**Administrative Requirements**

*A. Executive Order 12866*

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

*B. Regulatory Flexibility Act*

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 District is already imposing. Therefore, because the federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

*C. Unfunded Mandates*

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

*D. Submission to Congress and the General Accounting Office*

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

*E. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 29, 1997. Filing a petition for reconsideration by the Administrator of this final rule to approve the District of Columbia New Source Review program 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, Incorporation by reference.

Dated: July 17, 1997.

**Thomas Voltaggio,**

*Acting Regional Administrator, Region III.*

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. 7401–7671q.

## Subpart J—District of Columbia

2. Section 52.470 is amended by adding paragraph (c)(37) to read as follows:

**§ 52.470 Identification of plan.**

* * * * *

(c) * * *

(37) Revisions to the District of Columbia Municipal Regulations submitted on May 2, 1997 and May 9, 1997 by the District of Columbia Department of Consumer and Regulatory Affairs:

(i) Incorporation by reference.

(A) Letter of April 29, 1997 from the Department of Consumer and Regulatory Affairs transmitting new source review (NSR) program.

(B) Regulations adopted on April 29, 1997; Title 20 of the District of Columbia Municipal Regulations (DCMR) Chapter 2, sections 200 (as amended), 201, 202, 204 (as amended), 206, 299 and the amended definition of ''modification'' in Chapter 1, section 199.

(ii) Additional material.

(A) Remainder of May 2, 1997 State submittal.

(B) District Register for May 9, 1997.

[FR Doc. 97–20214 Filed 7–30–97; 8:45 am]

BILLING CODE 6560–50–P

---

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[MD037–3015; FRL–5864–8]**

## Approval and Promulgation of Air Quality Implementation Plans; State of Maryland; Enhanced Motor Vehicle Inspection and Maintenance Program

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

**ACTION:** Final conditional approval.

**SUMMARY:** EPA is granting conditional approval of a State Implementation Plan (SIP) revision submitted by the State of Maryland. This revision establishes and requires the implementation of an enhanced motor vehicle inspection and maintenance (I/M) program in the counties of Anne Arundel, Baltimore, Calvert, Carroll, Cecil, Charles, Frederick, Harford, Howard, Montgomery, Prince George's, Queen Anne's, Washington, and the City of Baltimore. The intended effect of this action is to conditionally approve the Maryland enhanced motor vehicle I/M program. EPA is conditionally approving Maryland's SIP revision based on the fact that: Maryland's SIP is deficient in certain aspects with respect to the requirements of the Act and EPA's I/M program regulations, and Maryland has made a commitment in a letter, dated December 23, 1996, to work with EPA to address and correct all deficiencies as necessary to ensure full compliance with I/M requirements by a date certain within one year from September 2, 1997. This action is taken under section 110 of the 1990 Clean Air Act (CAA, or the Act).

**EFFECTIVE DATE:** This final rule is effective on September 2, 1997.

**ADDRESSES:** Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building,

Philadelphia, Pennsylvania 19107 and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

**FOR FURTHER INFORMATION CONTACT:** Catherine L. Magliocchetti at 215–566–2174 or Jeffrey M. Boylan at 215–566–2094 at the EPA Region III address above, or via e-mail at boylan.jeffrey@epamail.epa.gov. or magliocchetti.catherine@epamail.epa.gov

**SUPPLEMENTARY INFORMATION:**

## I. Background

On October 31, 1996, (61 FR 56183), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. The NPR proposed conditional approval of Maryland's enhanced inspection and maintenance program, submitted on July 11, 1995 and amended on March 27, 1996, by the Maryland Department of the Environment (MDE). A description of Maryland's submittal and EPA's rationale for its proposed action were presented in the NPR and will not be restated here.

## II. Public Comments/Response to Public Comments

EPA received comments from two citizens, and from the Maryland Department of the Environment. The individual comments are listed below, followed by EPA's response.

*Comment* #1: One citizen disagreed with the idea of car emission testing in general, stating that he thought that money budgeted to EPA could be better spent elsewhere.

Response #1: EPA maintains that enhanced vehicle emission inspection programs, such as the one designed by Maryland, are one of the most cost-effective air pollution control technologies available today. Mobile sources contribute significantly to the ozone nonattainment problem in the State of Maryland, and citizens can contribute to improving air quality by keeping their vehicles well maintained. The Vehicle Emissions Inspection Program, or VEIP, developed by Maryland will help decrease the amount of ozone-forming pollutants in the state at a modest cost to the consumer. Administration and implementation of the VEIP is funded at the state level, from transportation funding and from the collection of inspection fees by the state and its contractor. In addition, vehicle testing is required by the Clean Air Act for serious and severe ozone nonattainment areas, such as those in Maryland.

*Comment* #2: Another citizen commented that Maryland's VEIP should be delayed until inspection & maintenance programs in the neighboring states of Pennsylvania, Virginia, Delaware, and West Virginia are put into effect.

Response #2: Under the Clean Air Act (the Act), Pennsylvania, Virginia and Delaware were all originally required to develop and implement inspection & maintenance programs similar to the program developed in Maryland as of 1995. West Virginia is not currently required to implement an inspection & maintenance program under the requirements of the Act since the entire state has met the national ambient air quality standards for ozone and carbon monoxide.

Pennsylvania, Virginia, and Delaware are all moving forward with inspection & maintenance programs and each of these states has submitted I/M program revisions to their respective State Implementation Plans, as required by the Act. EPA has issued final rulemakings granting conditional, interim approvals to Pennsylvania and Virginia's I/M plans (PA published on January 28, 1997 at 62 FR 4004; and VA published on May 15, 1997 at 62 FR 26745), and Delaware received a final conditional approval for its plan on May 19, 1997 at 62 FR 27195. Programs in Pennsylvania and Virginia are required to start by November 1997 under the terms of the relevant conditional approvals. EPA anticipates full start-up of both programs in October of 1997. Delaware's I/M program enhancements have been implemented since January of 1995.

The following comments were submitted by MDE. In those places where clarification or background on a comment is necessary in order to understand the comment, EPA has summarized what the state is required to do as a condition of the rulemaking:

*Comment #3:* In the notice of proposed rulemaking, EPA cited a deficiency under 40 CFR 51.350 regarding the interpretation of Maryland's enabling legislation to run the inspection & maintenance program. As a condition for approval, EPA stated that Maryland must either provide an opinion from the State Attorney General's Office that offers the State's interpretation on the sunset date as being no earlier than November 15, 2005; or in the absence of such an opinion, provide EPA with new legislative authority that allows for such an extended sunset date for the program.

MDE commented that it maintains that legal authority exists for the program to continue for so long as is required by federal law, and that the sunset provision allows for the State to revisit the program and enact any needed legislative actions at the time of program extension. However, MDE has committed to asking the Attorney General's Office for a confirmation of the matter.

Response *#3:* Despite MDE's comment, EPA still needs confirmation from the State's Attorney General on this subject, as conditioned in the notice of proposed rulemaking. As specified in the notice, if the Attorney General, the state official authorized to interpret state law, does not hold a similar interpretation of the statute, new legislative authority will be required.

*Comment #4:* MDE commented that EPA and MDE need to reach agreement on whether all of the procedures and assumptions used in Maryland's modeling demonstration, for fulfillment of the requirements under 40 CFR 51.351 of the I/M rule, were appropriate and consistent with EPA regulations and guidelines. MDE may require clarification on some issues since EPA policy has been changing in response to evolving technology (e.g., recent developments in evaporative system testing). Maryland expects confirmation that I/M modeling and program requirements are being equitably applied to all states.

Response *#4:* EPA will continue to work with MDE with regard to the appropriate assumptions and inputs for the modeling of the performance standard demonstration. For clarification regarding EPA's policy on evaporative testing, MDE should refer to guidance issued on November 5, 1996, entitled, I/M Evaporative Emissions Tests, and December 23, 1996 guidance, entitled, I/M Evaporative Emissions Tests—An Addendum, which outline EPA's current testing and modeling methodologies.

EPA hereby confirms that I/M program and modeling requirements are being equitably applied to all states, and further verifies that Maryland is not being held to a higher standard for purposes of modeling the program performance standard.

*Comment #5:* MDE will provide an explanation of how subject vehicles in the program area are identified. MDE also requests clarification and guidance from EPA on the requirements for identification of vehicles routinely operated in, but not necessarily registered in the program area.

Response *#5:* EPA anticipates clarification from MDE as to how vehicles operating on Federal Facilities will be identified, and the protocol that

will be used by the State in order to assure that vehicles operating on federal installations are covered by the program. In addition, EPA will provide MDE with additional guidance on the identification of other vehicles routinely operated, but not registered in the program area (i.e. rental vehicles, fleet vehicles, etc).

*Comment #6:* MDE commented that its regulations specifically prohibit the inspection contractor from performing emissions-related repairs. Since the inspection contractor is the only entity performing initial tests in Maryland, the State believes this requirement has been satisfied. Further, Maryland questions the applicability of this requirement to a centralized I/M program.

Response #*6:* Under 40 CFR 51.357 of the I/M rule, initial tests must be performed without repair or adjustment at the inspection facility, prior to the test. EPA agrees with MDE's comment, and believes that since the inspection contractor is prohibited from performing emissions-related repairs under the State's regulation, that this requirement of the federal regulation has been satisfied.

*Comment #7:* Also under 40 CFR 51.357, EPA has conditioned approval of the I/M program on MDE's providing EPA with all applicable State regulations addressing the testing of vehicles with switched engines, and vehicles with no certified engine configuration. MDE commented that its State's laws and regulations prohibit tampering and the applicable sections will be provided to EPA confirming that this section of the federal I/M rule has been fulfilled.

Response #*7:* Based on Maryland's response, no changes are necessary to this part of the condition. EPA anticipates documentation from the state to be provided. EPA reiterates that the State should specifically delineate the areas of its anti-tampering laws and regulations that address engine switching and testing of vehicles with no certified engine configuration.

*Comment #8:* Under 40 CFR 51.360, EPA asked Maryland to fully document the criteria that will be used in the State for granting hardship exemptions or extensions for the program. MDE commented that Maryland will continue its current practice of granting short extensions for persons whose financial situations do not allow for repairs to be conducted immediately. Maryland will provide a description of this practice to EPA.

Response #*8:* EPA accepts MDE's above explanation as sufficient for fulfilling this condition, so long as a ''short'' extension period is clearly defined and reasonable to EPA. EPA awaits MDE's description of its practice, consistent with this response.

*Comment #9:* MDE will provide EPA with a description of Maryland's program to handle out-of-state exemptions, and MDE's mechanism to enforce vehicle transfer requirements when motorists move into the I/M area. MDE will also provide documentation on the citing of motorists for noncompliance with the vehicle registration requirement. MDE also reiterated its need for further guidance from EPA on how to identify vehicles operating in, but not registered in an I/M area.

Response #*9:* EPA anticipates the documentation referred to by MDE for out-of-state exemptions, and for noncompliance citations. Please see Comment 5 for EPA's response on MDE's guidance request.

*Comment #10:* MDE will provide EPA with clarification on the State's practice of vehicle impoundment when a motorist is cited for driving with a suspended registration.

Response #*10:* EPA anticipates this documentation.

*Comment #11:* MDE commented that Maryland will continue to use its system of month/year registration stickers as a visible means of compliance with registration in the State. MDE will alert EPA if any changes to this procedure occur in the future.

Response #*11:* EPA accepts MDE's discussion on this procedure, and no further action is required of MDE with respect to this aspect of the condition.

*Comment #12:* MDE requests additional information and guidance from EPA as to exactly what exemption triggering elements need examination.

Response #*12:* EPA needs confirmation from MDE that any exemptions that would allow vehicles to by-pass an inspection test, such as the diesel exemption and the electric car exemption, are either checked by confirmation of the VIN, or by physical examination of the vehicle. If VIN records cannot confirm exemption status of the vehicle, MDE should confirm the exemption by physically examining the vehicle before the exemption is granted.

*Comment #13:* MDE questions the applicability of some or all of the requirements under 40 CFR 51.362 of the federal I/M rule to a registration-based enforcement program. EPA has asked Maryland to demonstrate that an acceptable enforcement program exists, and that this program should include the procedures used for auditing the program and a penalty schedule for missing documentation from the program's inspection stations.

Response #*13:* EPA views the requirements under this section as appropriate and reasonable measures that states are required to implement in both centralized and decentralized I/M programs. The intent of this section of the I/M rule is to control and eliminate fraudulent acts by those most closely responsible for implementation of the I/M program. In Maryland's specific situation, these requirements are meant to provide another means of verifying proper conduct by the State's contractor, and its employees, who are responsible for dealing with customers in the inspection lanes. EPA expects that Maryland will fulfill this condition, as described in the NPR.

*Comment #14:* MDE commented that it has instituted an auditing program that is likely the costliest and strictest in the nation. MDE will provide a description to EPA.

Response #*14:* EPA anticipates MDE's description of its auditing program.

*Comment #15:* MDE will review its enforcement authority under its contract with the inspection contractor and provide EPA with information regarding the penalty structure set up to make sure the contractor is in compliance with the State's regulations.

Response #*15:* EPA anticipates this documentation from the State.

*Comment #16:* Maryland will ensure that the inspector certification program includes recertification requirements. Maryland proposes to accomplish this administratively, rather than by adopting regulations.

Response #*16:* EPA accepts Maryland's proposal for fulfilling this requirement; however, MDE must provide EPA with the administrative procedures manual, or description of this practice as part of the SIP support material, in order to comply with this requirement for approval purposes. Recertification need not be done through regulation, but must be an explicit, enforceable SIP requirement.

*Comment #17:* In response to EPA's condition under 40 CFR § 51.368, Maryland will review the State provision for protection of whistle blowers and provide the information to EPA. With regard to public complaints, Maryland is very responsive to all complaints received and provides prompt investigation and corrective action as required. The State will document this aspect of the program in the form of a complaint response plan.

Response #*17:* EPA anticipates MDE's response to this condition.

*Comment #18:* MDE commented that a copy of the final regulation revision

and documentation of the public hearing process will be submitted to EPA.

Response #*18:* EPA anticipates receipt of this documentation.

*Comment #19:* MDE commented that confounding factors in the State could potentially affect the current program start-up schedule, previously slated for June 1, 1997.

Response #*19:* EPA recognizes that potential problems with the State's program and its contractor may affect timely implementation of the program. As is stated in the NPR, Maryland must start mandatory testing of all subject vehicles as soon as possible or by November 15, 1997 at the latest.

*Comment #20:* Maryland does not understand the rationale for requiring a county-by-county analysis of the performance standard. MDE states that the federal I/M rule requires that ''Areas shall meet the performance standard for the pollutants which cause them to be subject to enhanced I/M requirements.'' Since its inclusion in the Ozone Transport Region causes Maryland to be subject to enhanced I/M requirements, Maryland believes that the EPA rule should be interpreted to treat the I/M counties as one area in calculating emissions factors relative to the performance standard.

Response #*20:* EPA agrees with MDE's interpretation of this requirement, and will allow MDE to submit an amalgamated performance standard analysis.

*Comment #21:* In the Technical Support Document, EPA explained that MDE must use the default compliance rate of 96% for modeling purposes, or provide EPA with documentation supporting the 100% rate used in its current analysis. MDE responded that it believes documentation supporting a compliance rate greater than 96% can be provided to EPA.

Response #*21:* EPA welcomes such supporting documentation from the State, and advises MDE to use whatever the appropriate compliance rate is, as supported by State-generated evidence.

*Comment #22:* Maryland commented that it believes that it followed EPA guidance in calculating RSD reductions. Maryland does not know of any requirement to ''subtract out'' the minimum RSD component in calculating RSD credits for an I/M program.

Response #*22:* MDE should refer to EPA's guidance on RSD credit issuance, User Guide and Description for Interim Remote Sensing Program Credit Utility. As is stated in this guidance, programs can only receive extra credit for a remote sensing component if the State's program goes above and beyond what is already required in the federal I/M rule. EPA is not requiring MDE to ''subtract out'' the minimum RSD component. Rather, EPA is stating that additional credit for a remote sensing program will only be granted if the State follows the EPA guidance and institutes testing above and beyond what is already required in the federal I/M rule. A state such as Maryland, that is only complying with the minimum on-road testing requirements, as explained at 40 CFR 51.371, is not eligible for more credit under the performance standard. Should MDE chose to expand its RSD component, additional credit could be claimed, as explained in the above-named guidance document.

*Comment #23:* MDE commented that it commits to adopting and using EPA non-invasive pressure testing procedures when they become available, and MDE will therefore take full credit for pressure testing in the performance standard. MDE will revise the SIP revision language to reflect this commitment.

Response #*23:* In June of 1996, EPA issued draft technical guidance which included draft procedures and specifications for a fuel-fill pipe pressure test. EPA will soon issue final, revised technical guidance on the fuel-fill pipe pressure procedures, and expects that Maryland will adopt this test under the above referenced commitment, and use this ''non-invasive'' procedure to test the integrity of the vehicle's fuel system. MDE should refer to the High-Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications: IM240 and Functional Evaporative System Tests, (Revised Technical Guidance, DRAFT), dated June 1996, the November 5, 1996 memo from Margo Oge, I/M Evaporative Emissions Tests, and the December 23, 1996 memo from Leila Cook, I/M Evaporative Emissions Tests—An Addendum. EPA also cautions the state that the full pressure test must be in place for at least one full test cycle before the evaluation year, in order for MDE to take credit for 100% pressure credit in modeling the performance standard.

*Comment #24:* MDE would like clarification from EPA as to whether the requirements of 40 CFR 51.355—Test Frequency & Convenience—have been met. It is noted that EPA did not cite any deficiencies in the NPR for this section, however, the TSD did include a discussion on Maryland's enforcement system safeguards, and the need for further action by the state with respect to the penalty for noncompliance with the program.

Further, MDE commented that it is unclear as to whether EPA expects MDE to correct another deficiency cited in the TSD under this section, but not in the NPR. In the TSD, EPA stated that it was unclear from Maryland's regulations whether or not the inspection contractor is required to give out-of-cycle inspections to those other than used vehicle dealers, or new residents of the State. This was cited as a deficiency in the TSD, but not the NPR.

Response #*24:* As is mentioned in the TSD discussion on this section, this problem is also addressed under the Motorist Compliance Enforcement Section—40 CFR 51.361. In the NPR, EPA chose not to duplicate conditions relating to the same failure, even though the TSD may have discussed the same problem under multiple sections. EPA does have a condition relating to the cited failure on enforcement safeguards and penalties (as discussed in the TSD and reiterated by MDE in its comment letter), however, MDE should address this deficiency under the Motorist Compliance Enforcement Section.

With respect to out-of-cycle testing, EPA did not place a condition on the State to make a correction for this TSD-cited deficiency. Furthermore, EPA here clarifies that the TSD erroneously stated that provisions need to be made to test these types of vehicles. In fact, EPA's regulation requires only that stations be required to adhere to regular testing hours and to test any subject vehicle presented for a test during its test period. EPA believes this requirement has been met by the State's SIP revision.

Therefore, for the purposes of this rulemaking, MDE does not have any conditions placed on the State under 40 CFR 51.355, and no remedy is required by the State under this section.

*Comment #25:* MDE has requested clarification of the requirements under 40 CFR 51.356 for SIP approval. Specifically, clarification is requested regarding the I/M rule requirement that the program provide for allowing inspections of vehicles registered in other program areas, and for issuance of certificates of compliance or waiver.

Response #*25:* As stated in the TSD, EPA could not find any provisions in the SIP that explicitly allow for inspections of vehicles outside of the program area, and for the issuance of certificates of compliance or waiver. However, since EPA understands that Maryland is investigating the idea of reciprocity with surrounding states for purposes of compliance with the program requirements, EPA assumes that Maryland intends on extending the

option of out of state inspections to those requesting it. For the purposes of rulemaking, EPA has not placed any conditions on the State therefore, with respect to this component of the I/M program at this time. If however EPA discovers problems with the reciprocity issue in the future, EPA will commence a SIP call to remedy this problem.

*Comment #26:* Also under 40 CFR 51.356, MDE would like clarification as to what is required in order to meet the federal fleet installations testing requirement. MDE will provide an update on the discussions with US GSA and US DoD, however, MDE would like to know what further is required for SIP approval.

Response #*26:* The TSD states that Maryland's SIP revision does not speak to the requirement that specifically the Federal installation managers show proof of inspection for all Federal employee-owned vehicles operated on the installation. However, the Maryland SIP revision does state that ''the federal agency has the responsibility of ensuring that its employees comply, with MVA's guidance.'' EPA believes that this statement satisfies this intent of this section of the rule, and no further action is required by MDE in order for SIP approval. EPA would however, welcome any further information that the Department can provide with respect to federal fleet testing issues, specifically relating to discussions with US GSA and US DoD. EPA here notes that the District of Columbia is also engaging US GSA and US DoD in discussions on fleet testing in the Washington Metropolitan area, and that it may be instructive for Maryland, the District of Columbia and the Commonwealth of Virginia to engage in these discussions together at this time.

*Comment #27:* MDE has also asked for clarification under 40 CFR 51.356, as to what is required for SIP approval in relation to special exemptions. MDE noted that it will quantify the special exemptions extended to motorists under the VEIP program, however, MDE would like clarification as to what is required for SIP approval.

Response #*27:* EPA anticipates MDE's clarifications of the special exemptions categories, and believes that this clarification can be made under the enhanced performance standard section, 40 CFR 51.351. There are no further SIP requirements for special exemptions, provided that the program meets the performance standard, taking exemptions into account.

*Comment #28:* MDE commented that under 40 CFR 51.358, it has satisfied the dual exhaust sampling requirements. In the TSD, EPA cited a deficiency for this section, stating that the SIP does not contain provisions for sampling dual exhaust vehicles. MDE cited Appendix G of SIP revision 95–06, page RFP38.

Response #*28:* EPA has reviewed the cite provided by MDE and concurs that the simultaneous testing requirement has indeed been met under the SIP. EPA notes that the TSD will be amended to correct this oversight, however no conditions are affected since none were cited in the NPR for this element.

*Comment* #29: MDE has asked for clarification under 40 CFR 51.358 as to whether or not the SIP is deficient with respect to the requirement to update test equipment to accommodate new technology vehicles and changes to the program. Under this section of the TSD, EPA commented that the SIP does not appear to address this element. However the NPR cites this requirement as being met through the annual reporting requirement.

Response #*29:* EPA believes that the above reference requirement has been met by Maryland through its annual reporting requirement, as found in the SIP revision under Section II.P.2.. EPA will amend the TSD to reflect this, however, no changes will be made to the NPR conditions, since none were imposed under this section.

*Comment* #30: MDE commented that the NPR discussion under 40 CFR 51.358 notes that all requirements of this section are approvable, however, the TSD notes that Quality Assurance requirements and procedures for the evaporative system functional test equipment are not included in the SIP revision. MDE further commented that it will provide EPA with the appropriate requirements and procedures when EPA approved specifications for the pressure test become available.

Response #*30:* EPA expects that the requirements under this section will be met when the state is able to provide revised pressure testing procedures for the SIP. MDE can fulfill the Quality Assurance requirements for the pressure test specifications when the pressure test specification is approved by EPA, adopted by Maryland and submitted to EPA as a revision to the SIP.

*Comment* #31: MDE would like clarification as to whether or not a deficiency exists with respect to counterfeit resistancy of vehicle inspection reports. No deficiency was cited in the NPR, however, the TSD reported that Maryland does not have a specific requirement aimed at making documents counterfeit resistant, and that the program certificates do not carry an official seal. MDE further commented that this requirement should not be applicable to a state with registration denial as the enforcement mechanism.

Response #*31:* As is cited in the NPR, EPA believes that Maryland has an adequate measure to ensure counterfeit resistance, i.e., unique identification numbers given on each Vehicle Inspection Report (VIR), coupled with accountability of the lane inspectors for each numbered VIR. EPA notes that the official seal requirement has not been met by the state, however, EPA believes the unique serial number method is adequate for maintaining counterfeit resistantancy. EPA also concurs with MDE's assessment regarding applicability of this requirement (i.e., offical seal) to programs using registration denial. Nothing further is required by the state in order to meet this section of the rule.

*Comment* #32: MDE commented that the TSD cites a deficiency regarding ensuring that compliance documents cannot be stolen or removed without being damaged. The NPR does not cite such deficiency. MDE would like clarification as to what is required of Maryland to comply with this section. Further MDE questioned the applicability of this section to a program using registration denial as the enforcement mechanism.

Response #*32:* EPA concurs with MDE's assessment regarding applicability of this requirement to programs using registration denial. Nothing further needs to be done by the state to meet the requirements of this section.

*Comment* #33: MDE commented that under the section relating to Waivers and Compliance via Diagnostic Inspections (40 CFR 51.360), all of the vehicles that are the subject of extensions for the program are actually inspected in the biennial test cycle and neither the compliance rate, nor emissions reductions are affected by this practice. Maryland requests clarification regarding what deficiency, if any exists for this section.

Response #*33:* EPA agrees with MDE's rationale regarding compliance rate calculations, and emissions reductions. EPA further accepts MDE's clarification contained in its comment letter, that hardship extensions do not actually constitute compliance waivers from the program, and therefore do not excuse the motorist from meeting the requirements of the program, but merely extend the amount of time afforded to the motorist for compliance with the program. EPA accepts this explanation as sufficient for purposes of satisfying this condition under this section of the rule. No further documentation needs to be provided by MDE for this condition.

*Comment #34:* MDE commented that the TSD cites the quality control section of waiver issuance as being unapprovable. MDE requests clarification from EPA regarding this TSD cited deficiency.

Response #*34:* EPA has reviewed the TSD and believes this citation of a deficiency is a typographical error. EPA will amend the TSD to reflect an approvable citation for this requirement. EPA notes that no change is necessary for the NPR, since no condition was cited for this section.

*Comment #35:* MDE commented that it will address the evaporative system total purge flow check when the evaporative system tests are implemented. MDE requests that EPA clarify what is required under this section for approval.

Response #*35:* EPA noted in the TSD that the purge system pass/fail results did not include the evaporative test total purge flow achieved during the test. However, EPA did not cite this as a deficiency in the NPR since MDE has committed to changing its purge specifications when EPA makes non-invasive purge procedures available. EPA will reassess the requirements of this section when the non-invasive procedures become available. This requirement may or may not be a part of the revised non-invasive testing specifications, and so EPA did not cite a lack of this data as a deficiency at this time. EPA will clarify what exactly is required when non-invasive specifications become available, and MDE is instructed to consult EPA guidance on pressure testing specifications for SIP revision purposes.

*Comment #36:* MDE notes that the NPR cites all requirements of 40 CFR 51.370 as having been met. However, the TSD cites a deficiency with regard to recall campaign number for vehicles with unresolved recalls. MDE wants clarification as to whether this is a SIP deficiency, and what is required of Maryland under this section. MDE further requests guidance from EPA on complying with the recall provisions of the I/M rule.

Response #*36:* MDE should ensure that the data system includes the recall campaign number for vehicles with unresolved recalls, however, under the NPR, no further documentation needs to be submitted to EPA to demonstrate that this requirement has been met at this time, and no condition has been placed on the State for this deficiency since guidance does not currently exist on how to accomplish this task at this time. EPA will assist MDE in developing methods for ensuring that this data be included in Maryland's system in the future.

## III. Conditional Approval

Under the terms of EPA's October 31, 1996 notice of proposed conditional approval rulemaking (61 FR 56183), Maryland was required to make commitments to remedy deficiencies with the I/M program SIP (as specified in the above notice) within twelve months of the effective date of today's final conditional approval notice. On December 23, 1996, Jane T. Nishida, Secretary of the MDE, submitted a letter to David L. Arnold, Chief, Ozone/CO and Mobile Source Section, EPA Region III, committing to address and correct, by a date certain, all of the deficiencies listed in EPA's October 31, 1996 NPR.

Because Maryland has submitted the commitment letter called for in EPA's October 31, 1996 NPR, EPA is today taking final conditional approval action upon the Maryland I/M SIP, under section 110 of the CAA.

## IV. Final Rulemaking Action

EPA is conditionally approving Maryland's enhanced I/M program as a revision to the Maryland SIP, based upon certain conditions. Should the State fail to fulfill the conditions by the deadline of no more than one year from September 29, 1997, this conditional approval will convert to a disapproval pursuant to CAA section 110(k). In that event, EPA would issue a letter to notify the State that the conditions had not been met, and that the approval had converted to a disapproval.

## V. Administrative Requirements

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

### *A. Executive Order 12866*

This action has been delegated to the Regional Administrator for decision-making and signature. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

### *B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Conditional approvals of SIP submittals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new federal requirement.

### *C. Unfunded Mandates*

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the conditional approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

*D. Submission to Congress and the General Accounting Office*

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

*E. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 29, 1997.

Filing a petition for reconsideration by the Administrator of this final rule to conditionally approve the Maryland 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) of the Administrative Procedures Act).

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

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Nitrogen dioxide, Ozone, Reporting and record keeping requirements.

Dated: July 18, 1997.

**Thomas Voltaggio,**

*Acting Regional Administrator, Region III.*

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. 7401–7671q.

## Subpart V—Maryland

2. Section 52.1072 is added to read as follows:

### § 52.1072 Conditional approval.

(a) The State of Maryland's July 11, 1995 submittal for an enhanced motor vehicle inspection and maintenance (I/M) program, and the March 27, 1996 amendment to the original SIP revision is conditionally approved based on certain contingencies. The following conditions listed in paragraphs (a)(1) through (a)(15) of this section must be addressed in a revised SIP submission. Along with the conditions listed in paragraphs (a)(1) through (a)(15) of this section is a separate detailed I/M checklist explaining what is required to fully remedy the deficiencies found in the proposed notice of conditional approval. This checklist is found in the Technical Support Document (TSD), located in the docket of this rulemaking, that was prepared in support of the proposed conditional I/M rulemaking action for Maryland. By no later than one year from September 29, 1997, Maryland must submit a revised SIP that meets the following conditions for approvability:

(1) Fully adopt and submit to EPA as a SIP revision, final regulations and documentation of the public hearing process addressing Maryland's March 27, 1997 amendment to the SIP pertaining to proposed regulatory changes to the VEIP, as a result of the flexibility afforded to Maryland from federal and state legislative changes.

(2) Provide confirmation from the State Attorney General's Office clearly stating that Maryland's interpretation of the sunset date of the program is no earlier than November 15, 2005, or in the absence of such an opinion, submit to EPA new legislative authority allowing for such an extended sunset date of the program.

(3) Submit to EPA a modeling demonstration of the program using the appropriate assumptions and methodology (see TSD and the Response to Public Comments section of this rule for detailed discussions) demonstrating compliance with the I/M performance standard for the years 2002 and 2005 (excluding the year 1999, as recommended by EPA).

(4) Obtain and/or demonstrate to EPA that adequate funding and tools exist for the years 1997 and 1998, including a detailed explanation of the number of personnel dedicated to quality assurance, data analysis, program administration, and enforcement. In addition, Maryland needs to provide budget allotments for equipment resources. EPA notes that an update of the budget information is adequate to satisfy this condition.

(5) Provide an explanation to EPA of how all subject vehicles in the program will be identified, which includes an estimate of the number of unregistered vehicles operated in the program area. Subsequent to EPA issuing guidance, Maryland needs to document how vehicles that are routinely operated in the program but not registered in the program area are identified.

(6) Provide to EPA applicable sections of state laws and regulations specifically addressing engine switching and testing of vehicles with no certified engine configuration. Maryland needs to commit to adopting non-invasive purge test procedures when EPA specifications become available. In addition, EPA expects Maryland to submit written procedures for the gas-cap check and to adopt the non-invasive fuel-fill pipe pressure specifications and procedures when EPA issues the final technical guidance.

(7) Submit to EPA written specifications for the gas cap check procedures referenced in Maryland's regulations.

(8) Provide to EPA a description of how Maryland's current practice of issuing short term extensions because of economic hardship is granted, which reasonably and clearly defines the time frame of the extension period.

(9) Submit to EPA documentation of how Maryland will handle out-of-state exemptions, employ mechanisms to enforce vehicle transfer requirements when owners move into the program area, and cite motorists for noncompliance with the registration requirement. Maryland will need to clarify its practice on vehicle impoundment when a motorist is cited for driving with a suspended registration. In addition, EPA needs verification on vehicle exemption triggering elements which allow the subject vehicle to by-pass an inspection test. Confirmation by VIN check or physical examination of the subject vehicle needs to be included in the SIP revision, as a means of ensuring validation of the exemption triggering elements.

(10) Demonstrate to EPA that enforcement program oversight is quality controlled and quality assured. Maryland needs to provide a procedures document that details the specifics of the implementation of the enforcement program oversight including information management activities, activities of enforcement involved in

monitoring the program, and auditing the enforcement. Quality control and assurance needs to address penalty structures, periodic auditing and analysis, program effectiveness, and in use fleet compliance via parking lot surveys and road side pullovers.

(11) Provide a description to EPA of Maryland's auditing program that will include a minimum number of covert vehicles that are used for auditing purposes, covert and overt performance audits of inspectors, audits of stations and inspectors records, equipment audits, and formal training of all state I/M enforcement officials and auditors.

(12) Submit to EPA documentation regarding the set up of Maryland's penalty structure used to ensure the contractor is in compliance with State regulations. The penalty schedule must be applied to the contractor, stations, and inspectors. Information should include administrative & judicial responsibilities & procedures, and a description of the funding allocations.

(13) Submit to EPA an administrative procedures manual or description of the practice of inspector recertification which must occur at least every two years.

(14) Submit to EPA State regulations documenting provisions for the protection of whistle blowers. In addition, Maryland needs to provide documentation of how it investigates and responds to complaints made by the public.

(15) Maryland must start mandatory testing of all subject vehicles as soon as possible, or by November 15, 1997 at the latest.

(b) [Reserved]

[FR Doc. 97–20219 Filed 7–30–97; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 64

**[Docket No. FEMA–7669]**

### List of Communities Eligible for the Sale of Flood Insurance

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Final rule.

**SUMMARY:** This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

**EFFECTIVE DATES:** The dates listed in the third column of the table.

**ADDRESSES:** Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 6464, Rockville, MD 20849, (800) 638–6620.

**FOR FURTHER INFORMATION CONTACT:** Robert F. Shea, Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street SW., room 417, Washington, DC 20472, (202) 646–3619.

**SUPPLEMENTARY INFORMATION:** The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Associate Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Associate Director finds that the delayed effective dates would be contrary to the public interest. The Associate Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

**National Environmental Policy Act**

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

**Regulatory Flexibility Act**

The Associate Director certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

**Regulatory Classification**

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

**Paperwork Reduction Act**

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

**Executive Order 12612, Federalism**

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

**Executive Order 12778, Civil Justice Reform**

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

**List of Subjects in 44 CFR Part 64**

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

### PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

**§ 64.6 [Amended]**

2. The tables published under the authority of § 64.6 are amended as follows: