

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[MO 168-1168; FRL-7444-3]

#### Approval and Promulgation of Implementation Plans; State of Missouri

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

**ACTION:** Proposed rule.

**SUMMARY:** We, the EPA, are announcing a proposal to approve a revision to the state implementation plan (SIP) for the inspection and maintenance (I/M) program operating in the Missouri portion of the St. Louis, Missouri, nonattainment area. Missouri has made several amendments to the I/M rule to improve performance of the program and has requested that the SIP be revised. The effect of this action would be to ensure Federal enforceability of the state air program rules and to maintain consistency between the state-adopted rules and the approved SIP.

**DATES:** Comments must be received on or before March 3, 2003.

**ADDRESSES:** Written comments should be mailed to Leland Daniels, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of documents relative to this action are available for public inspection during normal business hours at the above-listed Region 7 location. Interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

**FOR FURTHER INFORMATION CONTACT:** Leland Daniels at (913) 551-7651.

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a SIP?

What is the Federal approval process for a SIP?

What are the criteria for SIP approval?

What does Federal approval of a state regulation mean to me?

What is being addressed in this document?

Have the requirements for approval of a SIP revision been met?

What action is EPA taking?

#### What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality

meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

#### What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion in the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If relevant adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, Part 52, entitled "Approval and Promulgation of Implementation Plans." The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are "incorporated by reference," which means that we have approved a given state regulation with a specific effective date.

#### What Are the Criteria for SIP Approval?

In order to be approved into a SIP, the submittal must meet the requirements of section 110. In addition to the procedural requirements mentioned above, the plan must provide for the attainment, maintenance, and

enforcement of the national ambient air quality standards.

The CAA has additional requirements for the approval of SIPs for ozone nonattainment areas. It requires the adoption of either a "basic" or an "enhanced" I/M program depending on the severity of the ozone problem and the population of the area. Section 182(a)(2)(B) directed us to publish guidance for state I/M programs. We promulgated I/M regulations and subsequent amendments, codified in 40 CFR part 51, subpart S.

#### What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

#### What Is Being Addressed in This Document?

On May 18, 2000 (65 FR 31480), we took final action to approve Missouri's SIP for the I/M program in the St. Louis nonattainment area (St. Louis City, and the counties of St. Louis, St. Charles, Jefferson, and Franklin) and incorporated by reference the state I/M rule, 10 CSR (Code of State Regulations) 10-5.380. Although Missouri's program contains most of the features of an enhanced program, we approved the program with regard to compliance with the basic I/M requirements in Section 182(b)(4) of the Clean Air Act (CAA) and 40 CFR part 51, subpart S, because those are the I/M requirements currently applicable to the St. Louis area.<sup>1</sup> On April 5, 2000, the Missouri Department of Natural Resources (MDNR) began implementation of the I/M program. On February 4, 2002, the program began using the final, lower test levels,

<sup>1</sup> As discussed in a final rulemaking being published today in the Rules Section of the **Federal Register**, we are reclassifying the area to "serious" nonattainment in response to an order in *Sierra Club and Missouri Coalition for the Environment v. Environmental Protection Agency*, 311 F. 3d 853 (7th Cir. 2002). In that rule, EPA is establishing a schedule to require Missouri and Illinois to submit SIPs to meet the "serious" area requirements within one year from today. As a result, Missouri would be required to meet the I/M requirements in section 182(c)(3) by that deadline. However, in another proposed rule also published today, EPA is proposing to redesignate the St. Louis area to attainment. If the area is redesignated before the serious area requirements come due, Missouri would not be required to meet these requirements. In any event, the revisions which are the subject of this proposal are properly reviewed against the section 182(b)(4) requirements.

commonly known as cutpoints, to determine if a vehicle passed or failed the inspection.

MDNR has made several submissions concerning the I/M SIP. The content of those being considered here are discussed below.

The legal authority for the I/M program was amended in 1999 by Senate Bill 019. Amendments which affected the design of the I/M program include the following: requires the MDNR and the Missouri Highway Patrol to enter into an interagency agreement covering all aspects of the administration and enforcement of Section 307.366, Missouri Revised Statutes (RSMo); establishes criteria and procedures for a contract for the construction and operation of the I/M program; provides the residents of Franklin County the option of a biennial motor vehicle registration. For the purpose of registration, for vehicles sold by a licensed motor vehicle dealer, any inspection and approval within 120 days preceding the date of the sale is considered timely. Costs for repair work may only be included toward reaching the waiver amount if the repairs are performed by a recognized repair technician. It deleted the \$5.00 fee reduction for any person required to wait for up to 15 minutes before the inspection begins. Penalties for longer wait times were retained. The I/M amendments contained in the October 25, 2000, submittal reflected these statutory changes.

On October 25, 2000, we received a request from Roger Randolph, Director of the Air Pollution Control Program, MDNR, to amend the I/M SIP and incorporate changes made to the I/M rule (10 CSR 10-5.380) by the Missouri Air Conservation Commission. These changes removed a fee reduction (otherwise known as a wait time penalty) of \$5.00 whenever someone had to wait up to 15 minutes for a test; incorporated a transition program from January 1 through April 4, 2000; and provided another test option for residents of Franklin County.

On June 19, 2002, we received a letter from MDNR that contained their plan for incorporating the On-Board Diagnostic (OBD) test into the I/M program and a commitment to do so. This was in response to our amendment of the Federal I/M rule that changed the implementation date for use of the OBD test from January 1, 2001, to January 1, 2002, and provide options for other implementation dates.

On December 13, 2002, we received a request from MDNR to approve a revision to the I/M SIP and incorporate amendments made to the I/M rule. In

addition to restructuring the rule, a number of amendments were made to: clarify the meaning of vehicles primarily operated in the area (section 1); clarify existing definitions and include new definitions (section 2); clarify fleet vehicle testing requirements, set fee payment methods, station and clean screening testing procedures, emission test standards and waiver requirements (section 3); clarify the vehicle test report requirement for vehicles that fail the OBD test, the clean screening test report requirements and the fleet vehicle reporting requirements (section 4); clarify the test methods for the OBD and the visual test methods; exempt hybrid electric vehicles from tailpipe test methods; include clean screening test methods as valid test methods (section 5), and delete the transition period. The submittal also included a list of nonregulatory provisions that will be updated early in 2003.

The following sections address whether the elements of the state's submittal comply with the applicable elements in the Federal rule. Only those elements affected by changes in the state rule are reviewed. Our decision for approval is based solely on the State's ability to meet the I/M requirements for a basic program.

#### *Applicability (40 CFR 51.350)*

As required in the I/M rule, any area classified as a moderate ozone nonattainment area and not required to implement an enhanced I/M program shall implement a basic I/M program in any 1990 census-defined, urbanized area within the nonattainment area with a population of 200,000 or more.

The legal authority for the I/M program is contained in the Missouri Revised Statutes (RSMo), sections 643.300-643.355 and section 307.366. The implementing regulations are in Missouri rule 10 CSR 10-5.380. In 1999 the legal authority for the I/M program was amended by Senate Bill 019. The amendments required MDNR and the Missouri Highway Patrol to enter into an interagency agreement covering all aspects of the administration and enforcement of Section 307.366, RSMo; established criteria and procedures for a contract for the construction and operation of the I/M program; and provided the residents of Franklin County the option of a biennial motor vehicle registration. For the purpose of registration, for vehicles sold by a licensed motor vehicle dealer, any inspection and approval within 120 days preceding the date of the sale is considered timely. Costs for repair work may only be included toward reaching

the waiver amount if the repairs are performed by a recognized repair technician. It deleted the \$5.00 fee reduction for any person who is required to wait for up to 15 minutes before the inspection begins.

The legal authority and regulations necessary to establish the program boundaries for the areas required by EPA's rule to be included in a basic I/M program continue. Thus, this portion of the SIP continues to be approvable.

#### *Adequate Tools and Resources (40 CFR 51.354)*

The Federal regulation requires Missouri to provide a description of the resources to be used in the program. The state must provide a detailed budget plan that describes the source of funds for personnel, program administration, program enforcement, and purchase of equipment. In addition, the SIP must include public education and assistance and funding for other necessary functions.

These amendments do not alter the detailed budget, fee amounts, source of funds for personnel, program administration, program enforcement, and purchase of equipment contained in the I/M SIP. The amendment does allow fees to be paid by cash, check or credit card. Thus, this portion of the SIP continues to be approvable.

#### *Test Frequency and Convenience (40 CFR 51.355)*

The I/M performance standard assumes an annual test frequency; however, other schedules may be approved if the performance standard is achieved. The Missouri legislation provides the legal authority to implement a biennial program. In 1999, the statutory authority was revised by Senate Bill 019 and it provided the residents of Franklin County the option of a biennial motor vehicle registration. Enforcement is accomplished through registration denial. Missouri did demonstrate that it met the performance standard. This portion of the SIP continues to meet the Federal requirements.

Although not required for a basic program, enhanced I/M programs shall be designed in such a way as to provide convenient service to motorists required to have their vehicles tested. To meet the enhanced requirements, the state must show that the network of stations is sufficient to ensure short waiting times, short driving distances, and regular testing hours. The State has assured consumer convenience by both State law, rule and contract provisions regarding station location, accessibility, and operation; equipment availability

and reliability, and wait time penalties. Although the shortest wait time penalty was deleted (the one for waits of up to 15 minutes), the wait time penalties for waits longer than 30 and 60 minutes remain. Since the beginning of the program, the average wait time is 12 minutes. Therefore, this portion of the SIP meets the test frequency and convenience requirements for an enhanced I/M program which exceed the requirements for a basic program.

#### *Vehicle Coverage (40 CFR 51.356)*

The performance standards for enhanced I/M programs assumes coverage of all 1968 and later model year light-duty vehicles (LDV) and light-duty trucks (LDT) up to 8500 pounds gross vehicle weight rating (GVWR) and includes vehicles operating on all fuel types. The standard for basic I/M programs does not include light duty trucks. Other levels of coverage may be approved if the necessary emission reductions are achieved.

Missouri's I/M statute requires coverage of all 1971 and newer LDVs and LDTs up to 8500 pounds GVWR which are domiciled or primarily operated in the area. As of the date of the original I/M SIP submittal (November 1999), 1.3 million vehicles are in the nonattainment area. The Missouri I/M regulation provides the regulatory authority to implement and enforce the vehicle coverage.

In section 1, the June 17, 2002, amendments added a definition of those vehicles that are primarily operated in the geographic area. In section 2, it also established a definition of a hybrid electric vehicle and specified in subsection 5(F) that they are not subject to tailpipe emission tests but are subject to other test methods.

In section 2, a number of definitions were clarified or added. These include compliance cycle, control chart, diagnostic trouble code, emission inspection, hybrid electric vehicle, malfunction indicator lamp, on-board diagnostics, OBD test, qualifying repair, readiness flag, and recognized labor costs.

The amendment established a compliance cycle for both privately- and publicly-owned vehicles. For privately-owned vehicles, the compliance cycle begins 60 days prior to the expiration of the vehicle's registration. For publicly-owned vehicles, the compliance cycle begins on January 1 of each even-numbered year. All applicable vehicles are to demonstrate compliance with the emission standards set in the rule during the compliance cycle. Federal fleets and federal employee vehicles are to comply with the December 1999

Interim Guidance for Federal Facility Compliance with Clean Air Act Section 118(c) and 118(d) and Applicable Provisions of State Vehicle Inspection and Maintenance Programs.

Missouri has revised its regulations to require Federal facilities operating vehicles in the I/M program area to report certification of compliance to the state. These requirements appear to be different than those for other non-Federal groups of Missouri registered vehicles. However, at this time we are not requiring states to implement 40 CFR 51.356(a)(4) dealing with Federal installations within I/M areas. The Department of Justice has recommended to us that this Federal regulation be revised since it appears to grant states authority to regulate Federal installations in circumstances where the Federal government has not waived sovereign immunity. It would not be appropriate to require compliance with this regulation if it is not authorized. We will be revising this provision in the future and will review state I/M SIPs with respect to this issue when this new rule is final. Therefore, for these reasons, we are neither proposing approval nor disapproval of the specific requirements which apply to Federal facilities at this time.

The amendments did not alter the level of coverage. Thus the level of coverage remains approvable as it meets the requirements for an enhanced I/M program which exceed the requirements for a basic program. In addition, Missouri has legal authority to implement fleet-testing requirements and to implement requirements for special exemptions. As noted above we are neither proposing approval nor disapproval of the requirements which apply to Federal facilities. Therefore, this portion of the SIP is approvable as it meets the requirements for a basic and an enhanced I/M program.

#### *Test Procedures and Standards (40 CFR 51.357)*

The Federal rule requires Missouri to establish written test procedures and pass/fail standards that are followed for each model year and vehicle type included in the program.

The October 25, 2000, submittal did provide for the use of the idle test and set emission limits for carbon monoxide and hydrocarbons during the transition period (see motorist compliance enforcement below). This test and the emission limits are applicable to automobile dealers and used vehicle purchasers. This submittal did not alter the program's test procedures and standards for the I/M program which

started on April 5, 2000. This portion of the SIP continues to be approvable.

Although the submittal of December 13, 2002, retained the test methods contained in the previously approved SIP, two significant changes were made. First, the December 13, 2002, submittal took advantage of the flexibility included in our April 5, 2001, rulemaking concerning the integration of OBD testing in the I/M program. Second, the submittal added a hybrid method as one of the clean screening methods (see on-road testing below). In addition, per our guidance, it exempted hybrid electric vehicles from tailpipe test methods but subjected them to the evaporative system pressure test, OBD test, anti-tampering test, and clean screening.

The original, Federally-approved SIP committed to begin OBD testing beginning January 1, 2001. The December 13, 2002, submittal revises the original OBD start date commitment by introducing a two-year phase-in period for the OBD test starting January 1, 2003, and ending December 31, 2004. During the two-year phase-in period, the OBD test would be used as a "clean screen" test. Then starting January 1, 2005, the OBD test would be used to pass or fail the 1996 and newer model year vehicles.

During the phase-in period if a model year 1996 or newer, OBD-equipped vehicle passes its initial OBD test, the owner will be issued a passing compliance certificate and allowed to register the vehicle without further testing. If the vehicle fails its initial OBD inspection, it will then receive a "second-chance" IM240 test. Only if the vehicle fails both tests during this two-year period phase-in period will it be required to be repaired. Once the vehicle has been repaired, it must be submitted for a retest. According to the December 13, 2002, submittal, vehicles submitted for a retest will receive both an OBD test and an IM240 test, the latter of which must be passed for the vehicle to pass its retest. The December 13, 2002, submittal's requirement that the IM240 test be the deciding test for the retest is inconsistent with the April 5, 2001, Federal rule which requires only the OBD test be used for the retest.

Although the Missouri regulation is not consistent with our requirements for the OBD test during the 2003-2004 phase-in period, the Federal I/M rule (see 40 CFR 51.372) provides additional flexibility with regard to as-of-yet unimplemented I/M program elements

for basic I/M areas<sup>2</sup> that qualify for redesignation to attainment. Under this additional flexibility, an as-of-yet unimplemented I/M program element may be converted into a contingency measure as part of the area's approved maintenance plan (which, in turn, forms a part of the area's approved redesignation request). We believe that the St. Louis nonattainment area is eligible for redesignation and, in a separate rulemaking, are proposing to find that the area has attained the 1-hour ozone standard and to redesignate the area from nonattainment to attainment for that standard.

Other elements needed for the I/M program and redesignation request to be approved include legal authority for the as-of-yet unimplemented I/M program element(s), a request to place the as-of-yet unimplemented I/M upgrade into the contingency measures portion of the maintenance plan upon redesignation, a commitment to adopt (or consider adopting) the regulations needed to implement the deferred I/M program element(s) including an enforceable schedule for adoption and implementation of those I/M program element(s). See 40 CFR 51.372(c).

The legal authority for the program is discussed above (see Applicability). Missouri has legal authority to implement and operate an I/M program as required including OBD.

Section 6.1 of the maintenance plan, contingency measures, contains a request that the OBD test measures in 40 CFR Parts 51 and 82 be placed in the contingency measures portion of the SIP, upon redesignation of the area to attainment. This requirement is fulfilled.

Section 6.1 of the maintenance plan also contains a commitment that MDNR will adopt or consider adopting regulations to implement EPA's OBD testing requirement to correct a violation of the ozone standard. This requirement is fulfilled.

Section 6.1 of the maintenance plan also contains an enforceable schedule for development, proposal, adoption, submission, and implementation of the OBD testing requirements. This requirement is fulfilled.

The criteria for full approval also requires that basic areas continuing operation of I/M programs as part of the maintenance plan without implemented upgrades shall be assumed to be 80 percent as effective as an implemented, upgraded version of the same I/M program. The presumption that

Missouri's I/M program is 80 percent as effective is not applicable. We are not discounting the effectiveness of Missouri's program as they are not taking any credit for emissions reduction benefits for OBD testing during the 2003–2004 time period in the MOBILE modeling efforts done for the emission inventories in the maintenance plan.

For the reasons set forth above, this portion of the SIP is approvable only if the St. Louis nonattainment area is redesignated. This portion of the SIP is not approvable if the area is not redesignated. For the reasons listed above we are not discounting the effectiveness of the Missouri program by 20 percent.

#### *Test Equipment (40 CFR 51.358)*

As required by Federal rule, the original state submittal contained the written technical specifications for all test equipment to be used in the program. The specifications required the use of computerized test systems. The specifications also included performance features and functional characteristics of the computerized test systems that meet the applicable Federal I/M regulations and were approvable.

Additional language was added to the regulatory amendment to clarify the performance features of the emission test equipment, the functional characteristic of computerized test systems, and that the evaporative system pressure test equipment, the single-speed and two-speed idle test equipment, the transient emission test equipment, and the OBD test equipment must meet standards specified by EPA. This portion of the SIP continues to be 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 permits a motorist to comply without meeting the applicable test standards. For enhanced I/M programs, an expenditure of at least \$450 in repairs, adjusted annually to reflect the change in the Consumer Price Index (CPI) as compared with the CPI for 1989, is required to qualify for a waiver. For the basic program the minimum expenditure is \$75 for pre-1981 vehicles and \$200 for 1981 and newer vehicles.

As required, the Missouri statute provides legislative authority to issue waivers, set and adjust cost limits, and administer and enforce the waiver system. Previously, the dollar amounts were set by statutes. This amendment

increased the amount that must be spent on qualifying repairs and added a requirement that measured tailpipe emissions must show a reduction upon reinspection. The waiver amount for pre-1981 model year vehicles is set at \$200 and the amount for 1981 and all subsequent model year vehicles is \$450. After January 1, 2005, 1996 and newer model year vehicles will not be eligible for a waiver. The state statute allows these amounts to be adjusted for inflation after January 1, 2001, to be consistent with an enhanced I/M program. Waivers will be issued for vehicles that do not pass the emission inspection and meet the waiver criteria. The repair record must show that the repair expenditures were not covered by either a recall or manufacturer warranty and that parts costs and labor costs of recognized technicians total the minimum applicable amount for the model year of the vehicle. However, because Missouri is subject to the basic program requirements, they are only required to meet or exceed the basic I/M requirements of a minimum of \$75 for pre-1981 vehicles and \$200 for 1981 and newer vehicles.

Missouri regulations include provisions that address waiver criteria and procedures, including cost limits, tampering and warranty-related repairs, quality control, and administration. Parts and labor costs for qualifying emission repairs count toward the waiver amount if the repairs were performed or supervised by a recognized repair technician. The SIP sets a waiver rate and describes corrective action that will be taken if the actual waiver rate exceeds the commitment in the SIP. The SIP meets this portion of the regulation and is acceptable.

#### *Motorist Compliance Enforcement (40 CFR 51.361)*

The Federal regulation requires that compliance will be ensured through the denial of motor vehicle registration in enhanced I/M programs unless an exception for use of an existing alternative is approved. A basic I/M area may use an alternative enforcement mechanism if it demonstrates that the alternative will be as effective as registration denial. To register a vehicle subject to the I/M requirements, the Missouri Department of Revenue by rule, 12 CSR 10–23.170, requires an owner to present an original, current certificate of emissions inspection no older than 60 days. Senate Bill 019 in 1999 provided that for the purpose of registration, for vehicles sold by a licensed motor vehicle dealer, any inspection and approval within 120

<sup>2</sup> As noted previously, the St. Louis area is still being evaluated as a basic area, since the enhanced area requirements have not yet come due.

days preceding the date of the sale is considered timely. Thus the enforcement method used is registration denial.

The December 13, 2002, submittal did not alter Missouri's SIP commitment to a compliance rate of 96 percent which was used in the performance standard modeling demonstration and continues to be approvable. This submittal did not alter the registration denial enforcement process, the identification of agencies responsible for performing each applicable activity, and a plan for testing fleet vehicles. Therefore, this portion of the SIP 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 training, licensing or certification requirements previously approved were retained. In addition, four hours of continuing education per year is required. This portion of the SIP continues to be approvable.

#### *On-Road Testing (40 CFR 51.371)*

On-road testing is required in enhanced I/M areas and is an option for basic areas. The on-road testing program shall provide information about the emission performance of in-use vehicles. The use of either remote sensing devices (RSD) or roadside pullovers where tailpipe emission testing is done can be used to meet the Federal regulations. For enhanced areas, the on-road testing program must test 0.5 percent of the vehicles or 20,000 vehicles, whichever is less. A motorist that has passed an emissions test and is found to be a high emitter as a result of an on-road test shall be notified that the vehicle is required to pass an out-of-cycle emissions test.

To improve motorist convenience and reduce the number of test lanes needed in the St. Louis area, approximately 40 percent of the vehicles are excused from some I/M testing that would otherwise be required. This is accomplished by exempting the two newest model year vehicles (roughly 11 to 15 percent of all vehicles) and using RSD to test and identify another 25 to 29 percent of the vehicles, those that are low emitting vehicles. This is known as clean screening.

In subsection (3)(J) and (K), the rule specifies the clean screening emission inspection requirements (test methods and procedures) and the inspection standards. The rule includes a hybrid test method (see (3)(J)(B)) for clean screening that does not meet our guidance. This hybrid test method

excuses vehicles from further I/M testing if the vehicle is a known low emitter and has passed one RSD test.

The original SIP committed to a minimum of 0.5 percent of the fleet receiving a RSD test each year. The original contract contained a description of the program and methods of collecting, analyzing, and reporting data. Enabling authority to enforce off-cycle inspection and repair requirements is not contained in Missouri's legislation. As stated above, the on-road testing requirements are optional for basic programs. Therefore, this is not relevant to the EPA's proposed action with respect to the current I/M requirement applicable to St. Louis.

#### **Have the Requirements for Approval of a SIP Revision Been Met?**

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

#### **What Action Is EPA Taking?**

Our review of the material submitted indicates that the state has revised the I/M program in accordance with the requirements of the CAA and the Federal rule except for one. The state's use of the IM240 test during the phase-in period to test model year 1996 and newer vehicles is inconsistent with the Federal rule (see Test Procedures and Standards above). As discussed above, since this SIP revision was made in conjunction with a request to redesignate the St. Louis area to attainment, and as provided for in the Federal I/M rule, we are proposing to approve the Missouri SIP revision for the St. Louis I/M program and incorporate by reference the state I/M rule, 10 CSR 10-5.380, which was submitted on December 13, 2002, if the area is redesignated to attainment. If the area is not redesignated, we are proposing to disapprove this SIP revision. We are neither proposing to approve nor disapprove the specific requirements which apply to Federal facilities at this time. We are soliciting comments on this proposed action. Final rulemaking will occur after consideration of any comments.

#### **Statutory and Executive Order Reviews**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus

standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: January 13, 2003.

**James Gulliford,**

*Regional Administrator, Region 7.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[MO 170-1170; IL 216-1; FRL-7444-5]

#### Determination of Attainment, Approval and Promulgation of Implementation Plans, and Designation of Areas for Air Quality Planning Purposes; States of Missouri and Illinois

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to determine that the St. Louis ozone nonattainment area (St. Louis area) has attained the 1-hour ozone National Ambient Air Quality Standard (NAAQS). This proposal is based on three years of complete, quality-assured ambient air quality monitoring data for the 2000 through 2002 ozone seasons that demonstrate that the 1-hour ozone NAAQS has been attained in the area. On the basis of this proposal, EPA is also proposing to determine that certain attainment demonstration requirements along with certain other related requirements of part D of Title I of the Clean Air Act (CAA) are not applicable to the St. Louis area.

The EPA is also proposing to approve an exemption from certain nitrogen

oxides (NO<sub>x</sub>) requirements as provided for in section 182(f) for the Illinois portion of the St. Louis area. Section 182(f) establishes NO<sub>x</sub> requirements for ozone nonattainment areas. However, it provides that these requirements do not apply to an area if the Administrator determines that NO<sub>x</sub> reductions would not contribute to attainment. Because the St. Louis area is currently attaining the ozone NAAQS, EPA is proposing to grant the Illinois portion of the St. Louis area an NO<sub>x</sub> exemption from NO<sub>x</sub> reasonably available control technology (RACT) requirements. If final action is taken, the Illinois portion of the St. Louis area would no longer be subject to these NO<sub>x</sub> emission control requirements. However, all emission controls previously adopted by the state must continue to be implemented.

EPA is also proposing to approve requests from the States of Missouri and Illinois, submitted on December 6, 2002, and December 30, 2002, respectively, to redesignate the St. Louis area to attainment of the 1-hour ozone NAAQS. In proposing to approve these requests EPA is also proposing to approve the states' plans for maintaining the 1-hour ozone NAAQS through 2014, as revisions to the Missouri and Illinois State Implementation Plans (SIPs). EPA is also proposing to find adequate and approve the states' 2014 Motor Vehicle Emission Budgets (MVEBs) for volatile organic compounds (VOCs) and nitrogen oxide compounds (NO<sub>x</sub>) in the submitted maintenance plans for transportation conformity purposes.

The St. Louis nonattainment area is located in portions of Illinois and Missouri. The Illinois portion of the nonattainment area includes Madison, Monroe, and St. Clair Counties (collectively referred to as the Metro-East area). The Missouri portion of the nonattainment area includes Franklin, Jefferson, St. Charles, and St. Louis Counties and St. Louis City.

**DATES:** Comments must be received on or before March 3, 2003.

**ADDRESSES:** Written comments should be mailed to Joshua Tapp, Chief, Air Planning and Development Branch, Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101; or, J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (ART-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Relevant documents are available for inspection during normal business hours at the above-listed Region 7 and Region 5 locations. Interested persons wanting to examine these documents

should make an appointment with the appropriate office at least 24 hours in advance.

#### FOR FURTHER INFORMATION CONTACT:

Tony Petruska, Region 7, (913) 551-7637, ([petruska.anthony@epa.gov](mailto:petruska.anthony@epa.gov)) or Edward Doty, Region 5, (312) 886-6057, ([doty.edward@epa.gov](mailto:doty.edward@epa.gov)).

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