

public inspection during normal business hours at the following location. Anyone wanting to examine these documents should make an appointment by calling the person listed below at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD-L), 1445 Ross Avenue, Dallas, Texas 75202-2733.

FOR FURTHER INFORMATION CONTACT: Bill Deese of the EPA Region 6 Air Planning Section at (214) 665-7253.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule located in the Rules and Regulations section and the short informational proposed rule located in the Proposed Rules section of the October 28, 1999, **Federal Register**.

Dated: December 8, 1999.

Lynda F. Carroll,

Acting Regional Administrator, Region 6.

Therefore the amendment to 40 CFR 52.2270, published in the **Federal Register** October 28, 1999 (64 FR 57983), which was to become effective December 27, 1999, is withdrawn.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. NJ41-207, FRL-6509-4]

Approval and Promulgation of Implementation Plans; New Jersey; Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: Elsewhere in today's **Federal Register**, the Environmental Protection Agency (EPA) has published a rulemaking action proposing to find that the State of New Jersey will have implemented its enhanced inspection and maintenance (I/M) program when mandatory testing begins on December 13, 1999 and that EPA is reinstating the interim approval under section 348 of the National Highway Systems Designation Act (NHSDA). EPA is making an interim final determination that on December 13, 1999, it is more likely than not that the program will be implemented curing the deficiencies which caused sanctions to be imposed. Therefore, the application of the offset sanction that began on June 14, 1999 is

stayed and the application of the highway sanction is deferred as of December 13, 1999.

DATES: Effective December 13, 1999. Although this interim final rule will be effective on December 13, 1999, EPA is accepting comments as to whether the stay and deferral announced in this document should remain in effect. Comments must be received on or before January 18, 2000.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations: Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866 and New Jersey Department of Environmental Protection, Bureau of Air Quality Planning, 401 East State Street, CN418, Trenton, New Jersey 08625.

All comments should be addressed to Raymond Werner, Acting Branch Chief, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866.

FOR FURTHER INFORMATION CONTACT:

Judy-Ann Mitchell, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-4249.

SUPPLEMENTARY INFORMATION:

I. Background

New Jersey submitted changes to the existing I/M program on March 27, 1996 to satisfy the applicable requirements of both the Clean Air Act (CAA) and the National Highway System Designation Act (NHSDA). On October 31, 1996 (61 FR 56172), EPA published a notice of proposed conditional interim approval of New Jersey's enhanced I/M program. On May 14, 1997 (62 FR 26401), EPA published a final conditional interim approval of New Jersey's enhanced I/M program.

Due to New Jersey's delays in starting the enhanced I/M program, EPA notified New Jersey by a December 12, 1997 letter that the sanctions clock was started for failure to implement the enhanced I/M program, in accordance with section 179(a)(4) of the Act. The offset sanction began in New Jersey on June 14, 1999. The highway sanction would begin six months thereafter if New Jersey did not implement the program. On November 19, 1999, New Jersey notified EPA by letter that the mandatory enhanced I/M program will be implemented on December 13, 1999.

II. Interim Final Action

Based on New Jersey's commitment to the start of the program on December 13, 1999, EPA believes that it is more likely than not that the State will have taken the steps necessary to start an approvable enhanced I/M program. Initiation of sanctions clocks on December 12, 1997 was based on the fact that New Jersey did not start-up a mandatory approved enhanced I/M program. EPA is now able to conclude that since New Jersey is operating an I/M program that will be fully enforceable on December 13, 1999, the State will have met the obligation to implement the enhanced I/M program and sanctions should be stayed and deferred on December 13, 1999.

In the event that the implementation is found to be inadequate, the stay and deferral may be removed and the sanctions imposed immediately upon such a finding in either a proposed or final rulemaking regarding implementation. A proposal to reinstate the interim approval under section 348 of the NHSDA and to stop the sanctions clock and lift any sanctions applied is published elsewhere in this **Federal Register**. Pursuant to 40 CFR 52.31(d)(4)(ii), the stay and deferral may be reinstated if EPA proposes to take action to find that the deficiency of having failed to implement the enhanced I/M program has not been corrected.

EPA is publishing a separate document that will serve as the proposed reinstatement of the interim approval and finding that the State of New Jersey implemented the enhanced I/M program on December 13, 1999. If comments are received which cause EPA to conclude that the enhanced I/M program has not been implemented, EPA will not proceed with the final rulemaking and both the offset and highway sanctions will be applied immediately via a letter and a **Federal Register** notice. Therefore, any comments which could affect this interim final determination must be submitted in response to the proposal to reinstate the interim approval and to stop the sanctions clock and lift the stay and deferral of the sanction. All public comments received will then be addressed in a subsequent final notice either reinstituting the sanctions or stopping this sanctions process pursuant to 40 CFR 51.31(d)(5). Parties interested in commenting should do so at this time.

III. Administrative Requirements

Because New Jersey will have met the start-up requirements as defined by

EPA, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect.¹ 5 U.S.C. 553(b)(B). The EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. Through this interim final determination action authorized by the EPA rule on sanctions, 40 CFR 52.31(d)(ii), the Agency concludes that it is more likely than not that the State will have satisfactorily implemented the I/M program, therefore eliminating the basis for imposition of sanctions. Therefore, it is not in the public interest to apply sanctions when the State has submitted an enforceable program which will start-up on December 13, 1999. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a finding that the State is no longer subject to that requirement prior to the date sanctions would take effect. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to stay and defer sanctions while EPA completes its rulemaking process regarding the lifting of the sanctions. In addition, EPA is invoking the good cause exception to the 30-day advance notice requirement of the APA because the purpose of this notice is to relieve a restriction. *See* 5 U.S.C. 553(d)(1).

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include

regulations that 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." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation. This final rule will 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, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly

affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because it does not create any new requirements. Therefore, because this rule does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

¹ As previously noted, however, by this action EPA is providing the public with a chance to comment on EPA's determination after the effective date through the notice and comment process announced in this *Federal Register* regarding the permanent stopping of the sanctions clock and EPA will consider any comments received in determining whether to reverse the action taken in this interim final rule.

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under section 205, 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 EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that this action imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to

perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 15, 2000. Filing a petition for reconsideration by the Administrator of this interim 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, Intergovernmental relations, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: December 7, 1999.

Jeanne M. Fox,

Regional Administrator, Region 2.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[IN 109-1a; FRL-6507-5]

Approval of Hospital/Medical/ Infectious Waste Incinerator State Plan For Designated Facilities and Pollutants: Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving Indiana's State Plan for Hospital/Medical/ Infectious Waste Incinerators (HMIWI), submitted on September 30, 1999. The State Plan adopts and implements the Emissions Guidelines (EG) applicable to existing HMIWIs. This approval means that EPA finds the State Plan meets Clean Air Act (Act) requirements. Once effective, this approval makes the State Plan federally enforceable.

DATES: This rule is effective on February 15, 2000, unless EPA receives adverse written comments by January 18, 2000. If adverse written comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** and

inform the public that the rule will not take effect.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

You can inspect copies of the State Plan submittal at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend you contact Ryan Bahr, Environmental Engineer, at (312) 353-4366 before visiting the Region 5 Office).

FOR FURTHER INFORMATION CONTACT: Ryan Bahr, Environmental Engineer, at (312) 353-4366.

SUPPLEMENTARY INFORMATION:

Throughout this document wherever "we", "us", or "our", are used we mean EPA. The supplemental information is organized in the following order:

- I. What is EPA approving in this action?
- II. The HMIWI State Plan Requirement.
 - What is an HMIWI State Plan?
 - Why are we requiring Indiana to submit an HMIWI State Plan?
 - Why do we need to regulate HMIWI emissions?
 - What criteria must an HMIWI State Plan meet to be approved?
- III. The Indiana HMIWI State Plan.
 - Where are the Indiana HMIWI requirements codified?
 - Who is affected by the State Plan?
 - Who is exempt from the State Plan?
 - What does the State Plan require?
 - When must the State Plan requirements be met if you plan to continue operation of your HMIWI?
 - What must you do to obtain an extended compliance schedule if you plan to install control equipment or make process changes and continue operation?
 - What must you do if you intend to permanently shut down?
 - What are the permit application deadlines?
 - What else does the State Plan include?
 - What public review opportunities were provided?
- IV. Review and Approval of the Indiana HMIWI State Plan.
 - Why is the Indiana HMIWI State Plan approvable?
- V. EPA Rulemaking Action.
- VI. Administrative Requirements.
 - A. Executive Order 12866
 - B. Executive Orders 13132
 - C. Executive Order 13045
 - D. Executive Order 13084
 - E. Regulatory Flexibility Act
 - F. Unfunded Mandates
 - G. Submission to Congress and the Comptroller General
 - H. National Technology Transfer and Advancement Act
 - I. Petitions for Judicial Review