

Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: January 30, 1996.

Felicia Marcus,

*Regional Administrator.*

Subpart F of part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

#### Subpart F—California

2. Section 52.220(c) is amended by adding paragraphs (194)(i)(A)(4), (198)(i)(J), (210)(i)(C)(2), and (215)(i)(B)(2) to read as follows:

##### § 52.220 Identification of plan.

- \* \* \* \* \*
- (c) \* \* \*
- (194) \* \* \*
- (i) \* \* \*
- (A) \* \* \*
- (4) Rule 74.21, adopted on April 6, 1993.
- \* \* \* \* \*
- (198) \* \* \*
- (i) \* \* \*
- (J) Ventura County Air Pollution Control District.
- (I) Rule 74.28, adopted on May 10, 1994.
- \* \* \* \* \*
- (210) \* \* \*
- (i) \* \* \*
- (C) \* \* \*
- (2) Rule 471, adopted on December 21, 1994.
- \* \* \* \* \*
- (215) \* \* \*
- (i) \* \* \*
- (B) \* \* \*
- (2) Rule 71 and Rule 71.5, adopted on December 13, 1994.
- \* \* \* \* \*

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#### 40 CFR Part 52

[OK–11–1–6604a; FRL–5430–3]

#### Approval of Discontinuation of Tail Pipe Lead and Fuel Inlet Test for Vehicle Antitampering Program for Oklahoma

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

**SUMMARY:** The EPA is approving the State Implementation Plan (SIP) revision submitted by the State of Oklahoma for the purpose of discontinuing the State's tail pipe lead and fuel inlet test in its vehicle antitampering program. The SIP revision also includes minor administrative changes related to the Oklahoma antitampering program. The SIP revision was submitted by the State in response to the dramatic diminished availability of leaded fuel which has resulted in a lack of a need for these tests, not only in Oklahoma but also nationwide. The rationale for the approval is set forth in this document; additional information is available at the address indicated in the ADDRESSES section.

**DATES:** This final rule will become effective on April 29, 1996 unless adverse or critical comments are received by April 1, 1996. 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 Mr. Thomas Diggs, Chief (6PD–L), Air Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Multimedia Planning & Permitting Division (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

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

Oklahoma Department of Environmental Quality, Air Quality Program, 4545 North Lincoln Blvd., Suite 250, Oklahoma City, Oklahoma 73105–3483.

**FOR FURTHER INFORMATION CONTACT:** Mr. James F. Davis, Air Planning Section (6PD–L), Multimedia Planning & Permitting Division, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, Telephone (214) 665–7584.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The SIP revision, discussed in more detail in the Technical Support Document, dated May 24, 1995, is briefly outlined below.

On May 16, 1994, the State of Oklahoma submitted to the U.S. Environmental Protection Agency (EPA) rules for Oklahoma SIP revisions allowing for the exclusions of the Plumbtesmo Lead Detection Test (LDT) and Fuel Inlet Restrictor (FIR) from the State Department of Public Safety's motor vehicle antitampering inspection procedures for Oklahoma City and Tulsa. In addition to the State regulations, Oklahoma submitted a summary and justification documenting the basis for this SIP revision.

In the mid-1980s, EPA established test procedures and emission reduction credits for inspecting and requiring replacement of the catalytic converter when a tailpipe lead test revealed lead deposits in the tail pipe, or when the fuel inlet restrictor was found to be widened to permit refueling with a leaded nozzle. Since the mid-1980s, the availability of leaded fuel and the lead content in the fuel has diminished dramatically. In addition, leaded gasoline has been banned by the Clean Air Act Amendments of 1990 as of December 31, 1995, (§ 211(n)).

##### II. Analysis

##### A. Procedural Background

The following criteria used to review the submitted SIP revision confirm that the State has demonstrated that the LDT and FIR check is no longer needed in Oklahoma: (1) proof that leaded gasoline is no longer generally available in the Emission Control Areas (ECA) of Tulsa and Oklahoma City, (2) verification that the local fleet has undergone more than one full inspection cycle with virtually no failures and, (3) completion of a State survey coordinated with EPA to determine that the fleet has failed the lead detection test less than 1 percent of the time. This Oklahoma SIP revision meets the criteria necessary for EPA to approve the SIP revision request.

The State's SIP indicates that at the time of the State's Air Quality Council hearing, leaded fuel comprised less than 5 percent of the total fuel sales in Oklahoma, and where it was available it

was more expensive, thus removing an incentive to misfuel. The State also cited a survey conducted in Tulsa in which only 26 of 269 service stations sold leaded gasoline. In addition, the SIP cites figures from the U.S. Department of Energy that show that leaded gasoline comprised about 1 percent of total sales.

The vehicle antitampering program in Oklahoma City has been in place since 1978 to help control carbon monoxide and ozone pollution, and the program in Tulsa has been in place since 1986 to help control ozone pollution. The data submitted by the State showed that the numbers of vehicles failing LDT and FIR are below limits that make the benefit of the tests worthwhile. In 1992, the failure rate for the FIR was less than .06 percent while the failure rate for the LDT was less than .02 percent. In addition, to confirm these statistics the State conducted a survey of over 1,000 vehicles in Tulsa and Oklahoma County and found that no vehicles subject to the antitampering inspection failed the Plumbtesmo LDT.

Also, EPA's Office of Mobile Sources recently issued a guidance memorandum dated September 16, 1994, entitled, "Discontinuation of Tail Pipe Lead and Fuel Inlet Tests," which essentially allows the discontinuation of these tests without a State-submitted demonstration that these tests are no longer necessary. One condition of discontinuation stated in this policy to retain full credit is that the State has performed the tests for at least one test cycle and has required catalyst replacement upon failure. Oklahoma City and Tulsa meet these criteria as well as those discussed above. The EPA has reviewed the Oklahoma SIP revision submitted to the EPA, using the criteria stated above. The Oklahoma regulations represent an acceptable approach to the State's vehicle antitampering program.

### III. Final Action

In this action, the EPA is approving the SIP revision submitted by the State of Oklahoma for removing the Plumbtesmo LDT and FIR test from its vehicle antitampering program.

Copies of the State's SIP revision and the Technical Support Document (TSD), detailing EPA's review of the SIP revision, are available at the address listed in the ADDRESSES section above. For a more detailed analysis of the SIP revision, the reader is referred to the TSD.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate

document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. Thus, today's direct final action will be effective April 29, 1996 unless, by April 1, 1996, adverse or critical comments are received.

If the 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 addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on 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 April 29, 1996.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to a SIP 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.*, the 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, the 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 that are less than 50,000.

The SIP revision approvals under section 110 and subchapter I, part D, of the Act 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, the EPA certifies that this proposed rule would not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State actions. The Act forbids the EPA to base its actions concerning SIP's on such grounds. *Union Electric Co. v. U.S.E.P.A.*, 427 U.S. 246, 256-266 (S. Ct. 1976); 42 U.S.C. section 7410(a)(2).

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed

into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated today does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

Under section 307(b)(1) of the Act, 42 U.S.C. 7607(b), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 29, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the SIP for the State of Oklahoma was approved by the Director of the Federal Register on July 1, 1982.

Dated: January 12, 1996.

A. Stanley Meiburg,

*Acting Regional Administrator (6A).*

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## **PART 52—[AMENDED]**

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

### **Subpart LL—Oklahoma**

2. Section 52.1920 is amended by adding paragraph (c)(46) to read as follows:

#### **§ 52.1920 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(46) A revision to the Oklahoma SIP to include revisions to Oklahoma Department of Public Safety regulation Title 595, Chapter 20, Subchapter 3—Emission and Mechanical Inspection of Vehicles, Subchapter 7—Inspection Stickers and Monthly Tab Inserts for Windshield and Trailer/Motorcycle, Subchapter 9—Class AE Inspection Station, Vehicle Emission Anti-tampering Inspection and Subchapter 11—Annual Motor Vehicle Inspection and Emission Anti-Tampering Inspection Records and Reports, adopted by the State on April 6, 1994, effective May 26, 1994 and submitted by the Governor on May 16, 1994.

(i) Incorporation by reference.

(A) Revisions to Oklahoma Department of Public Safety regulation Title 595, Chapter 20: 3–1(2); 3–3; 3–5; 3–6; 3–12; 3–25; 3–26; 3–27; 3–41(o); 3–42; 3–46(a) and (b); 3–61(a), (b), (e) and (f); 3–63(b) and (g); 7–1(c) and (f); 7–2(a); 7–3; 7–4(a); 7–5(a); 7–6(a); 7–7(a); 9–1(a); 9–3(l) and (m); 9–7; 9–10(a), (b) and (c); 9–11(a); 9–12(a); 9–13(a); 9–14(a) and (b); 9–15(a); 11–1; 11–2(a); 11–3(a); 11–4 effective May 26, 1994.

(ii) Additional material.

(A) State SIP revision entitled, “Oklahoma Vehicle Anti-Tampering Program SIP Revision,” which includes a completeness determination, SIP narrative, hearing records and other documentation relevant to the development of this SIP.

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## **40 CFR Part 52**

[MO–29–1–7151a; FRL–5425–2]

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

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

**ACTION:** Direct final rule.

**SUMMARY:** This document takes final action to approve the State Implementation Plans (SIP) submitted by the state of Missouri for the purpose of fulfilling the requirements set forth in EPA’s Transportation Conformity rule. The SIPs were submitted by the state to satisfy the Federal requirements in 40 CFR 51.396.

**DATES:** This action is effective April 29, 1996 unless by April 1, 1996 adverse or critical comments are received.

**ADDRESSES:** Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and EPA Air & Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Lisa V. Haugen at (913) 551–7877.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

Section 176(c)(4) of the Clean Air Act, as amended (CAA), requires the EPA to promulgate criteria and procedures for demonstrating and ensuring conformity of Federal actions to an applicable implementation plan developed pursuant to section 110 and part D of the CAA. Conformity to an implementation plan is defined by the CAA as conformity to an implementation plan’s purpose of eliminating or reducing the severity and number of violations of the National Ambient Air Quality Standards, and achieving expeditious attainment of such standards. On November 23, 1993, the EPA promulgated the final rule (hereafter referred to as the Transportation Conformity rule), which established the process by which the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and metropolitan planning organizations (MPO) determine conformity of highway and transit projects.

The Transportation Conformity rule also establishes the criteria for EPA approval of SIPs. See 40 CFR § 51.396. These criteria provide that the state provisions must be at least as stringent

as the requirements specified in EPA’s Transportation Conformity rule, and that they can be more stringent only if they apply equally to nonfederally funded transportation projects as well as those using Federal funds (section 51.396(a)).

The St. Louis area was designated nonattainment for ozone and carbon monoxide (CO) in 1978. On November 6, 1991, EPA promulgated a rule which classified the St. Louis area as a moderate ozone nonattainment area, and as an unclassified nonattainment area for CO. Kansas City was redesignated to attainment for ozone, and a maintenance plan was approved, in a June 23, 1992, Federal Register notice. Section 51.396 of the Transportation Conformity rule requires that states with areas subject to the rule submit an SIP revision containing the criteria and procedures for FHWA, FTA, MPOs, and other state or local agencies to assess the conformity of transportation plans, Transportation Improvement Programs (TIP), and projects to the applicable SIP, within 12 months after November 23, 1993. As the rule applies to all ozone and CO nonattainment and maintenance areas, SIP revisions for the St. Louis and Kansas City areas, addressing the requirements of the Transportation Conformity rule, became due on November 24, 1994.

##### **II. Review of State Submittal**

On February 14, 1995, the state of Missouri submitted Transportation Conformity SIP revisions for Kansas City and St. Louis. The submission included an SIP revision for Kansas City along with Missouri rule 10 CSR 10–2.390 (10–2.390), and an SIP revision, including Missouri rule 10 CSR 10–5.480 (10–5.480), which applies to St. Louis. Section 51.396 requires that, for the SIP revision to be approvable by EPA, certain sections of the Transportation Conformity rule be incorporated verbatim.

The state of Missouri chose to use the model Transportation Conformity rule developed by the State and Territorial Air Pollution Program Administrators (STAPPA)/Association of Local Air Pollution Control Officials (ALAPCO). The STAPPA/ALAPCO model rule added clarifying changes consistent with the intent of the Federal rule. For instance, 10–5.480(10)(B) and 10–2.390(10)(B) include examples of the types of planning assumptions which must be considered in making conformity determinations. The examples are added to the language in section 51.412 of the Federal rule, but do not change the section’s intent. The