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**SUPPLEMENTARY INFORMATION:**

**I. Background**

On April 16, 2001, the North Carolina Department of Environment and Natural Resources submitted a revision to the North Carolina State Implementation Plan (SIP) modifying rule 15A NCAC 2D .0521 Visible Emissions. These revisions include an exemption to this rule for engine maintenance and testing controls where visible emissions controls are infeasible.

Additionally, rule .0521 is being amended to establish an equitable reasonable procedure for sources using continuous opacity monitors (COM) to show compliance with the visible emission standard. This amendment is designed to provide sources using COMs the same opportunity to comply with the visible emissions rule as sources that do not use COM devices. Under the previous rule, the opacity is violated if two six minute averages exceed the standard in one hour or if five six-minute averages exceed the standard in 24 hours. Under the new amendment, sources with COMs are allowed to exceed the current opacity limit for up to .8 percent of the total operating hours without violating the visible emissions rule. Exceedances of the opacity limit greater than .8 percent of the total operating hours will be considered a violation of this rule.

In a letter dated March 29, 2002, EPA provided comments to North Carolina explaining the additional requirements that must be met in order for EPA to approve this rule. These requirements included the submittal of a worst case demonstration proving that such an exemption would not violate the National Ambient Air Quality Standards. On July 10, 2002, North Carolina submitted this demonstration to EPA. After a detailed review of this demonstration, EPA finds that North Carolina's amendments to rule .0521 Visible Emissions are approvable.

In addition to the revision being addressed within this notice, several other revisions were contained in this submittal and approved in 67 FR 51527. The additional revisions included the adoption of rules 15 NCAC 2Q .0316 and .0317, and the amending of rules .0109, .0803 and .0805 through .0808.

**II. Final Action**

EPA is approving the aforementioned changes to the SIP because the revisions are consistent with Clean Air Act and EPA regulatory requirements. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective August 5, 2003, without further notice unless the Agency receives adverse comments by July 7, 2003.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on August 5, 2003, and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

**III. 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 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,