

15. Reynolds, M.G., et al., "Clinical Manifestations of Human Monkeypox Influenced by Route of Infection," *Journal of Infectious Diseases*, 2006; 773-780.

16. Sejvar, J.J., et al., "Human Monkeypox Infection: A Family Cluster in the Midwestern United States," *Journal of Infectious Diseases*, 2004; 190:1833-1840.

17. Xiao, S., et al., "Experimental Infection of Prairie Dogs with Monkeypox Virus," *Emerging Infectious Diseases*, 2005; 11:539-545.

## II. Comments

Through this document, FDA is announcing the addition of the previous materials to the administrative docket and inviting comment limited to these publications. FDA believes that a 30-day comment period is sufficient in this case, as the agency is specifically limiting its reopening of the comment period to comments on how the agency should consider the information being added to the administrative docket in relation to FDA's interim final rule. Comments are invited, and will be considered, only to the extent they are focused on the specific information being added to the record of FDA's interim final rule.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the documents listed above. Submit a single copy of electronic comments or two copies of any mailed comments, except that individuals may submit one paper copy. Comments should be identified with the docket number found in brackets in the heading of this document. Received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 9, 2007.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. E7-2857 Filed 2-20-07; 8:45 am]

**BILLING CODE 4160-01-S**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[Docket No. EPA-R02-OAR-2006-0685, FRL-8275-5]

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

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

**ACTION:** Final rule.

**SUMMARY:** The EPA is approving a revision to the State Implementation Plan (SIP) for New York's motor vehicle enhanced inspection and maintenance (I/M) program which includes the adoption of a statewide On-Board Diagnostic (OBD) program. New York has made revisions to Title 6 of the New York Codes, Rules and Regulations (NYCRR), Part 217, "Motor Vehicle Enhanced Inspection and Maintenance Program Requirements," and Title 15 NYCRR Part 79, "Motor Vehicle Inspection Regulations," to comply with EPA regulations and to improve performance of its I/M program. The intended effect of this action is to maintain consistency between the State-adopted rules and the federally approved SIP and to approve a control strategy that will result in emission reductions that will help achieve attainment of the national ambient air quality standard for ozone.

**DATES:** *Effective Date:* This rule will be effective March 23, 2007.

**ADDRESSES:** EPA has established a docket for this action under the Federal Docket Management System (FDMS) which replaces the Regional Materials in EDOCKET (RME) docket system. The new FDMS is located at [www.regulations.gov](http://www.regulations.gov) and the docket ID for this action is EPA-R02-OAR-2006-0685. All documents in the docket are listed in the FDMS index. Publicly available docket materials are available either electronically in FDMS or in hard copy at the Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866. Copies of the documents relevant to this action are also available for public inspection during normal business hours, by appointment at the Air and Radiation Docket and Information Center, Environmental Protection Agency, Room 3334, 1301 Constitution Avenue, NW., Washington, DC; and the New York State Department of Environmental Conservation, Division of Air Resources, 625 Broadway, Albany, New York 12233.

**FOR FURTHER INFORMATION CONTACT:** Kirk J. Wieber, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-3381.

#### SUPPLEMENTARY INFORMATION:

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## I. Background

### A. What Are the Clean Air Act Requirements for I/M Programs?

The Clean Air Act (CAA) requires certain states to implement an enhanced inspection and maintenance (I/M) program to detect gasoline-fueled motor vehicles which exhibit excessive emissions of certain air pollutants. The enhanced I/M program is intended to help states meet federal health-based national ambient air quality standards (NAAQS) for ozone and carbon monoxide by requiring vehicles with excess emissions to have their emissions control systems repaired. Section 182 of the CAA requires I/M programs in those areas of the nation that are most impacted by carbon monoxide and ozone pollution. Section 184 of the CAA also created an "Ozone Transport Region" (OTR) which geographically includes the 11 states from Maryland to Maine (including all of New York State) and the District of Columbia Consolidated Metropolitan Statistical Area. Depending on the severity of the nonattainment designation(s) and/or geographic location within the OTR, EPA's regulation under 40 CFR 51.350 outlines the appropriate motor vehicle I/M requirements.

As a result of the 1-hr ozone nonattainment designations, New York State's 62 counties were divided into two separate I/M areas. The "downstate" 9-county New York Metropolitan Area (NYMA), which includes New York City (Bronx, Kings, New York, Richmond, and Queens Counties), Long Island (Nassau and Suffolk Counties), and Westchester and Rockland Counties, has been classified as a high enhanced I/M area. On January 1, 1998, New York began implementing a high enhanced I/M program (New York refers to this program as its NYTEST program) in the NYMA. By May 1999, this enhanced I/M program was fully functional for the entire NYMA.

The remaining 53 "Upstate" counties of New York State were classified as a low enhanced I/M area. Since 1998, the Upstate I/M area featured annual anti-tampering visual inspections including a gas cap presence check.

Since all of New York State is included within the OTR, additional I/M requirements are mandated in the more populated counties of Upstate New York pursuant to 40 CFR 51.350(a). Section 51.350(a)(1) provides that,

"States or areas within an ozone transport region shall implement enhanced I/M programs in any metropolitan statistical area (MSA), or portion of an MSA, within the state or area with a 1990 population of 100,000 or more as defined by the Office of Management and Budget (OMB) regardless of the area's attainment classification." Further, section 51.350(b)(1) provides that, "[i]n an ozone transport region, the program shall entirely cover all counties within subject MSAs or subject portions of MSAs, as defined by OMB in 1990, except largely rural counties having a population density of less than 200 persons per square mile based on the 1990 Census can be excluded except that at least 50 percent of the MSA population must be included in the program \* \* \*." In effect, 16 of the 53 counties located in Upstate New York are required to have low enhanced I/M. The 16 counties are Albany, Broome, Chautauqua, Dutchess, Erie, Monroe, Niagara, Oneida, Onondaga, Orange, Putnam, Rensselaer, Schenectady, Saratoga, Warren and Washington.

On April 5, 2001, EPA published in the **Federal Register** "Amendments to Vehicle Inspection and Maintenance Program Requirements Incorporating the On-Board Diagnostics Check" (66 FR 18156). The revised I/M rule requires that electronic checks of the On-Board Diagnostics (OBD) system on model year 1996 and newer OBD-equipped motor vehicles be conducted as part of states' motor vehicle I/M programs. OBD is part of the sophisticated vehicle powertrain management system and is designed to detect engine and transmission problems that might cause vehicle emissions to exceed allowable limits. OBD is the subject of this proposed rulemaking action.

The OBD system monitors the status of up to 11 emission control related subsystems by performing either continuous or periodic functional tests of specific components and vehicle conditions. The first three testing categories—misfire, fuel trim, and comprehensive components—are continuous, while the remaining eight only run after a certain set of conditions has been met. The algorithms for running these eight periodic monitors are unique to each manufacturer and involve such things as ambient temperature as well as driving conditions. Most vehicles will have at least five of the eight remaining monitors (catalyst, evaporative system, oxygen sensor, heated oxygen sensor, and exhaust gas recirculation or EGR system) while the remaining three (air conditioning, secondary air, and heated

catalyst) are not necessarily applicable to all vehicles. When a vehicle is scanned at an OBD-I/M test site, these monitors can appear as either "ready" (meaning the monitor in question has been evaluated), "not ready" (meaning the monitor has not yet been evaluated), or "not applicable" (meaning the vehicle is not equipped with the component monitor in question).

The OBD system is also designed to fully evaluate the vehicle emissions control system. If the OBD system detects a problem that may cause vehicle emissions to exceed 1.5 times the Federal Test Procedure (FTP) standards, then the Malfunction Indicator Light (MIL) is illuminated. By turning on the MIL, the OBD system notifies the vehicle operator that an emission-related fault has been detected, and the vehicle should be repaired as soon as possible thus reducing the harmful emissions contributed by that vehicle.

EPA's revised OBD I/M rule applies to only those areas that are required to implement I/M programs under the CAA, which include the NYMA and certain counties in Upstate New York. This rule established a deadline of January 1, 2002 for states to begin performing OBD checks on 1996 and newer model OBD-equipped vehicles and to require repairs to be performed on those vehicles with malfunctions identified by the OBD check.

EPA's revised I/M rule also provided several options to states to delay implementation of OBD testing, under certain circumstances. An extension of the deadline for states to begin conducting mandatory OBD checks is permissible provided the state making the request can show just cause to EPA for a delay and that the revised implementation date represents "the best the state can reasonably do" (66 FR 18159). EPA's final rule identifies factors that may serve as a possible justification for states considering making a request to the EPA to delay implementation of OBD I/M program checks beyond the January 2002 deadline. Potential factors justifying such a delay include contractual impediments, hardware or software deficiencies, data management software deficiencies, the need for additional training for the testing and repair industries, and the need for public education or outreach.

On May 7, 2001 (66 FR 22922), EPA fully approved New York's enhanced I/M program as it applies to NYMA and included the state's performance standard modeling as meeting the applicable requirements of the CAA. However, the OBD component of that

program was not being implemented at that time and therefore was not approved by EPA as satisfying a fully operational OBD program. Additional information on EPA's final approval of New York's enhanced I/M program can be found in EPA's May 7, 2001 final approval notice.

#### *B. What Did New York Include in This Latest Submittal?*

On April 4, 2002, the New York State Department of Environmental Conservation (NYSDEC) requested a formal extension of the OBD I/M test deadline, per EPA's I/M requirement rule. New York's request lists contractual impediments, hardware and software deficiencies and data management deficiencies as the factors for its request for an extension of the OBD testing deadline. Based upon the reasons listed by New York, EPA believed that the State's delayed implementation was justified.

On February 27, 2006, NYSDEC submitted to EPA a revision to its SIP which incorporates OBD system requirements in the NYMA and the 53 counties located in Upstate New York. New York's SIP revision includes revisions to the NYSDEC regulation found at Title 6 of the New York Codes, Rules and Regulations (NYCRR), Part 217, "Motor Vehicle Enhanced Inspection and Maintenance Program Requirements," and the New York State Department of Motor Vehicles (NYSDMV) regulation found at Title 15 NYCRR Part 79, "Motor Vehicle Inspection Regulations," and a performance standard modeling demonstration. On October 12, 2006 (71 FR 60098), EPA proposed to approve New York's revised enhanced I/M program which includes the adoption of a statewide OBD program. For a detailed discussion on the content and requirements of the revisions to New York's regulations, the reader is referred to EPA's proposed rulemaking action.

#### *C. What Action Is EPA Taking Today?*

The EPA is approving a revision to the New York SIP pertaining to New York's enhanced I/M program which incorporates OBD testing requirements and procedures in the NYMA and the 53 counties located in Upstate New York (New York refers to this program as the New York Vehicle Inspection Program (NYVIP)). EPA is also repealing Title 6 of the NYCRR, Subpart 217-2, "Motor Vehicle NY 91 Inspection and Maintenance Program Requirements" and Title 15 NYCRR Part 79, Section 26, which previously included exhaust emission standards and inspection/repair procedures that are no longer

being relied upon by or necessary for New York State to implement as part of its enhanced I/M program.

## II. What Comments Did EPA Receive in Response to Its Proposal?

In response to EPA's October 12, 2006 proposed rulemaking action, EPA received no comments.

## III. Summary of Conclusions

EPA's review of the materials submitted indicates that New York has revised its I/M program in accordance with the requirements of the CAA, 40 CFR part 51 and all of EPA's technical requirements for an approvable OBD program. EPA is approving the revisions to the NYSDEC regulation Title 6 of the NYCRR, Part 217, "Motor Vehicle Enhanced Inspection and Maintenance Program Requirements," specifically, Subpart 217-1, "Motor Vehicle Enhanced Inspection and Maintenance Program Requirements" and Subpart 217-4, "Inspection and Maintenance Program Audits," effective on October 30, 2002, and the New York State Department of Motor Vehicles regulation Title 15 NYCRR Part 79 "Motor Vehicle Inspection Regulations," specifically, Sections 79.1-79.15, 79.17, 79.20, 79.21, 79.24, and 79.25, effective on May 4, 2005. The CAA gives states the discretion in program planning to implement programs of the state's choosing as long as necessary emission reductions are met. EPA is also approving New York's performance standard modeling demonstration, which reflects the State's I/M program as it is currently implemented in the 53 counties located in Upstate New York (NYVIP), as meeting the required EPA alternate low enhanced I/M performance standards.

## IV. Statutory and Executive Order Reviews

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 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 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 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 Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 23, 2007. 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, Sulfur oxides, Volatile organic compounds.

Dated: January 23, 2007.

**Alan J. Steinberg,**

*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 HH—New York

■ 2. Section 52.1670 is amended by adding new paragraph (c)(111) to read as follows:

#### § 52.1670 Identification of plans.

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

(111) Revisions to the State Implementation Plan submitted on February 27, 2006, by the New York State Department of Environmental Conservation, which consist of administrative changes to its motor vehicle enhanced inspection and maintenance (I/M) program which includes the adoption of a statewide On-Board Diagnostic (OBD) program.

(i) Incorporation by reference:  
 (A) Regulation Title 6 of the New York Codes, Rules and Regulations (NYCRR), Part 217, "Motor Vehicle Enhanced Inspection and Maintenance Program Requirements," specifically, Subpart 217-1, "Motor Vehicle Enhanced Inspection and Maintenance Program Requirements" and Subpart 217-4, "Inspection and Maintenance Program Audits," effective on October 30, 2002, and the New York State Department of Motor Vehicles regulation Title 15 NYCRR Part 79 "Motor Vehicle Inspection Regulations," specifically, Sections 79.1-79.15, 79.17, 79.20, 79.21, 79.24, and 79.25, effective on May 4, 2005.  
 ■ 3. In 52.1679, the table is amended by revising the entries under Title 6 for Part 217 and Title 15 for Part 79 to read as follows:  
**§ 52.1679 EPA-approved New York State regulations.**

New York State regulation	State effective date	Latest EPA approval date	Comments
Title 6:			
Part 217, Motor Vehicle Emissions: Subpart 217-1, Motor Vehicle Enhanced Inspection and Maintenance Program Requirements.	10/30/02	2/21/07	[Insert FR page citation].
Subpart 217-4, Inspection and Maintenance Program Audits	10/30/02	2/21/07	[Insert FR page citation].
Title 15:			
Part 79, "Motor Vehicle Inspection Regulations" Sections 79.1-79.15, 79.17, 79.20, 79.21, 79.24, 79.25.	5/4/05	2/21/07	[Insert FR page citation].

[FR Doc. E7-2801 Filed 2-20-07; 8:45 am]  
 BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52 and 70**

[EPA-R07-OAR-2006-0803; FRL-8278-8]

**Approval and Promulgation of Implementation Plans and Operating Permits Program; State of Missouri**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving revisions to the Missouri State Implementation Plan (SIP) and Operating Permits Program. The revisions clarify the rule and streamline processes without negatively impacting air quality. The approved revisions will ensure consistency between the state and the Federally-approved rules.

**DATES:** This direct final rule will be effective April 23, 2007, without further notice, unless EPA receives adverse comment by March 23, 2007. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R07-OAR-2006-0803, by one of the following methods:

1. *http://www.regulations.gov*. Follow the online instructions for submitting comments.
2. *E-mail: algoe-eakin.amy@epa.gov*.
3. *Mail:* Amy Algoe-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.
5. *Hand Delivery or Courier:* Deliver your comments to Amy Algoe-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

*Instructions:* Direct your comments to Docket ID No. EPA-R07-OAR-2006-0803. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an

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

*Docket:* All documents in the electronic docket are listed in the *http://www.regulations.gov index*. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are