 1, 2003 SIP revision on April 29, 2004. Hereafter, the corrected version is referred to as the December 2003 SIP revision. This December 2003 SIP revision serves several purposes. First, the SIP revision updates the Commonwealth's emissions testing program to comply with recent changes to Federal requirements regarding incorporation of on-board diagnostic checks to enhanced I/M program areas. Second, the SIP revision amends the prior approved SIP to alter the I/M program design to be implemented in sixteen counties where enhanced I/M had been required under

prior versions of state regulation and the approved SIP.

The Commonwealth's December 2003 SIP revision revises the emissions testing regimen that will apply to sixteen previously subject counties now designated as the South Central and Northern I/M Regions. Emissions testing will continue to apply to most 1975 and newer model year, gasoline powered vehicles having a gross vehicle weight rating of 9,000 pounds or less that are registered in an I/M region. Those vehicles that are exempted or excluded from testing include current model year vehicles and any otherwise subject vehicle which has traveled less than 5,000 miles in the previous year. Emissions testing continues to be required on an annual basis, in coordination with a Pennsylvania safety inspection.

Pennsylvania's December 2003 SIP revision contains modifications to the emissions testing regulations at Chapter 177 of Title 67 of the Pennsylvania Code and public notice from the Department of Transportation that certifies that I/M testing implementation is to be phased in beginning December 1, 2003. The revised emission regulation establishes differing emissions testing regimen for each subject I/M Region. The South Central I/M Region is defined to encompass the Counties of Berks, Cumberland, Dauphin, Lancaster, Lebanon, Lehigh, Northampton and York. Emissions testing there consists of an annual on-board diagnostic system check for 1996 and newer OBD-II-equipped vehicles and a gas cap leakage test (in order to verify a gas cap's ability to prevent evaporative hydrocarbon vapor from escaping). Additionally, the subject 1975 to 1995 vehicles receive a gas cap leakage test and will also undergo a visual anti-tampering inspection of emissions-related components. The Commonwealth applies the same anti-tampering inspection in all emissions and safety program counties, entailing visual inspection of the following components to ensure such components have not been removed or rendered inoperable: Catalytic converter, exhaust gas recirculation (EGR) system, positive crankcase ventilation (PCV) valve, air pump, evaporative control system components, and fuel tank inlet restrictor.

The SIP revision defines the Northern I/M Region to include the Counties of Blair, Cambria, Centre, Erie, Lackawanna, Luzerne, Lycoming and Mercer. Emissions testing there consists of visual anti-tampering inspection of 1975 and newer vehicles, as described above, and a gas cap leakage test of

those same vehicles. Testing in the Northern Region program varies from that of the South Central Region in that the Commonwealth does not require OBD I/M checks as part of the Northern Region.

The December 1, 2003 SIP revision also contains amendments to the Commonwealth's motor vehicle safety inspection program, which is codified at Chapter 175 of Title 67 of the Pennsylvania Code. Under this revised safety inspection program, vehicles registered in counties not subject to emissions testing under Pennsylvania I/M regulation (at Chapter 177 of Title 67) must undergo a visual anti-tampering inspection as part of the safety inspection. This safety program visual inspection applies in forty-two of the Commonwealth's sixty-seven counties. The result is that Pennsylvania now requires an annual visual anti-tampering inspection on a statewide basis for 1975 to 1995 vehicles through either the applicable I/M or safety inspection program. In the Non-I/M areas subject to the safety inspection program, anti-tampering inspection applies on a broader basis to include vehicles older than 1975 and newer than 1995. Addition of the anti-tampering inspection in Non-I/M areas as part of the safety inspection program applies to the following Counties: Adams, Armstrong, Bedford, Bradford, Butler, Cameron, Carbon, Clarion, Clearfield, Clinton, Columbia, Crawford, Elk, Fayette, Forest, Franklin, Fulton, Greene, Huntington, Indiana, Jefferson, Juniata, Lawrence, McKean, Mifflin, Monroe, Montour, Northumberland, Perry, Pike, Potter, Schuylkill, Snyder, Somerset, Sullivan, Susquehanna, Tioga, Union, Venango, Warren, Wayne and Wyoming.

The December 2003 SIP includes additional materials, including revised emissions benefits modeling supporting the changes in the emissions and safety inspection programs, new test equipment specifications for OBD inspection equipment, new inspection procedures for visual anti-tampering program, stand alone test equipment specifications for OBD and visual testing, supplements to Pennsylvania's contract for management of the I/M program, sample vehicle inspection reports and other miscellaneous support documents.

The Commonwealth's December 2003 SIP revision does not address changes to the I/M programs in the Pittsburgh and Philadelphia Regions, except in cases where updates to the Commonwealth's regulations affect all I/M-subject regions. Pennsylvania has submitted separate SIP revisions to EPA to address

changes specific to the Pittsburgh and Philadelphia I/M programs. Those SIP revisions are the subject of a separate rulemaking(s).

Finally, Pennsylvania's December 2003 SIP revision submittal to EPA does not include regulatory language adopted as part of Pennsylvania regulation that would phase-down/phase-out I/M testing of pre-1996 subject vehicles at a point in time when pre-1996 vehicles make up less than a certain portion of the region's total I/M subject fleet. The Commonwealth has also not included in its December 2003 SIP revision submittal to EPA the language in its regulation that would set the minimum repair expenditure for failing vehicles in need of I/M-related repairs (or waiver limit) at \$150 for the first two years after commencement of a new I/M program. Neither of these state regulatory provisions was submitted as part of the SIP and therefore these provisions are not under consideration by EPA as a revision to the Pennsylvania SIP.

### III. Proposed Action

EPA is proposing to approve Pennsylvania's I/M SIP revision submitted on December 1, 2003, as amended by a technical correction on April 29, 2004. This SIP revision incorporates changes being made by Pennsylvania to its I/M program in general and specifically with regard to the program testing regimen in the South Central and Northern I/M Regions as described herein.

EPA is also proposing to approve Pennsylvania's visual anti-tampering inspection (under the safety inspection program in the Non-I/M Regions) as a SIP strengthening air quality control measure, not as an enhanced I/M program pursuant to EPA's I/M requirement rule (at 40 CFR 51, Subpart S). While anti-tampering testing is not required in the Non-I/M Region counties of Pennsylvania, Pennsylvania has voluntarily undertaken this measure to bolster emissions reductions towards meeting the goals of the other areas of the Commonwealth that are subject to I/M program testing. The Non-I/M Region anti-tampering inspection program was not undertaken in support of any currently existing air quality rate of progress, attainment or maintenance plan. However, the Non-I/M program for the affected forty-two counties does provide a minor benefit toward the I/M performance standard demonstration for the sixteen counties comprising the South Central and Northern Regions. EPA therefore proposes to incorporate the safety inspection program for Non-I/M Regions into the SIP as a SIP strengthening measure, in that it does

reduce ozone-related pollution and that it may provide benefit to neighboring areas that violate the National Ambient Air Quality Standards (NAAQS) for ozone. For more information regarding EPA's detailed review of the Commonwealth's December 30, 2003 I/M SIP revision, please refer to the Technical Support Document (TSD) prepared by EPA in support of this rulemaking action. The TSD is part of the docket for this action, and is available at the EPA office listed in the **ADDRESSES** portion of this proposed rulemaking. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting either electronic or written comments.

### IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the 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 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a Federal standard and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This proposed rule to approve a revision to Pennsylvania's prior SIP-approved I/M program does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and record keeping requirements, Volatile organic compounds.

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

Dated: April 15, 2005.

**Richard Kampf,**

*Acting Regional Administrator, Region III.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[RME-OAR-2005-MD-0002; FRL-7904-3]

#### Approval and Promulgation of Air Quality Implementation Plans; Maryland; Clarification of Visible Emissions Exception Provisions

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Maryland Department of the Environment for the purpose of clarifying exception provisions of the visible emissions regulations for several source categories. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments must be received in writing by May 26, 2005.

**ADDRESSES:** Submit your comments, identified by Regional Material in EDocket (RME) ID Number RME-OAR-2005-MD-0002 by one of the following methods:

A. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.

B. *Agency Web Site:* <http://www.docket.epa.gov/rmepub/> RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the online instructions for submitting comments.

C. *E-mail:* [morris.makeba@epa.gov](mailto:morris.makeba@epa.gov).

D. *Mail:* RME-OAR-2005-MD-0002, Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

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**Docket:** All documents in the electronic docket are listed in the RME index at <http://www.docket.epa.gov/rmepub/>. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.