

State regulation	State effective date	EPA approved date	Comments
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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.			
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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.			
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Subchapter 28, "Inspection of New Motor Vehicles." .....	May 19, 2003 .....	May 21, 2004 [Insert FR page citation].	
Sections: 28.3, 28.4, 28.6.			
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Subchapter 29, "Mobile Inspection Unit." .....	May 19, 2003 .....	May 21, 2004 [Insert FR page citation].	
Sections: 29.1, 29.2, 29.3.			
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Subchapter 32, "Inspection Standards and Test Procedures To Be Used By Official Inspection Facilities." .....	May 19, 2003 .....	May 21, 2004 [Insert FR page citation].	
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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].	
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Subchapter 43, "Enhanced Motor Vehicle Inspection and Maintenance Program." .....	May 19, 2003 .....	May 21, 2004 [Insert FR page citation].	
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Subchapter 44, "Private Inspection Facility Licensing." .....	May 19, 2003 .....	May 21, 2004 [Insert FR page citation].	
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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

attainment deadline for this area of November 15, 2005, and to require Maryland, Virginia and the District of Columbia to submit, as necessary, a revision or revisions to their SIPs for the Metropolitan Washington, D.C. ozone nonattainment area to meet the CAA's requirements for severe one-hour ozone nonattainment areas. Pursuant section 182(i), EPA set March 1, 2004 as the submittal deadline for Maryland, Virginia and the District of Columbia to submit these new planning requirements.

#### *B. What SIP Revisions Required by the Reclassification Have Not Been Submitted?*

Maryland has not submitted a SIP revision to implement the penalty fee provisions specified by CAA section 185. Section 185 of the CAA requires that major stationary sources of volatile organic compound (VOC) and nitrogen oxide (NO<sub>x</sub>) emissions located in severe ozone nonattainment areas pay a fee for every ton of annual emissions over 80 percent of a baseline amount if the area fails to attain the ozone national ambient air quality standards.<sup>1</sup> The fee is set at \$5,000 per ton (adjusted annually using the same consumer price index (CPI) adjustment as is used for the Title V operating permit program fees).

Pursuant to our January 24, 2003 reclassification final rule (68 FR 3410), under section 182(d)(3) of the CAA, Maryland was required to submit a SIP revision to implement this "section 185 fee" provision in the Metropolitan Washington, DC area and has not done so.

EPA believes that Maryland has made submittals addressing all the other severe area elements with the exception of the section 185 fee provision. EPA has determined that these submittals are complete.<sup>2</sup>

## **II. What Is the Schedule of Sanctions and Other Consequences of This Action?**

Under section 179(a) of the CAA, if EPA has not found that the State has made a complete submittal within 18 months of the effective date of EPA's

finding, pursuant to CAA section 179(a) and 40 CFR 52.31, the offset sanction identified in CAA section 179(b) will be applied in the affected area. If the State still has not made a complete submission six months after the offset sanction is imposed, then the highway funding sanction will apply in the affected areas, in accordance with 40 CFR 52.31. In addition, CAA section 110(c) provides for EPA to promulgate a Federal implementation plan (FIP) no later than two years after a finding under section 179(a).

The 18-month clock will stop and the sanctions will not take effect if, within 18 months after the date of the finding, EPA finds that the State has made a complete submittal. In addition, EPA will not promulgate a FIP if the State makes the required SIP submittal and EPA takes final action to approve the submittal within two years of EPA's finding.

In addition, EPA recently promulgated regulations addressing the transition from the 1-hour ozone NAAQS to the 8-hour ozone NAAQS.<sup>3</sup> These regulations provide that once the 1-hour ozone NAAQS is revoked for an area, the section 185 fees provision for purposes of the 1-hour ozone NAAQS will no longer apply. Because at that time the State would no longer be obligated to submit a SIP revision for the section 185 requirement for the 1-hour standard, the sanctions and FIP clocks would stop upon revocation of the 1-hour ozone NAAQS.

## **III. Final Action**

In this final rule, pursuant to section 179(a) of the CAA, EPA is issuing to the State of Maryland a finding of failure to submit a required SIP element for failure to submit a SIP revision to implement the provisions of section 185 of the CAA in the Metropolitan Washington, DC severe one-hour ozone nonattainment area.

At the same time as the signing of this document, the EPA Regional Administrator for Region III sent a letter to Maryland describing this finding in more detail. This letter and its enclosure is included in the docket to this rulemaking.

## **III. Notice-and-Comment Under the Administrative Procedures Act**

This notice is a final agency action, but is not subject to the notice-and-comment requirements of the APA, 5 U.S.C. 553(b). EPA believes that because of the limited time provided to make findings of failure to submit and

findings of incompleteness regarding SIP submissions or elements of SIP submission requirements, Congress did not intend such findings to be subject to notice-and-comment rulemaking. However, to the extent such findings are subject to notice-and-comment rulemaking, EPA invokes, consistent with past practice (for example, *see* at 65 FR at 81368, December 26, 2000, or, *see* 61 FR at 36294, July 10, 1996), the good cause exception pursuant to the APA, 5 U.S.C. 553(b)(3)(B). Notice and comment are unnecessary because no significant judgment is involved in making a nonsubstantive finding of failure to submit SIP revisions or elements of SIP submissions required by the Clean Air Act. Furthermore, providing notice and comment would be impracticable because of the limited time provided under the statute for making such determinations. Finally, notice and comment would be contrary to the public interest because it would divert agency resources from the critical substantive review of complete SIPs. *See* 58 FR 51270 (October 1, 1993) and 59 FR 39832 (August 4, 1994).

## **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). 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.*). The various CAA provisions discussed in this notice require the states to submit SIP revisions. This notice merely provides a finding that the states have not met those requirements. This notice does not, by itself, require any particular action by any State, local, or tribal government; or by the private sector and therefore is not a Federal mandate. This final rule will not have a significant impact on a substantial number of small entities because findings of failure to submit required SIP revisions do not by themselves create any new requirements. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities. Because this rule contains no Federal mandates

<sup>1</sup> Section 185 of the CAA only mentions major stationary sources of VOC emissions. However, section 182(f) requires the SIP for ozone nonattainment areas impose the same provisions on major stationary sources of NO<sub>x</sub> emissions as those imposed upon major stationary sources of VOC emissions unless EPA determines that the NO<sub>x</sub> provisions should not apply pursuant to one of the exceptions enumerated in section 182(f).

<sup>2</sup> EPA believes that the District of Columbia and Virginia each has made submittals addressing all the other severe area elements including the section 185 fee provision. EPA has determined that these submittals are complete.

<sup>3</sup> These regulations were published in the April 30, 2004, edition of the **Federal Register**

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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**BILLING CODE 6560-50-P**

## **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](mailto: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