

under the regulatory provisions of title II of the Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104-4) for State, local, or tribal governments or the private sector, this rule does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the UMRA. This rule also does not have tribal implications because it will 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). This action also does not have Federalism implications because it does not 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). This notice merely provides a finding that the State of Maryland has not submitted the SIP revision required by the CAA provisions discussed in this notice. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical. EPA believes that VCS are inapplicable to today's action because it does not require the public to perform activities conducive to the use of VCS. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

Under section 801(a)(1)(A) of the APA, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), EPA submitted, by the effective date of this rule, 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. This rule is not a "major rule" as defined by APA section 804(2), as amended. As noted above, EPA is issuing this action as a rulemaking. There is a question as to whether this action is a rule of "particular applicability," under section 804(3)(A) of APA as amended by SBREFA, and thus exempt from the congressional submission requirements, because this rule applies only to named States. In this case, EPA has decided to err on the side of submitting this rule to Congress, but will continue to consider this issue of the scope of the exemption for rules of "particular applicability."

C. 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 July 20, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action issuing a finding that the State of Maryland has failed to submit a SIP revision to implement the "section 185 fee" provision in the Metropolitan Washington, DC area may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Dated: May 13, 2004.

Donald S. Welsh,

Regional Administrator, Region III.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA213-4026; FRL-7663-7]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; The 2005 ROP Plan for the Pennsylvania Portion of the Philadelphia-Wilmington-Trenton Severe Area Severe 1-Hour Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving State Implementation Plan (SIP) revisions submitted by the Commonwealth of Pennsylvania. These revisions amend

Pennsylvania's rate-of-progress (ROP) plan for 2005 for its portion of the Philadelphia-Wilmington-Trenton severe 1-hour ozone nonattainment area (the Philadelphia area). These revisions update the plan's emission inventories and motor vehicle emissions budgets (MVEBs) to reflect the use of MOBILE6 while continuing to satisfy the ROP requirement for 2005. The revisions also amend the contingency measures associated with the 2005 ROP plan. These SIP revisions are being approved in accordance with the Clean Air Act (the Act).

DATES: *Effective Date:* This final rule is effective on June 21, 2004.

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 the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Martin Kotsch, (215) 814-3335, or by e-mail at Kotsch.Martin@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On March 16, 2004 (69 FR 12293), EPA published a notice of proposed rulemaking (NPR) proposing approval of revisions to Pennsylvania's 2005 ROP plan for its portion of the Philadelphia area. The revisions update the plan's mobile emissions inventories and 2005 MVEBs to reflect the use of MOBILE6, an updated model for calculating mobile emissions of ozone precursors. These SIP revisions were proposed under a procedure called parallel processing, whereby EPA proposes its rulemaking action on a SIP revision concurrently with a state's procedures for amending its SIP. The Pennsylvania Department of the Environmental Protection (PADEP) submitted the proposed SIP revisions to EPA on January 9, 2004 for parallel processing. On March 16, 2004 (69 FR 12293), EPA proposed approval of Pennsylvania's January 9, 2004 submittal. No comments were submitted to EPA on its March 16, 2004 proposal. The PADEP formally submitted the final SIP revisions to EPA on February 23, 2004. That final submittal had no substantive changes from the proposed version submitted on January 9, 2004. A detailed description of Pennsylvania's submittal and EPA's rationale for its proposed approval were presented in NPR published on March 16, 2004, and

will not be restated in their entirety here.

II. Summary of the SIP Revisions

These SIP revisions amend the 1990 and 2005 motor vehicle emissions inventories and 2005 MVEBs of Pennsylvania's 2005 ROP plan for its portion of the Philadelphia area to

reflect the use of the MOBILE6 motor vehicle emissions model. The PADEP has demonstrated that the revised plan's levels of motor vehicle emissions, calculated using MOBILE6, continue to demonstrate the required ROP for 2005. These revised MOBILE6-based MVEBs in the 2005 ROP plan are identical to the MOBILE6-based MVEBs of the 2005

attainment demonstration plan for the Philadelphia area found adequate by EPA on May 28, 2003 (68 FR 31700). The revised mobile inventories and MVEBs being approved for Pennsylvania's 2005 ROP Plan are shown in tons per day (tpd) in Tables 1 and 2.

TABLE 1.—MOTOR VEHICLE EMISSIONS INVENTORIES OF PENNSYLVANIA'S 2005 ROP PLAN

Philadelphia-Wilmington-Trenton severe 1-hour ozone nonattainment	1990		2005	
	VOC (tpd)	NO _x (tpd)	VOC (tpd)	NO _x (tpd)
Pennsylvania Portion	239.95	252.93	79.69	144.73

TABLE 2.—MOTOR VEHICLE EMISSIONS BUDGETS IN PENNSYLVANIA'S 2005 ROP PLAN

Philadelphia-Wilmington-Trenton severe 1-hour ozone nonattainment area	2005 ROP plan	
	VOC (tpd)	NO _x (tpd)
Pennsylvania Portion	79.69	144.73

III. Final Action

EPA is taking final action to approve the SIP revisions submitted by the Commonwealth of Pennsylvania on February 23, 2004. These revisions amend the 1990 and 2005 motor vehicle emissions inventories and 2005 MVEBs of Pennsylvania's 2005 ROP plan for the Philadelphia area severe 1-hour ozone nonattainment area to reflect the use of MOBILE6.

These SIP revisions were proposed under a procedure called parallel processing, whereby EPA proposes a rulemaking action concurrently with a state's procedures for amending its SIP. On January 9, 2004, the PADEP submitted its proposed SIP revisions to EPA. On March 16, 2004 (69 FR 12293), EPA proposed approval of Pennsylvania's January 9, 2004 submittal. No comments were submitted to EPA on its EPA's March 16, 2004 proposal. The PADEP formally submitted the final SIP revisions to EPA on February 23, 2004. EPA has evaluated Pennsylvania's final SIP revisions submitted on February 23, 2004 and finds that no substantive changes were made from the proposed SIP revisions submitted on January 9, 2004.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this 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 approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this 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 approves 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 rule also does not have tribal implications because it will 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). This action also does not have Federalism implications because it does not 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). This action merely approves 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 rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (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) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. 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).

C. 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 July 20, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition

for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action to approve revisions to Pennsylvania's 2005 ROP plan for its portion of the Philadelphia area to reflect the use of MOBILE6 may not be challenged later in proceedings to enforce their requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 10, 2004.

Donald S. Welsh,
Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart NN—Pennsylvania

■ 2. Section 52.2037 is amended by revising the section heading,

redesignating the existing paragraph (i) as (i)(1) and adding paragraph (i)(2), and revising paragraph (k) to read as follows:

§ 52.2037 Control strategy plans for attainment and rate-of-progress: Ozone.

* * * * *

(i)(1) * * *

(2) EPA approves revisions to the Pennsylvania State Implementation Plan, submitted by the Secretary of the Pennsylvania Department of the Environmental Protection on February 23, 2004. These revisions amend Pennsylvania's rate-of-progress (ROP) plan for year 2005 for its Pennsylvania portion of the Philadelphia-Wilmington-Trenton 1-hour ozone nonattainment area. These revisions update the 2005 ROP plan's 1990 and 2005 motor vehicle emissions inventories and motor vehicle emissions budgets to reflect the use of the MOBILE6 emissions model, and establish revised motor vehicle emissions budgets of 79.69 tons per day (tpd) of volatile organic compounds and 144.73 tpd of nitrogen oxides.

* * * * *

(k) EPA approves the following mobile budgets of the post-1996 rate of progress plans and the 2005 attainment plan:

TRANSPORTATION CONFORMITY BUDGETS FOR THE PHILADELPHIA AREA

Type of control strategy SIP	Year	VOC (tpd)	NO _x (tpd)	Date of adequacy determination or SIP approval date
Post-1996 ROP Plan	1999	88.6	109.6	June 23, 2000 (65 FR 36438, June 8, 2000).
Post-1996 ROP Plan	2002	69.52	93.13	June 23, 2000 (65 FR 36438, June 8, 2000).
Post-1996 ROP Plan	2005	79.69	144.73	June 21, 2004 (May 21, 2004, Insert Federal Register page citation).
Attainment Demonstration	2005	79.69	144.73	June 12, 2003 (68 FR 31700, May 28, 2003).

- (1) [Reserved]
- (2) [Reserved]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 287-0455; FRL-7665-9]

Withdrawal of Direct Final Rule Revising the California State Implementation Plan, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: On March 22, 2004 (69 FR 13225), EPA published a direct final approval of a revision to the California

State Implementation Plan (SIP). This revision concerned South Coast Air Quality Management District (SCAQMD) Rules 1133—Composting and Related Operations—General Administrative Requirements, 1133.1—Chipping and Grinding Activities, and 1133.2—Emission Reductions from Co-Composting Operations. The direct final action was published without prior proposal because EPA anticipated no adverse comment. The direct final rule stated that if adverse comments were received by April 21, 2004, EPA would publish a timely withdrawal in the **Federal Register**. EPA received timely adverse comments and, therefore, is withdrawing the direct final approval. EPA will address the comments in a subsequent final action based on the parallel proposal also published on March 22, 2004 (69 FR 13272). As stated in the parallel proposal, EPA will not

institute a second comment period on this action.

DATES: *Effective Date:* The direct final rule published on March 22, 2004, at 69 FR 13225 is withdrawn as of May 21, 2004.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, EPA Region IX, at either (415) 947-4111, or wamsley.jerry@epa.gov.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 7, 2004.

Laura Yoshii,
Acting Regional Administrator, Region IX.

■ Accordingly, the amendment to 40 CFR 52.220, published in the **Federal**