

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,

Pesticides & Toxics Management Division, Environmental Protection Agency, Region IV, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347-3555, extension 4214. Reference file KY KY77-1-6553.

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 Commonwealth of Kentucky contains the Louisville urbanized area portion of the Louisville ozone nonattainment area which is classified as moderate. The Louisville ozone nonattainment area also includes two counties in Indiana. Section 51.372(b)(2) of the federal I/M regulation (codified at 40 CFR 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. This notice addresses only the Jefferson County portion of the nonattainment area.

On November 12, 1993, the Commonwealth of Kentucky, through the Kentucky Natural Resources and Environmental Protection Cabinet submitted to EPA a revised SIP for an improved basic I/M program for Jefferson County. This submittal included revisions to Regulation 8.01, Mobile Source Emissions Control; Regulation 8.02, Vehicle Emissions Testing Procedure; and 8.03, Commuter Vehicle Testing Requirements. The I/M regulations were adopted by the Department of Planning and Environmental Management, Air Pollution Control District (APCD) of Jefferson County, Kentucky on February 17, 1993, and became effective on March 1, 1993, and on September 14, 1993, for Regulation 8.03. EPA summarizes the requirements of the Federal I/M regulations as found in 40 CFR 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 51.350-51.373.

II. EPA's Analysis of the Louisville, Kentucky, 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 Commonwealth'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 Louisville nonattainment area includes most, but not all of Jefferson County, a portion of Bullitt County, Kentucky, and portions of Clark and Floyd Counties in Indiana. The population distribution of these counties is such that an equivalent or greater population is covered by an I/M program in all of Jefferson County, Kentucky, and all of Clark and Floyd Counties in Indiana. The Kentucky submittal contains the legal authority and regulations necessary for the Jefferson County APCD to establish the program boundaries and operate a basic I/M program. The I/M program for Clark and Floyd Counties will be submitted by Indiana and will be addressed in a separate notice.

The program boundaries described in the Kentucky submittal meet the Federal I/M requirements under section 51.350 and are approvable.

The Federal I/M regulation requires that state programs shall not lapse prior to the time they are no longer needed. EPA has concluded 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 Louisville ozone nonattainment area is November 15, 1996, and the Jefferson County I/M regulations contained in the Kentucky submittal do not establish an I/M program implementation sunset date prior to the attainment deadline. EPA therefore concludes that this section is approvable.

Jefferson County's Regulation 8.03 also subjects owners or operators of vehicles who routinely or regularly commute to Jefferson County, Kentucky, for employment or self-employment to the same vehicle emissions testing program as residents of the county. The employer is responsible for providing a list of such vehicle owners subject to the provisions of this regulation. EPA has determined this section of the submittal is approvable.

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 Kentucky 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 Kentucky submittal includes the following program design parameters:

network type—centralized, test-only
 start date—1984
 test frequency—annual
 model year coverage—1968 and later
 vehicle type coverage—light and heavy duty gasoline powered vehicles
 emission test—Idle
 emission standards—1.2 percent CO, 220 ppm HC
 emission control device—none
 evaporative system checks (pressure)—1984 and later
 stringency (pre-1981 failure rate)—20 percent
 waiver rate (pre-81/81 and newer)—22 percent/17 percent
 compliance rate—99 percent
 evaluation date(s)—January 1, 1997

The Jefferson County, Kentucky, program design parameters meet the Federal I/M regulations and are approvable.

The emission levels achieved by the County 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 states can demonstrate that the selected program is effective in achieving the basic I/M performance standard. The APCD will administer a centralized I/M program in Jefferson County. The enhanced program evaluation requirements of this section do not pertain to the Jefferson County 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 states 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 a 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 Jefferson County, Kentucky, 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 activities of the audit contractor, and the Department of Planning and Environmental Management. 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 Commonwealth submittal meets the adequate tools and resources requirements set forth in the Federal I/M regulations and is approvable.

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 Jefferson County, Kentucky, I/M regulation provides for an annual test frequency for all covered vehicles. A vehicle is assigned a test month. Prior to the assigned test month, the program contractor notifies the vehicle owner when their vehicles may be tested. The

vehicle may be tested in either the month prior to the assigned month or in the assigned month. Vehicle owners not complying with the testing requirement by the end of the assigned month are notified they are in violation and subject to criminal prosecution. Continued noncompliance results in a court appearance. A guilty verdict results in a fine and the mandatory payment of court costs. The assignment of test months within each test year will be made using a method to be determined by the program contractor, and is based on the registration month of the vehicle. The program RFP sets standards for station convenience and requires a station in each quadrant of Jefferson County. The contract calls for all lanes to be operational at peak times as defined in the Request For Proposals (RFP). The contract also calls for additional lanes to be opened as practical whenever queuing in all operating lanes at a station exceeds an average of five cars per operating lane. The submittal meets the requirements for testing frequency and convenience and is approvable.

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 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 Jefferson County I/M regulation requires all vehicles up to 18,000 pounds gross vehicle weight registered in the county except diesel vehicles, two stroke motorcycles, and vehicles which the APCD Administrator has determined shall not be tested because of fuel or engine characteristics, to be tested annually. In addition to light duty vehicles and light duty trucks, motorcycles, motorhomes, and large gasoline powered vehicles are subject to testing. Vehicle owners are notified that the vehicle is required to be tested prior to registration via a computer matching mechanism. Noncomplying vehicle owners are issued a Notice of Violation. Regulation 8.03 also requires commuters into Jefferson County to have their vehicles tested. This regulation requires all employers to submit a list of employees that live outside of Jefferson County but commute to their jobs in Jefferson County. Fleet self testing is allowed only for businesses not involved in the general repair or sales of vehicles. 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 and the APCD will also accept test results from other approved testing programs. Exempted vehicles are taken into account in the performance standard demonstration.

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

Owners of vehicles which are registered in the program area but are operated more than 250 miles outside of the area for extended periods, such as with students and military personnel, may apply for an extension. The vehicle owner must present a sworn affidavit with documentation that the vehicle will be based at the remote location for the time period claimed. The vehicle must be presented for testing once it is returned to Jefferson County. The Kentucky submittal meets the requirements of this section.

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 Commonwealth's I/M submittal includes a description of the test procedure used in the Louisville I/M program. The program contract requires the procedure described in Appendix H, which contains the EPA short tests mentioned above, to be utilized. Specifically, Test 1 provides for minor modifications to EPA's "Idle Test Procedure with Loaded Preconditioning." Test 2 contains the same modifications to EPA's "Idle Test Procedure." The modification is to allow the Contractor to declare an Initial Test Mode Failure at less than the overall maximum initial test time of 55 seconds which shall result in performing the second chance as prescribed in the referenced EPA document. Regulation 8.02 added the requirement for testing the evaporative system with the EPA recommended pressure test. The evaporative system pressure test procedure is the EPA procedure described in Appendix B, Subpart 5, Part 51.

These test procedures conform to EPA approved test procedures and are approvable. The I/M regulation for Jefferson County 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 Commonwealth conform to EPA established standards and are approvable. The Jefferson County I/M regulation establishes evaporative pressure test standards which 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 state SIP submittals 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 Jefferson County I/M regulation and RFP 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 9 of the Jefferson County regulations, the RFP, and the contract all contain 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. A special software encryption algorithm codes the "Inspection Number" field on the test form and cannot be duplicated without access to the source code. The RFP also contains the requirement for two mobile audit vans which provide overt audit capability. They are provided by the contractor, but used by APCD personnel. This portion of the Kentucky 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. For basic I/M programs, an expenditure of at least \$75 for pre-81 vehicles and \$200 for 1981 and later vehicles in repairs, is required in order to qualify for a waiver. Waivers can only be issued after a vehicle has failed a retest performed after all qualifying repairs have been made. Any available warranty coverage must be used to obtain repairs before expenditures can be counted toward the cost limit. Tampering related repairs shall not be applied toward the cost limit. Repairs must be appropriate to the cause of the test failure. Repairs for 1980 and newer model year vehicles must be performed by a recognized repair technician. The Federal regulation allows for compliance via a diagnostic inspection after failing a retest on emissions and requires quality control of waiver issuance. The SIP must set a maximum waiver rate and must describe corrective action that would be taken if the waiver rate exceeds that contained in the SIP.

The Jefferson County regulation provides the necessary authority to

issue waivers, set cost limits, administer and enforce the waiver system. The submittal commits to a maximum waiver rate as established in the performance standard demonstration and commits to corrective action to reduce the waiver rate if this value is exceeded. The Jefferson County Regulation 8.01 sets a \$75 cost limit for pre-81 vehicles and \$200 for 1981 and newer vehicles. The regulation includes provisions which address waiver criteria and procedures, including cost limits, tampering and warranty related repairs, quality control and administration. A unique feature of the regulation is any vehicle owner requesting a waiver must submit the vehicle for review at the APCD referee test center and must show a measurable improvement in emissions. A vehicle repair form must be submitted by the owner at that time, verifying the repairs. The vehicle is diagnosed by APCD personnel that must be ASE certified Master Mechanics as well as sworn Kentucky peace officers and EPA Administrator designated representatives for tampering and fuels. 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 Jefferson County regulation provides the legal authority to implement a computer matching enforcement system. The RFP contains a detailed description of the enforcement process. The contractor is responsible for data operations. This includes a requirement to update the database every Monday. A database of tested vehicles is compared to a database of registered subject vehicles. The testing process for the vehicle owner begins when the owner is sent a reminder of the testing requirement by the contractor. Any owner failing to obtain a certificate of compliance by the end of the assigned month will be sent a notice of violation (NOV) which states that if the vehicle is brought in for testing that month no further action will be taken. A legal notice called Notice of

Court Action (NOCA) will be sent by the contractor to the vehicle owner who fails to have the vehicle tested by the end of the NOV month. This notice states that, if the owner obtains a certificate of compliance by a specified cutoff date, a criminal complaint which has already been prepared in his name, will not be processed by the Jefferson County District Court. The cutoff date is established by the APCD each month. When an owner fails to obtain a certificate of compliance by the cutoff date, a sworn criminal complaint is filed in the Jefferson district court pursuant to the Kentucky Rules of Criminal Procedure. The fine for violations shall not be less than \$10 and not more than \$50 for the first offense and not less than \$50 or more than \$100 for each subsequent offense. Payment of court costs by a defendant, upon conviction, shall be mandatory and cannot be probated or suspended.

Jefferson County Regulation 8.03 contains a requirement that people living outside of the County but working in it must have their vehicles inspected. The employer is responsible for providing a list of vehicle owners subject to this requirement. An employer may be fined up to \$500 per day per offense. Enforcement against vehicle owners is the same as for residents of Jefferson County. The submittal commits to maintaining the compliance rate used in the performance standard demonstration. This portion of the Kentucky 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 Jefferson County regulation provides the legal authority to implement a computer matching enforcement system. The RFP contains a detailed description of the enforcement process. The submittal also describes the process used in auditing the computer matching enforcement mechanism. Compliance with the vehicle inspection program is audited by the Jefferson County APCD by

routine checks of Kentucky vehicle registration records against I/M test records. Additionally, Jefferson County APCD enters all court records of all noncompliance cases into a computer program to verify appropriate action was taken. Cases are identified as ultimately receiving the inspection after appropriate legal action, the vehicle being removed from the owner's record because of sale or scrappage of vehicle, or no test required because the vehicle has been removed from use on the road. This portion of the Kentucky 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 Kentucky 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 the APCD personnel. Regulation 8, Sections 8 and 9 require various quality assurance and control functions be performed to insure correct program operation. These include overt and covert audits and remote observation of inspection personnel performing testing. Overt audits may be performed by 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 RFP requires the contractor to develop quality assurance and control procedures as well as operations manuals. The quality assurance requirements and procedures in the Jefferson County 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. 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 Kentucky submittal includes the legal authority to establish and impose penalties against stations, contractors and inspectors. The Jefferson County enforcement program is staffed by Kentucky peace officers and immediate action and prosecution is taken when needed. The Jefferson County APCD auditors can suspend licenses and operations immediately upon detection of a violation. The RFP establishes fines to the contractor for failure to perform as required. Inspectors may be decertified. The Jefferson County 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 51.359.

Jefferson County Regulation 8.01, Section 7, specifies the information contained on the inspection form. The RFP requires the collection of data, and subsequent analysis, on each individual test conducted and describes the type of data to be collected. 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 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 states 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 Jefferson County I/M program RFP 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. Jefferson County commits to submit all required reports to EPA. Additionally, Jefferson County APCD commits to submitting the 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. The submittal commits to the reports required under 40 CFR 51.366 and is approvable.

Inspector Training and Licensing or Certification—40 CFR 51.367

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

The Jefferson County I/M regulation requires all inspectors to receive formal training, be certified by APCD and renew the certification every year. The inspector must attend a training course and pass an examination with at least a score of 80%. 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 a public information and consumer protection program. The RFP includes a public information program which educates the public on I/M, Commonwealth 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, protection of whistle blowers and providing assistance to motorists in obtaining

warranty covered repairs. 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, a description of the procedures and criteria to be used in meeting the performance monitoring requirements required in the Federal regulation and a description of the repair technician training resources available in the community.

The Jefferson County regulations contain a provision regarding vehicle repair forms. These must be completed by a professional mechanic registered with the APCD, or the vehicle owner in cases of self-repair. A mechanic registered by the APCD must pass an APCD training course in which air pollution and vehicles are discussed. The APCD also maintains a hotline staffed by ASE certified master technicians. Motorists whose vehicles fail the test are given a repair facility report card. This report card contains information regarding a facility's success in repairing vehicles and having them pass the inspection retest. The APCD provides regular feedback to each facility on their repair performance. The performance monitoring program design meets the criteria described in the Federal regulation and is approvable. 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 Jefferson County 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 use of either remote sensing devices (RSD) or roadside pullovers including tailpipe emission testing can be used to meet the Federal regulations. The program must

include on-road testing of 0.5% of the subject fleet or 20,000 vehicles, whichever is less, in the nonattainment area or the I/M program area. Motorists that have passed an emission test and are found to be high emitters as a result of a on-road test shall be required to pass an out-of-cycle test.

The Jefferson County 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 January 1, 1994. The Jefferson County I/M program has been in operation since 1984. The changes required by the CAA were implemented during 1993. The SIP meets the SIP submission and implementation deadline requirements set forth in the Federal I/M regulation.

EPA's review of the material indicates that the Commonwealth has adopted a basic I/M program in accordance with the requirements of the Act. EPA is approving the Kentucky SIP revision for a basic I/M program in Jefferson County, which was submitted on November 12, 1993.

Final Action

The EPA is approving the Jefferson County I/M revision and 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 Kentucky 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. sections 7410(a)(2) and 7410(k)(3).

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 S—Kentucky

2. Section 52.920, is amended by adding paragraph (c)(72) to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

(72) Modifications to the existing basic I/M program in Jefferson County to implement an anti-tampering check, pressure testing of the evaporative control system, and testing of commuter vehicles submitted by the Commonwealth of Kentucky on November 12, 1993.

(i) Incorporation by reference. Regulation 8.01 and 8.02, adopted on February 17, 1993, and Regulation 8.03 adopted on February 17, 1993.

(ii) Other material. None.

* * *

[FR Doc. 95-18513 Filed 7-27-95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

[NC-062-1-6430a; NC-068-1-6632a; NC-067-1-6633a; FRL-5254-6]

Approval and Promulgation of Implementation Plans; State: Approval of Revisions to the State of North Carolina's State Implementation Plan (SIP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the North Carolina State Implementation Plan (SIP) to allow the State and two local air pollution control agencies to issue Federally enforceable state operating permits (FESOP) and Federally enforceable local operating permits (FELOP). On May 31, 1994, the State of North Carolina through the Department of Environment, Health, and Natural Resources (DEHNR) submitted a SIP revision fulfilling the requirements necessary to issue FESOP. On June 1, 1994, the Forsyth County Department of Environmental Affairs (FCDEA) through the DEHNR submitted a SIP revision fulfilling the requirements necessary to allow Forsyth County to issue FELOP. On September 15, 1994, the Western North Carolina Regional Air Pollution Control Branch (WNCRAPCB) through the DEHNR submitted a SIP revision fulfilling the requirements necessary to allow the Western North Carolina to issue FELOP. These submittals conform with the requirements necessary for a state or local agency's minor source operating permit program to become Federally enforceable. In order to extend the Federal enforceability of state and local operating permits to hazardous air pollutants (HAP), EPA is also proposing approval of the North Carolina, Forsyth

County, and Western Carolina FESOP and FELOP regulations pursuant to section 112 of the Act.

DATES: This action will be effective by September 26, 1995 unless notice is received by August 28, 1995 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES:

Written comments should be addressed to Scott Miller at the EPA Regional office listed below.

Copies of the material submitted by North Carolina may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), 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.

North Carolina Department of Health, Environment, and Natural Resources, Air Quality Section, P.O. Box 29535, Raleigh, North Carolina 27626.

Forsyth County Environmental Affairs Department, Air Quality Section, 537 North Spruce Street, Winston-Salem, North Carolina 27101.

Western North Carolina Regional Air Pollution Control Agency, Buncombe County Courthouse, 60 Court Plaza, Asheville, North Carolina 28801.

FOR FURTHER INFORMATION CONTACT: Scott Miller, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365. The telephone number is 404/347-3555 extension 4153. Reference file numbers NC-068-1-6632; NC-067-1-6633; NC-062-1-6430.

SUPPLEMENTARY INFORMATION: On May 31, 1994, June 1, 1994, and September 15, 1994, the State of North Carolina, the FCDEA, and the WNCRAPCB, respectively, through the DEHNR submitted SIP revisions designed to allow the three agencies to issue operating permits which are Federally enforceable pursuant to EPA requirements as specified in a **Federal Register** notice, "Requirements for the preparation, adoption, and submittal of implementation plans; air quality, new source review; final rules." (See 54 FR 22274, June 28, 1989). These voluntary SIP revisions allow EPA and citizens to enforce terms and conditions of state-issued and local-issued minor source operating permits. In addition, operating

permits that are issued under a state or local agency's minor source operating permit program that is approved into the SIP may provide Federally enforceable limits to an air pollution source's potential to emit. Limiting of a source's potential to emit through Federally enforceable operating permits can affect a source's applicability to Federal regulations such as title V operating permits, New Source Review (NSR) preconstruction permits, Prevention of Significant Deterioration (PSD) preconstruction permits for criteria pollutants and Federal air toxics requirements mandated under section 112 of the Clean Air Act as amended in 1990 (CAA).

In the aforementioned June 28, 1989, **Federal Register** document, EPA listed five criteria necessary to allow a state or local agency's operating permit program to become Federally enforceable and, therefore, approvable into the SIP.

The first criteria for a state or local agency's operating permit program to become Federally enforceable is that the FESOP or FELOP program must be approved into the SIP. On May 31, 1994, June 1, 1994, and September 15, 1994, the State of North Carolina, the FCDEA, and the WNCRAPCB, respectively, through the DEHNR submitted SIP revisions designed to meet the five criteria for Federal enforceability. This action will approve these regulations into the North Carolina SIP, thereby, meeting the first criteria for Federal enforceability.

The second criteria for a state's operating permit program to become Federally enforceable is that the regulations approved into the SIP impose a legal obligation that operating permit holders adhere to the terms and limitations of such permits. North Carolina Regulation 15A NCAC 2Q.0306(b) addresses this requirement by outlining specific measures that the State may take in the event of the "failure of the owner or operator of a source permitted pursuant to this Rule to adhere to the terms and limitations of the permit." These measures include an enforcement action, permit termination, revocation, and reissuance as well as a denial of permit renewal application. Both the FCDEA and the WNCRAPCB operating permit programs meet this requirement by a verbatim incorporation of the State's Regulation 15A NCAC 2Q.0306(b) into their regulations.

The third criteria necessary for a state or local agency's operating permit program to be Federally enforceable is that the operating permit program require that all emissions limitations, controls, and other requirements imposed by such permits will be at least