

enforcement alternative including direct Federal enforcement.

Another organization commented that West Virginia has immediate authority to implement the provisions of the Energy Policy Act of 1992 to protect water and homes from damage from underground mining (Administrative Record Number WV-978). To get prompt, strict enforcement of the provisions of the Energy Policy Act the commenter recommended that OSM log and track all water loss and subsidence complaints and independently assess the State's conclusions. The State and OMS have agreed to set up a joint team to review all the complaints relating to subsidence and water loss filed between October 24, 1992, through July 10, 1995, the date of the new State subsidence procedures discussed above. However, since West Virginia has equivalent provisions to the Federal subsidence regulations (with the subsidence procedures policy of July 10, 1995) it is the State's responsibility to enforce those provisions. OSM will conduct normal oversight of the West Virginia program for the period following July 10, 1995, using the ten-day notice process if necessary.

The commenter also made additional recommendations. The Regional Director notes, however, the subject of the comments (baseline groundwater well sampling, presubidence survey requirements at 30 CFR 784.20, and timeframes for submitting State amendments to fully address such other requirements) are outside the scope of this notice.

A third organization commented that although West Virginia has statutory and regulatory provisions in place that correspond in some ways to the requirements of the Federal law, OSM should select joint State and OSM initial enforcement of the provisions of the Energy Policy Act of 1992 that the State has not yet fully addressed (Administrative Record Number WV-981). The commenter specifically noted that the West Virginia program currently allows the waiver of water replacement rights by current landowners, and that it is unclear whether the State means to apply the requirements of the Energy Policy Act only to "permits" issued on or after October 24, 1992, or to all portions of operations conducted after October 24, 1992. The Regional Director notes, and as discussed above, the State has implemented on July 10, 1995, new subsidence policy procedures that address the commenter's concerns. According to the new State subsidence procedures, all permits, regardless of issuance date, are liable for subsidence damage caused by underground mining

that occurred after October 24, 1992. As for the waiver language at West Virginia Code section 22A-3-24(b) and the State regulations at CSR 38-2-14.5(h) concerning the waiver of water supply replacement, the Regional Director notes that the West Virginia program contains the requirements of 30 CFR 817.41(j) concerning drinking, domestic or residential water supply. The Regional Director notes that the State and OSM will jointly review all the complaints that were filed between October 24, 1992, and July 10, 1995, to ensure that the State's past enforcement actions complied with the requirements of the Energy Policy Act of 1992. If a complaint was filed that meets the criteria of the Energy Policy Act of 1992. If a complaint was filed that meets the criteria discussed above, State officials will take enforcement action to require the company to comply with the new policy.

The commenter also provided comments regarding proof of damage through presubidence surveys and baseline monitoring and delays in program implementation. Those concerns are outside the scope of this document, but will be addressed at a later date.

Director's decision. Based on the information provided by West Virginia, discussions held with the State on July 13, 1995, and the comments discussed above, the Regional Director has decided that enforcement of the underground coal mine subsidence control and water replacement requirements in West Virginia will be accomplished through State enforcement.

OSM's initial concern that the West Virginia program does not have adequate authority to enforce the provisions of the Energy Policy Act of 1992 has been addressed by the State. On July 10, 1995, West Virginia implemented new State subsidence policy procedures that require repair or compensation for subsidence damage after October 24, 1992, consistent with 30 CFR 817.121(c)(2), and the approved program requires replacement of water supplies consistent with 30 CFR 817.41(j). In addition, OSM and the State will jointly review all the complaints filed between October 24, 1992, through July 10, 1995, to ensure that the State's past actions with regard to these complaints are consistent with the Energy Policy Act of 1992.

If circumstances within West Virginia change significantly, the Regional Director may reassess this decision. Formal reassessment of this decision would be addressed by notice in the **Federal Register**.

Dated: July 24, 1995.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 95-18584 Filed 7-27-95; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN131-1-6794a; TN136-1-6795a; TN137-1-6796a; FRL-5257-5]

Approval and Promulgation of Air Quality Implementation Plans; Tennessee; Basic Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving three state implementation plan (SIP) revisions submitted on March 17, July 8 and July 13, 1994, by the State of Tennessee, through the Tennessee Air Pollution Control Division. The revisions submitted March 17, 1994, modify the existing basic motor vehicle inspection and maintenance (I/M) program in Davidson County to meet the requirements of the EPA I/M regulations, as published on November 5, 1992. The revisions submitted on July 8 and July 13, 1994, establish and require the implementation of a basic I/M program in the four middle Tennessee counties of Rutherford, Sumner, Williamson, and Wilson. These counties, along with Davidson County, form the Nashville ozone nonattainment area. The regulations establishing the I/M program constituted the July 8, 1994, submittal while the nonregulatory components of the program were discussed in the July 13, 1994, submittal.

DATES: This final rule will be effective September 26, 1995 unless adverse or critical comments are received by August 28, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to Dale Aspy at the EPA Regional office listed below.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Air and Radiation Docket and Information Center (Air Docket), U.S.

Environmental Protection Agency,
401 M Street, SW., Washington, DC
20460.

Environmental Protection Agency,
Region 4, Air Programs Branch, 345
Courtland Street, NE., Atlanta,
Georgia 30365.

Air Pollution Control Division,
Tennessee Department of
Environment and Conversation, 9th
Floor, L & C Annex, 401 Church
Street, Nashville, Tennessee 37243-
1531.

Bureau of Environmental Health
Services, Nashville and Davidson
County Metropolitan Health
Department, 311 23rd Street, North,
Nashville, Tennessee 37203.

FOR FURTHER INFORMATION CONTACT: Dale
Aspy, Mobile Source Planning Unit,
Regulatory Planning and Development
Section, Air Programs Branch, Air,
Pesticides & Toxics Management
Division, Environmental Protection
Agency, Region 4, 345 Courtland Street,
NE., Atlanta, Georgia 30365. The
telephone number is 404/347-3555,
extension 4214. Reference files TN131,
TN136 and TN137.

SUPPLEMENTARY INFORMATION:

I. Background

The Clean Air Act as amended in 1990 (the Act) requires that most ozone nonattainment areas adopt either "basic" or "enhanced" I/M programs, depending on the severity of the problem and the population of the area. The moderate ozone nonattainment areas, plus marginal ozone areas with existing or previously required I/M programs, fall under the "basic" I/M requirements. Enhanced programs are required in serious, severe, and extreme ozone nonattainment areas with 1980 urbanized populations of 200,000 or more.

The Act requires states to make changes to improve existing I/M programs or to implement new ones for certain nonattainment areas. Section 182(a)(2)(B) of the Act directed EPA to publish updated guidance for state I/M programs, taking into consideration findings of the Administrator's audits and investigations of these programs. The Act further requires each area required to have an I/M program to incorporate this guidance into the SIP. Based on these requirements, EPA promulgated I/M regulations on November 5, 1992 (57 FR 52950, codified at 40 Code of Federal Regulations (CFR) 51.350-51.373).

The I/M regulation establishes minimum performance standards for basic I/M programs as well as requirements for the following: network

type and program evaluation; adequate tools and resources; test frequency and convenience; vehicle coverage; test procedures and standards; test equipment; quality control; waivers and compliance via diagnostic inspection; motorist compliance enforcement; motorist compliance enforcement program oversight; quality assurance; enforcement against contractors, stations and inspectors; data collection; data analysis and reporting; inspector training and licensing or certification; public information and consumer protection; improving repair effectiveness; compliance with recall notices; on-road testing; SIP revisions; and implementation deadlines. The performance standard for basic I/M programs remains the same as it has been since initial I/M policy was established in 1978, pursuant to the 1977 amendments to the Clean Air Act.

The State of Tennessee contains the Nashville urbanized area which is designated as moderate nonattainment for ozone. Section 51.372(b)(2) of the federal I/M regulation (codified at 40 CFR Part 51.372(b)(2)) required affected states to submit full I/M SIP revisions that met the requirements of the Act to EPA by November 15, 1993.

On March 17, 1994, the Davidson County Health Department, through the Tennessee Air Pollution Control Division (APCD), submitted a SIP revision addressing required changes to the existing I/M program in Davidson County. The major changes made to the Davidson County I/M program were the elimination of the exemption for vehicles over 12 model years old and the addition of a three point anti-tampering program. The proposed amendments will include a visual check for catalytic converters, gasoline fuel inlet restrictors and fuel filler caps, and the requirement that all vehicles manufactured in model year 1975 or newer be tested as a condition of renewing registration.

On July 8 and July 13, 1994, the State of Tennessee, through the Tennessee APCD, submitted to EPA SIP revisions for a basic I/M program for the four counties surrounding Davidson County. The counties of Rutherford, Sumner, Williamson, and Wilson constitute the remainder of the Nashville ozone nonattainment area. An I/M program was required to be implemented in the urbanized area, which includes a portion of these counties by the I/M applicability requirements which were revised in 40 CFR Part 51.350 on November 5, 1992. The first submittal was for the purpose of adding Chapter 1200-3-29, Light Duty Motor Vehicle Inspection and Maintenance, of the

Tennessee Air Regulation to the Tennessee SIP. The second submission was made to add all required nonregulatory elements of the I/M program to the SIP. The I/M regulations were approved by the Tennessee Air Pollution Board on September 8, 1993, and became state effective on June 29, 1994. Mandatory vehicle testing in the four counties of Rutherford, Sumner, Williamson, and Wilson began on December 1, 1994. EPA summarizes the requirements of the federal I/M regulations as found in 40 CFR Part 51.350-51.373 and its analysis of the state submittal below. Parties desiring additional details on the federal I/M regulation are referred to the November 5, 1992, **Federal Register** notice (57 FR 52950) or 40 CFR Part 51.350-51.373.

II. EPA's Analysis of Middle Tennessee Basic I/M Program

As discussed above, section 182(a)(2)(B) of the Act requires that states adopt and implement updated regulations for I/M programs in moderate and above ozone nonattainment areas. The following sections of this notice summarize the requirements of the federal I/M regulations and address whether the elements of the State's submittal comply with the federal rule.

Applicability—40 CFR 51.350

Section 182(b)(4) of the Act and 40 CFR 51.350(a)(4) require that any area classified as moderate ozone nonattainment and not required to implement enhanced I/M under 40 CFR 51.350(a)(1) shall implement basic I/M in the 1990 Census-defined urbanized nonattainment area. The urbanized portion of the Nashville nonattainment area contains Davidson County, and sections of Rutherford County, Sumner County, Williamson County, and Wilson County. Davidson County has operated an I/M program since 1985 and submitted on March 17, 1994, through the Tennessee APCD, the required revisions to that program. An analysis of the urbanized area utilizing the revised provisions of this section, identified the need to expand the current, Davidson County only program, to include the remainder of the nonattainment area. The program boundaries described in the Tennessee submittal meet the federal I/M requirements under section 51.350 and are approvable.

The federal I/M regulation requires that the state program shall not lapse prior to the time it is no longer needed. EPA believes that a program that does not lapse prior to the attainment deadline for each applicable area would meet this requirement. The attainment

date for the Nashville ozone nonattainment area is November 15, 1996, and the I/M regulations contained in the Tennessee submittal does not establish an I/M program implementation sunset date prior to the attainment deadline.

Basic I/M Performance Standard—40 CFR 51.352

The basic I/M program must be designed and implemented to meet or exceed a minimum performance standard, which is expressed as emission levels in area-wide average grams per mile (gpm) for certain pollutants. The performance standard shall be established using local characteristics, such as vehicle mix and local fuel controls, and the following model I/M program parameters: network type, start date, test frequency, model year coverage, vehicle type coverage, exhaust emission test type, emission standards, emission control device, evaporative system function checks, stringency, waiver rate, compliance rate and evaluation date. The emission levels achieved by the state's program design shall be calculated using the most current version, at the time of submittal, of the EPA mobile source emission factor model. At the time of the Tennessee submittal the most current version was MOBILE5a. Areas shall meet or exceed the performance standard for the pollutants which cause them to be subject to basic I/M requirements. In the case of ozone nonattainment areas, the performance standard must be met for both NO_x and VOCs.

The Tennessee submittal for the Davidson County I/M program includes the following program design parameters:

network type—centralized, test-only
start date—1985
test frequency—annual
model year coverage—1975 and later
vehicle type coverage—light gasoline powered vehicles
emission test—Idle
emission standards—1.2% CO, 220 ppm HC
emission control device—Catalytic converter, gas cap, fuel inlet restrictor
stringency (pre-1981 failure rate)—20%
waiver rate (pre-81/81 and newer)—0%/0%
compliance rate—98%
evaluation date(s)—January 1, 1997

The Tennessee submittal for the four additional counties includes the following program design parameters:

network type—centralized, test-only
start date—1995
test frequency—annual
model year coverage—1975 and later
vehicle type coverage—light gasoline powered vehicles
emission test—Idle

emission standards—1.2% CO, 220 ppm HC
emission control device—Catalytic converter, gas cap, fuel inlet restrictor
stringency (pre-1981 failure rate)—20%
waiver rate (pre-81/81 and newer)—0%/0%
compliance rate—98%
evaluation date(s)—January 1, 1997

The Tennessee program design parameters meet the federal I/M regulations and are approvable.

The emission levels achieved by these programs were modeled using MOBILE5a. The modeling demonstration was performed correctly, used local characteristics and demonstrated that the program design will exceed the minimum basic I/M performance standard, expressed in gpm, for VOCs and NO_x for each milestone and for the attainment deadline. The modeling demonstration is approvable.

Network Type and Program Evaluation—40 CFR 51.353

Basic I/M programs can be operated in a centralized test-only format, in a decentralized test and repair, or in any hybrid version as long as the state can demonstrate that the selected program is effective in achieving the basic I/M performance standard. The Tennessee APCD will administer a centralized I/M program in the four counties previously identified while the Davidson County Health Department will continue to administer the centralized I/M program in that county. The enhanced program evaluation requirements of this section do not pertain to the Tennessee program as it is a basic I/M program. The network type is approvable.

Adequate Tools and Resources—40 CFR 51.354

The federal regulation requires the state to demonstrate that adequate funding of the program is available. A portion of the test fee or separately assessed per vehicle fee shall be collected, placed in a dedicated fund and used to finance the program. Alternative funding approaches are acceptable if demonstrated that the funding can be maintained. Reliance on funding from the state or local General Fund is not acceptable unless doing otherwise would be a violation of the state's constitution. The SIP shall include a detailed budget plan which describes the source of funds for personnel, program administration, program enforcement, and purchase of equipment. The SIP shall also detail the number of personnel dedicated to the quality assurance program, data analysis, program administration, enforcement, public education and

assistance and other necessary functions.

The Tennessee program is to be funded by direct reimbursement of the primary contractor from vehicle inspection fees. A portion of the vehicle inspection fee will be returned to APCD to cover the cost of program oversight and will be sufficient to cover the program related activities. This method meets the federal regulation and is approvable. The submittal demonstrates that sufficient funds, equipment and personnel have been appropriated to meet program operation requirements. The Tennessee submittal meets the adequate tools and resources requirements set forth in the federal I/M regulations.

Test Frequency and Convenience—40 CFR 51.355

The SIP shall describe the test year selection scheme, how the test frequency is integrated into the enforcement process and shall include the legal authority, regulations or contract provisions to implement and enforce the test frequency. The program shall be designed to provide convenient service to the motorist by ensuring short wait times, short driving distances and regular testing hours.

The Tennessee and Davidson County I/M regulations provide for an annual test frequency for all covered vehicles. A vehicle is assigned a registration month. The vehicle owner must present a valid, passing, emission certificate in order to renew the registration of the vehicle. The emission certificate is valid for 90 days after the test. The program contractor notifies the vehicle owner when their vehicles may be tested. The program also defines acceptable wait times in the contract. Waiting times shall not exceed a daily average of 15 minutes for more than five consecutive days. If this time is exceeded, the state can require additional lanes to be opened. The submittal meets the requirements for testing frequency and convenience.

Vehicle Coverage—40 CFR 51.356

The performance standard for basic I/M programs assumes coverage of all 1968 and later model year light duty vehicles (LDV) and light duty trucks (LDT) up to 8,500 pounds gross vehicle weight rating (GVWR), and includes vehicles operating on all fuel types. Other levels of coverage may be approved if the necessary emission reductions are achieved. Vehicles registered or required to be registered within the I/M program area boundaries and fleets primarily operated within the I/M program area boundaries and

belonging to the covered model years and vehicle classes comprise the subject vehicles. Fleets may be officially inspected outside of the normal I/M program test facilities, if such alternatives are approved by the program administration, but shall be subject to the same test requirements using the same quality control standards as non-fleet vehicles and shall be inspected in independent, test-only facilities, according to the requirements of 40 CFR Part 51.353(a). Vehicles which are operated on federal installations located within an I/M program area shall be tested, regardless of whether the vehicles are registered in the state or local I/M area.

The federal I/M regulation requires that the SIP shall include the legal authority or rule necessary to implement and enforce the vehicle coverage requirement, a detailed description of the number and types of vehicles to be covered by the program and a plan for how those vehicles are to be identified including vehicles that are routinely operated in the area but may not be registered in the area, and a description of any special exemptions including the percentage and number of vehicles to be impacted by the exemption.

The Davidson County and Tennessee I/M regulations require all 1975 and newer model year gasoline powered vehicles up to 8,500 pounds gross vehicle weight registered in Davidson, Rutherford, Sumner, Williamson, and Wilson Counties except motorcycles, and vehicles which the APCD Administrator has determined shall not be tested because of fuel or engine characteristics, to be tested annually. This includes light duty vehicles and light duty trucks up to 8,500 pounds gross vehicle weight rating. The SIP submittals contain a listing of the number of subject vehicles in each county. Quality control requirements apply equally to both the centralized testing stations and the fleet self testers. Federally owned vehicles are subject to the testing requirements. Vehicles from other areas may be tested. Owners of subject vehicles that will be outside of the test area during the assigned test period may request an extension. However, they must submit the vehicle for an emission test upon return to the area.

The State's plan for testing fleet vehicles is acceptable and meets the requirements of the federal I/M regulation.

Test Procedures and Standards—40 CFR 51.357

Written test procedures and pass/fail standards shall be established and followed for each model year and vehicle type included in the program. Test procedures and standards are detailed in 40 CFR Part 51.357 and in the EPA document entitled "Recommended I/M Short Test Procedures For the 1990's: Six Alternatives."

The Tennessee I/M submittals include a description of the test procedure used in the Tennessee I/M program. The program contract requires an idle test procedure to be utilized. This procedure is an EPA short test procedure. A vehicle failing the initial test is preconditioned at 2500 revolutions per minute for about 25–30 seconds and retested at idle. These test procedures conform to EPA approved test procedures and are approvable. The State I/M regulation establishes hydrocarbon (HC) and carbon monoxide (CO) pass/fail exhaust standards for all test procedures for each applicable model year and vehicle type. The exhaust standards adopted by the state conform to EPA established standards and are approvable.

Test Equipment—40 CFR 51.358

Computerized test systems are required for performing any measurement on subject vehicles. The federal I/M regulation requires that the state SIP submittal include written technical specifications for all test equipment used in the program. The specifications shall describe the emission analysis process, the necessary test equipment, the required features, and written acceptance testing criteria and procedures.

The Davidson County and Tennessee I/M contracts require exhaust analyzers that meet the BAR90 performance specifications. These specifications require the use of computerized test systems. The specifications also include performance features and functional characteristics of the computerized test systems which meet the federal I/M regulations and are approvable.

Quality Control—40 CFR 51.359

Quality control measures shall insure that emission measurement equipment is calibrated and maintained properly, and that inspection, calibration records, and control charts are accurately created, recorded and maintained.

Section 8 of the contract and section 8 of the Tennessee APCD portion of the SIP submittal discuss quality control and assurance. The Davidson County

contract also discusses these items. These portions of the submittal include the quality control requirements for the emission measurement equipment, record keeping requirements and measures to maintain the security of all documents used to establish compliance with the inspection requirements. This portion of the Tennessee submittal complies with the quality control requirements set forth in the federal I/M regulation and is approvable.

Waivers and Compliance Via Diagnostic Inspection—40 CFR 51.360

The federal I/M regulation allows for the issuance of a waiver, which is a form of compliance with the program requirements that allows a motorist to comply without meeting the applicable test standards.

The Davidson County and Tennessee regulations do not provide for waivers. These provisions meet the federal I/M regulations requirements and are approvable.

Motorist Compliance Enforcement—40 CFR 51.361

The federal regulation requires that compliance shall be ensured through the denial of motor vehicle registration in I/M programs. However, a basic area may use an alternative enforcement mechanism if it demonstrates that the alternative will be as effective as registration denial. The SIP shall provide information concerning the enforcement process, legal authority to implement and enforce the program, a commitment to a compliance rate to be used for modeling purposes and to be maintained in practice.

The Davidson County and Tennessee I/M regulations provide the legal authority to implement a registration denial enforcement mechanism. The County Clerk's office can not issue a registration renewal without a passing emission test. Section 9 of the Tennessee APCD SIP submittal and Appendix 1 of the Davidson County SIP submittal discuss penalties to vehicle owners not complying with the requirement. The Davidson County Health Department and APCD will conduct reviews in their respective program areas of the Clerk's office registration to insure the regulation is enforced. The SIP contains a commitment to maintain the modeled compliance rate in practice. This portion of the Tennessee submittal meets the federal requirements and is approvable.

Motorist Compliance Enforcement Program Oversight—40 CFR 51.362

The federal I/M regulation requires that the enforcement program shall be audited regularly and shall follow effective program management practices, including adjustments to improve operation when necessary. The SIP shall include quality control and quality assurance procedures to be used to insure the effective overall performance of the enforcement system. An information management system shall be established which will characterize, evaluate and enforce the program.

The Davidson County and Tennessee I/M regulations provide the legal authority to implement a registration denial enforcement system. The Davidson County Health Department and Tennessee APCD will audit the County Clerk's Office to insure the regulation is enforced. This portion of the Tennessee submittal meets the federal requirements and is approvable.

Quality Assurance—40 CFR 51.363

An ongoing quality assurance program shall be implemented to discover, correct and prevent fraud, waste, and abuse in the program. The program shall include covert and overt performance audits of the inspectors, audits of station and inspector records, equipment audits, and formal training of all state I/M enforcement officials and auditors. A description of the quality assurance program which includes written procedure manuals on the above discussed items must be submitted as part of the SIP.

The Tennessee submittal includes a quality assurance program which describes details and procedures for implementing inspector, records, and equipment audits. Performance audits of inspectors and testing equipment will be performed by Davidson County Health Department and APCD personnel in their respective jurisdictions. Section 8 of the Tennessee APCD contract addresses quality assurance requirements. Section 8 of the Tennessee APCD SIP submittal addresses quality assurance procedures as well. Appendices 1 and 7 of the Davidson County submittal discuss these items as well. In both cases, overt and covert audits and remote observation of inspection personnel performing testing are included. Overt audits may be performed by Davidson County Health Department and APCD personnel at any time, unannounced, during station operation. Covert audits are required to use a range of vehicles which have been set to fail the

inspection test. The quality assurance requirements and procedures in the Tennessee I/M program meet the federal I/M regulation requirements and are approvable.

Enforcement Against Contractors, Stations and Inspectors—40 CFR 51.364

Enforcement against licensed stations or contractors, and inspectors shall include swift, sure, effective, and consistent penalties for violation of program requirements. The federal I/M regulation requires the establishment of minimum penalties for violations of program rules and procedures which can be imposed against stations, contractors and inspectors. The legal authority for establishing and imposing penalties, civil fines, license suspensions and revocations must be included in the SIP. State quality assurance officials shall have the authority to temporarily suspend station and/or inspector licenses immediately upon finding a violation that directly affects emission reduction benefits. An official opinion explaining any state constitutional impediments to immediate suspension authority must be included in the submittal. The SIP shall describe the administrative and judicial procedures and responsibilities relevant to the enforcement process, including which agencies, courts and jurisdictions are involved, who will prosecute and adjudicate cases and the resources and sources of those resources which will support this function.

The Tennessee submittal includes the legal authority to establish and impose penalties against stations, contractors and inspectors. Section 9 of the Tennessee APCD SIP submittal states that civil penalties of up to \$25,000 per day can be imposed for violations. Appendix 4 of the Davidson County submittal discusses this issue in that county's program. In both programs, the program auditors also have the ability to immediately shut down any testing lane they find not to be in compliance. The testing lane will remain out of operation until the necessary corrective action has been taken and a followup audit confirms the lane is operating properly. Per contract agreements with the system contractor and the State of Tennessee, the contractor is required to comply with all applicable federal, state, and county regulations. The contractor has to post a performance bond to help insure program operations comply with all regulations. The Tennessee I/M enforcement program can suspend and/or revoke fleet inspection licenses for violations. Inspectors may be decertified. The Tennessee I/M program

meets the requirements of this section and is approvable.

Data Collection—40 CFR 51.365

Accurate data collection is essential to the management, evaluation and enforcement of an I/M program. The federal I/M regulation requires data to be gathered on each individual test conducted and on the results of the quality control checks of test equipment required under 40 CFR Part 51.359.

Section 10 of the Tennessee SIP submittal specifies the information contained on the inspection form. Appendix 4, the contract, of the Davidson County submittal, contains the specifications for equipment and data. The contract, in section 12 of the Tennessee APCD submittal, requires the contractor to work with Davidson County and the State in the development of the test forms and the associated data fields. Data requirements are also specified in the covert and overt audit section of the Procedures and Policies section of the SIP. The type of test data collected meets the federal I/M regulation requirements and is approvable. The submittal also commits to gather and report the results of the quality control checks required under 40 CFR Part 51.359 and is approvable.

Data Analysis and Reporting—40 CFR 51.366

Data analysis and reporting are required to allow for monitoring and evaluation of the program by the state and EPA. The federal I/M regulation requires annual reports to be submitted which provide information and statistics and summarize activities performed for each of the following programs: testing, quality assurance, quality control and enforcement. These reports are to be submitted by July and shall provide statistics for the period of January to December of the previous year. A biennial report shall be submitted to EPA which addresses changes in program design, regulations, legal authority, program procedures and any weaknesses in the program found during the two year period and how these problems will be or were corrected.

The Tennessee I/M program SIP provides for the analysis and reporting of data for the testing program, quality assurance program, quality control program and the enforcement program. The type of data to be analyzed and reported meets the federal I/M regulation requirements and is approvable. Tennessee commits to submit annual reports on these programs to EPA by July of the

subsequent year. These annual reports will be submitted July 1, 1996, and each July 1 thereafter, covering the previous test year. Biennial reports will be submitted to discuss any changes in program design and procedures, and the appropriate corrective action taken.

Inspector Training and Licensing or Certification—40 CFR 51.376

The federal I/M regulation requires all inspectors to be formally trained and licensed or certified to perform inspections.

Both the Tennessee regulations and the contract require all inspectors to receive formal training, be licensed by the Davidson County Health Department or the APCD and renew the certification every year. In order to be licensed, the inspector must attend a training course and pass an examination. Currently, policies are being drafted by the APCD to officially require a score of at least 80% to pass. The SIP meets the federal I/M regulation requirements for inspector training and certification and is approvable.

Public Information and Consumer Protection—40 CFR 51.368

The federal I/M regulation requires the SIP to include public information and consumer protection programs.

The contracts provided with both SIP submittals include a public information program which educates the public on I/M, State and federal regulations, air quality and the role of motor vehicles in the air pollution problem and other items as described in the federal rule. The consumer protection program includes provisions for a challenge mechanism, and providing assistance to motorists in obtaining warranty covered repairs. Section 11 of the Tennessee APCD SIP submittal and Appendices 10, 11, and 13 of the Davidson County submittal discusses the various components of the public information and consumer protection program that will be implemented as part of the I/M program. The public information and consumer protection programs contained in the SIP submittal meet the federal regulations and are approvable.

Improving Repair Effectiveness—40 CFR 51.369

Effective repairs are the key to achieving program goals. The federal regulation requires states to take steps to ensure that the capability exists in the repair industry to repair vehicles. The SIP must include a description of the technical assistance program to be implemented, and a description of the repair technician training resources available in the community.

Section 10 of the Tennessee APCD contract contains a provision identifying the State as being responsible for interfacing with the repair industry with respect to technical assistance and technician training. The repair effectiveness program described in the SIP meets the federal regulation and is approvable.

Compliance With Recall Notices—40 CFR 51.370

The federal regulation requires the states to establish methods to ensure that vehicles that are subject to enhanced I/M and are included in an emission related recall receive the required repairs prior to completing the emission test or renewing the vehicle registration.

The Nashville ozone nonattainment area is classified as moderate and therefore not subject to this provision.

On-road Testing—40 CFR 51.371

On-road testing is required in enhanced I/M areas.

The Nashville ozone nonattainment area is classified as moderate and therefore not subject to this provision.

State Implementation Plan Submissions/Implementation Deadlines—40 CFR 51.372-373

The federal regulation requires centralized basic I/M programs to be fully implemented by July 1, 1994. The Davidson County portion of the Nashville nonattainment area has been in operation since 1985. This constitutes the largest portion of the vehicles in the area. Testing began on December 1, 1994 in the four surrounding counties. Although this testing began several months late, the SIP revision is now approvable as the program has been implemented in the four additional counties as required.

On April 1, 1994, the State of Tennessee was notified by EPA of a failure to submit the I/M plan as required. This action started the sanctions clock and the Federal Implementation Plan (FIP) clocks. Letters were sent on July 18 and August 2, 1994, notifying the Tennessee APCD that the submitted middle Tennessee I/M SIP revisions had been determined to be complete. This action stopped the sanctions clock. The FIP clock will be stopped by the final approval of this SIP provision.

EPA's review of the material indicates that the State has adopted a basic I/M program in accordance with the requirements of the Act. EPA is approving the Tennessee SIP revision for revisions to the Davidson County I/M program, as submitted on March 17,

1994, and for a basic I/M program in Rutherford, Sumner, Williamson, and Wilson counties which was submitted on July 8 and July 13, 1994.

Final Action

The EPA is publishing this action without prior proposal because the agency views this as a noncontroversial amendment and anticipates no adverse public comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comment be filed. This action will be effective September 26, 1995 unless, by August 28, 1995, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be discussed in a subsequent final rule based on the separate proposed rule. The EPA will not institute a second comment period for this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective September 26, 1995.

EPA is approving this revision to the Tennessee SIP for a basic I/M program. The Agency has reviewed this request for revision of the Federally-approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements.

Under section 307(b)(1) of the Act, 42 U.S.C. 7607 (b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 26, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for 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) of the Act, 42 U.S.C. 7607 (b)(2).)

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state

implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2).

Under Sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any local or tribal governments have elected to adopt the program provided for under Section 182 of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action will impose any mandate upon the State, local, or tribal governments either as the owner or operator of a source or as a regulator, or would impose any mandate upon the private sector, EPA's action will impose no new requirements; such sources are already subject to these

regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of \$100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and Recordkeeping requirements.

Dated: June 28, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of chapter I, title 40, *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. 7401-7671q.

Subpart RR—Tennessee

2. Section 52.2220, is amended by adding paragraph (c)(126) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(126) Modifications to the existing basic I/M program in Davidson County to implement an anti-tampering check, and to require testing of vehicles from model year 1975 and newer, submitted on March 17, 1994. Addition of a basic I/M program in the remainder of the middle Tennessee ozone nonattainment area, submitted on July 8, 1994.

(i) Incorporation by reference.

(a) Metropolitan Health Department Pollution Control Division Regulation 8, approved by the Tennessee Air Pollution Control Board on March 9, 1994.

(b) Regulation 1200-3-29, effective on September 8, 1993.

(ii) Other material. None.

3. Section 52.2235 is amended by adding paragraph (b) to read as follows:

§ 52.2235 Control Strategy for Ozone.

* * * * *

(b) Nonregulatory provisions for the implementation of a basic I/M program in Rutherford, Sumner, Williamson, and Wilson Counties, submitted on July 13,

1994, were approved by EPA on September 26, 1995.

[FR Doc. 95-18511 Filed 7-27-95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

[KY77-1-6553a; FRL-5257-8]

Approval and Promulgation of Air Quality Implementation Plans; Kentucky; Basic Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a state implementation plan (SIP) revision submitted on November 12, 1993, by the Commonwealth of Kentucky, through the Kentucky Natural Resources and Environmental Protection Cabinet. This revision modifies the implementation of a basic motor vehicle inspection and maintenance (I/M) program in Jefferson County, Kentucky, which will include commuter vehicles in the program.

DATES: This final rule will be effective September 26, 1995 unless adverse or critical comments are received by August 28, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to Dale Aspy at the EPA Regional office listed below.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

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

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365.

Air Pollution Control District of Jefferson County 850 Barrett Avenue, Suite 205, Louisville, Kentucky 40204.

Division for Air Quality, Department for Environmental Protection, Natural Resources and Environmental Protection Cabinet, 316 St. Clair Mall, Frankfort, Kentucky 40601.

FOR FURTHER INFORMATION CONTACT: Dale Aspy, Mobile Source Planning Unit, Regulatory Planning and Development Section, Air Programs Branch, Air,