

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. From April 16, 2004, until October 16, 2004, add § 165.T07–101 to read as follows:

### § 165.T07–101 Security Zone; HOVENSA Refinery, St. Croix, U.S. Virgin Islands.

(a) *Location.* The following area is a security zone: All waters from surface to bottom encompassed by a line connecting the following coordinates based on the NAD 83: The point at 17°41'32" North, 64°45'09" West; thence to 17°41'44" North, 64°44'39" West; thence to 17°38'30" North, 64°43'12" West; thence returning to the beginning point at 17°41'32" North, 64°45'09" West.

(b) *Regulations.* Under § 165.33, with the exception of vessels with scheduled arrivals to the HOVENSA Facility, no vessel may enter the regulated area unless specifically authorized by the Captain of the Port San Juan (COTP) or a Coast Guard commissioned, warrant, or petty officer designated by the Captain of the Port. The Captain of the Port will notify the public of any changes in the status of this zone by Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 16 (156.8 Mhz). The Captain of the Port San Juan can be reached on VHF Marine Band Radio, Channel 16 (156.8 Mhz) or by calling (787) 289–2040, 24 hours a day, 7 days a week. The HOVENSA Facility Port Captain can be reached on VHF Marine Band Radio channel 11 (156.6 Mhz) or by calling (340) 692–3488, 24 hours a day, 7 days a week.

Dated: April 16, 2004.

**William J. Uberti,**

*Captain, U.S. Coast Guard, Captain of the Port, San Juan.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[Region II Docket No. NJ68–275, FRL–7661–1]

### Approval and Promulgation of Implementation Plans; New Jersey; Motor Vehicle Enhanced Inspection and Maintenance Program

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a request from New Jersey to revise its State Implementation Plan (SIP) to incorporate revisions to the enhanced inspection and maintenance (I/M) program. New Jersey has made several amendments to its I/M rules to comply with EPA regulations and to improve performance of the program and has requested that the SIP be revised to include these changes. Chief among the amendments EPA is approving is New Jersey's On-Board Diagnostic (OBD) program. EPA is approving New Jersey's latest I/M rule changes. The intended effect of this action is to maintain consistency between the State-adopted rules and the federally approved SIP.

**DATES:** *Effective Date:* This rule will be effective June 21, 2004.

**ADDRESSES:** Copies of the state submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency,  
Region 2 Office, Air Programs Branch,  
290 Broadway, 25th Floor, New York,  
New York 10007–1866.

Environmental Protection Agency, Air  
and Radiation Docket and Information  
Center, Air Docket (6102), 401 M  
Street, SW., Washington, DC 20460.

New Jersey Department of  
Environmental Protection, Bureau of  
Air Quality Planning, 401 East State  
Street, CN027, Trenton, New Jersey  
08625.

#### FOR FURTHER INFORMATION CONTACT:

Reema Persaud, Air Programs Branch,  
290 Broadway, 25th Floor, New York,  
NY 10007–1866, (212) 637–4249,  
[persaud.reema@epa.gov](mailto:persaud.reema@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On December 15, 2003 (68 FR 69637), EPA published a notice of proposed rulemaking regarding a State Implementation Plan (SIP) revision submitted by the State of New Jersey. The notice proposed to approve a revision to the SIP for New Jersey's

enhanced inspection and maintenance (I/M) program. New Jersey made several amendments to its I/M rules to comply with EPA regulations and to improve performance of the program and requested that the SIP be revised to include these changes. Chief among the amendments EPA proposed to approve is New Jersey's On-Board Diagnostic (OBD) program. A detailed description of New Jersey's submittals and EPA's rationale for the proposed action were presented in the December 15, 2003 proposal, referenced above, and will not be restated here.

##### II. Public Comments on the Proposed Action

No comments were received for the proposed rulemaking published in the December 15, 2003 **Federal Register**.

##### III. Final Action

EPA is taking final action to approve New Jersey's OBD I/M program and additional changes to the I/M SIP discussed in the Notice of Proposed Rulemaking titled "Approval and Promulgation of Implementation Plans; New Jersey; Motor Vehicle Enhanced Inspection and Maintenance Program." EPA is approving the request for the exemption of OBD-eligible gasoline-fueled and bi-fueled school buses from enhanced I/M inspection, and for leasing companies and out-of-state dealerships to be allowed to issue temporary inspection decals. The SIP revision also incorporated several features of the current New Jersey Enhanced Inspection and Maintenance program, such as, the increase of the minimum cost expenditure value for the issuance of a waiver from \$200 to \$450; the exemption from dynamometer testing any motor vehicle "with a chassis height that has been modified so as to make its operation on a dynamometer either impractical or hazardous"; and the removal of all references to the evaporative pressure and purge test, while retaining the evaporative fuel cap leak test; and additional amendments to clarify definitions and other aspects of the program. The State demonstrated there is no adverse impact to air quality with the exemption of new cars from inspection for four years, as opposed to two years, and the change in the minimum cost expenditure value for the issuance of a waiver, from \$200 to \$450. Please refer to the proposed rulemaking 68 FR 69637 for further details on all approved measures. EPA's authority to approve New Jersey's enhanced I/M program is set forth at sections 110 and 182 of the Clean Air Act.

#### IV. Administrative 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 note) 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.*).

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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

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 may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

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

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

Dated: April 29, 2004.

**Jane M. Kenny**,  
Regional Administrator, Region 2.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### PART 52—[AMENDED]

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

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

#### Subpart FF—New Jersey

■ 2. Section 52.1570 is amended by adding new paragraph (c)(76) to read as follows:

#### § 52.1570 Identification of plan.

\* \* \* \* \*  
(c) \* \* \*  
\* \* \* \* \*

(76) Revisions to the New Jersey State Implementation Plan (SIP) concerning the Enhanced Inspection and Maintenance Program, submitted on August 13, 2003 by the New Jersey Department of Environmental Protection (NJDEP).

(i) Incorporation by reference:

(A) Title 13, Chapter 20 of the NJAC: Subchapter 7, "Vehicle Inspections" (Section: 7.1); Subchapter 26, "Compliance With Diesel Emission Standards and Equipment, Periodic Inspection Program for Diesel Emissions, and Self-Inspection of Certain Classes of Motor Vehicles" (Sections: 26.2, 26.16); Subchapter 28, "Inspection of New Motor Vehicles" (Section 28.3); Subchapter 29, "Mobile Inspection Unit" (Section: 29.2); Subchapter 32, "Inspection Standards and Test Procedures To Be Used By Official Inspection Facilities"; Subchapter 33, "Inspection Standards and Test Procedures To Be Used By Licensed Private Inspection Facilities"; Subchapter 43, "Enhanced Motor Vehicle Inspection and Maintenance Program"; Subchapter 44, "Private Inspection Facility Licensing"; and Subchapter 45, "Motor Vehicle Emission Repair Facility Registration," effective May 19, 2003.

(ii) Additional material:

(A) Letter from State of New Jersey Department of Environmental Protection dated August 13, 2003, requesting EPA approval of a revision to the Enhanced Inspection and Maintenance Program SIP which contains amendments to the Subchapter 16 "Control and Prohibition of Air Pollution from Volatile Organic Compounds."

■ 3. Section 52.1605 is amended by revising the entries under Title 13, Chapter 20 for Subchapters 7, 26, 28, 29, 32, 33, 43, 44, and 45 in the table in numerical order to read as follows:

**§ 52.1605 EPA-approved New Jersey regulations.**

State regulation	State effective date	EPA approved date	Comments
* * * * *			
Title 13, Chapter 20 Subchapter 7, "Vehicle Inspection." .....	May 19, 2003 .....	May 21, 2004 [Insert FR page citation].	
Sections: 7.1, 7.2, 7.3, 7.4, 7.5, 7.6.			
* * * * *			
Subchapter 26, "Compliance With Diesel Emission Standards and Equipment, Periodic Inspection Program for Diesel Emissions, and Self-Inspection of Certain Classes of Motor Vehicles." .....	May 19, 2003 .....	May 21, 2004 [Insert FR page citation].	
Section: 26.2, 26.16.			
* * * * *			
Subchapter 28, "Inspection of New Motor Vehicles." .....	May 19, 2003 .....	May 21, 2004 [Insert FR page citation].	
Sections: 28.3, 28.4, 28.6.			
* * * * *			
Subchapter 29, "Mobile Inspection Unit." .....	May 19, 2003 .....	May 21, 2004 [Insert FR page citation].	
Sections: 29.1, 29.2, 29.3.			
* * * * *			
Subchapter 32, "Inspection Standards and Test Procedures To Be Used By Official Inspection Facilities." .....	May 19, 2003 .....	May 21, 2004 [Insert FR page citation].	
* * * * *			
Subchapter 33, "Inspection Standards and Test Procedures To Be Used By Licensed Private Inspection Facilities." .....	May 19, 2003 .....	May 21, 2004 [Insert FR page citation].	
* * * * *			
Subchapter 43, "Enhanced Motor Vehicle Inspection and Maintenance Program." .....	May 19, 2003 .....	May 21, 2004 [Insert FR page citation].	
* * * * *			
Subchapter 44, "Private Inspection Facility Licensing." .....	May 19, 2003 .....	May 21, 2004 [Insert FR page citation].	
* * * * *			
Subchapter 45, "Motor Vehicle Emission Repair Facility Registration." .....	May 19, 2003 .....	May 21, 2004 [Insert FR page citation].	
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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[MD168-3110; FRL-7665-6]

**Finding of Failure To Submit Required State Implementation Plan Revision for the Metropolitan Washington, DC Ozone Nonattainment Area; Maryland**

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

**ACTION:** Final rule.

**SUMMARY:** The EPA is taking final action making a finding, under the Clean Air Act (CAA or Act), that the State of Maryland has failed to submit an ozone nonattainment state implementation plan (SIP) revision required by the new classification for the area under EPA's final rule that reclassified the Metropolitan Washington, DC ozone nonattainment area to severe nonattainment. EPA is issuing a finding that the State of Maryland failed to submit a SIP revision that provides for

the implementation of penalty fees upon major stationary sources of volatile organic compound and nitrogen oxide emissions in the Metropolitan Washington, DC severe ozone nonattainment area if the area fails to attain the one-hour ozone national ambient air quality standard. This action triggers the 18-month time clock for mandatory application of sanctions in Maryland and the 24-month time frame for EPA to promulgate a Federal implementation plan under 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.

**FOR FURTHER INFORMATION CONTACT:** Christopher Cripps, (215) 814-2179, or by e-mail at [cripps.christopher@epa.gov](mailto:cripps.christopher@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

*A. When Did EPA Reclassify the Metropolitan Washington, DC Ozone Nonattainment Area and What Was the Deadline for Submission?*

On January 24, 2003 (68 FR 3410), EPA promulgated a final rule reclassifying the Metropolitan Washington, DC ozone nonattainment area from serious to severe nonattainment for the 1-hour ozone national ambient air quality standard (NAAQS). This final rule established a deadline of March 1, 2004, by which the District, Maryland and Virginia were required to submit state implementation plan (SIP) revisions to their respective SIP to meet the additional requirements of severe ozone nonattainment areas found in section 182(d) of the CAA. These additional requirements were discussed in the notice of proposed rulemaking and the final rulemaking for the reclassification. See, 67 FR 68805, November 13, 2002 and 68 FR 3410, January 24, 2003.

The effect of our January 24, 2003 final rule (68 FR 3410) that reclassified the Metropolitan Washington, DC ozone nonattainment area to severe nonattainment was to set a new