

small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Toledo (see **ADDRESSES**.)

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

#### Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

#### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal government having first provided the funds to pay those costs. This rule will not impose an unfunded mandate.

#### Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk

to health or risk to safety that may disproportionately affect children.

#### Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2-1, paragraph (34)(g), of Commandant Instruction M16475.IC, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

#### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does 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.

#### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a statement of Energy Effects under Executive Order 13211.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05-1(g), 6.04-6, and 160.5; 49 CFR 1.46.

2. A new temporary § 165.T09-987 is added as follows:

#### § 165.T09-987 Safety zone: Maumee River, Toledo, Ohio.

(a) *Location.* All waters and the adjacent shoreline of the Maumee River, Rossford, Ohio, bounded by the arc of a circle with a 420-foot radius with its center in approximate position 41°36'59"N, 083°33'59"W. All geographic coordinates are North American Datum of 1983 (NAD 1983).

(b) *Effective period.* This section is effective from 2 p.m. until 10 p.m., September 1, 2001.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

Dated: August 6, 2001.

**David L. Scott,**

*Commander, U.S. Coast Guard, Captain of the Port.*

[FR Doc. 01-20637 Filed 8-15-01; 8:45 am]

**BILLING CODE 4910-15-U**

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[WI42-7306a; FRL-7029-3]

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

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

**ACTION:** Direct final rule.

**SUMMARY:** The EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Wisconsin. This revision requires the implementation of an enhanced motor vehicle inspection and maintenance (I/M) program in seven counties in southeast Wisconsin. The program reduces air pollution from motor vehicles by identifying and requiring repair of high emitting vehicles. This action is being taken under the Clean Air Act (CAA).

**DATES:** This "direct final" rule is effective October 15, 2001, unless EPA receives adverse written or critical comments by September 17, 2001. If the rule must be withdrawn, EPA will publish timely notice in the **Federal Register**.

**ADDRESSES:** Send written comments to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (A-18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone John Mooney at (312) 886-

6043 before visiting the Region 5 Office.)

A copy of the SIP revision is available for inspection at the Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), Room M1500, United States Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 260-7548.

**FOR FURTHER INFORMATION CONTACT:** John M. Mooney, Regulation Development Section (A-18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6043.

#### **SUPPLEMENTARY INFORMATION:**

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#### **I. What Action Is EPA Taking Today?**

EPA is approving Wisconsin's enhanced I/M plan for the Milwaukee-Kenosha-Racine and Sheboygan areas. Wisconsin originally submitted the I/M SIP to EPA on November 15, 1992, and made several supplements, dated January 15, 1993, November 15, 1993, July 28, 1994, February 13, 1996, July 3, 1997, August 11, 1998, December 30, 1998, December 22, 2000, and July 27, 2001.

#### **II. What Wisconsin SIP Revision Is EPA Approving?**

On November 15, 1992, the Wisconsin Department of Natural Resources (WDNR) submitted its original I/M SIP revision to the EPA. Since that time, the state has made a number of program revisions to address changes to federal I/M regulations and to meet subsequent I/M program submittal deadlines. As the

state made changes to its I/M program, the WDNR submitted additional I/M SIP revisions to the EPA. The following list contains a general description of the contents of each supplement to Wisconsin's I/M SIP. Full copies of the SIP revisions are located in EPA's docket.

- November 15, 1992—Wisconsin's initial revision which contains the general program description, program elements, and submittal schedules.
- January 15, 1993—commitments for submitting additional program revisions.
- November 15, 1993—implementation schedules for I/M program.
- July 28, 1994—response to EPA's July 14, 1994 (59 FR 35883) proposed conditional approval.
- February 13, 1996—response to EPA's January 12, 1995 (60 FR 2881) conditional approval, includes the final, signed I/M contract (I/M contract), final versions of NR 484, and 485, Wisconsin Administrative Code and the emergency rule for TRANS 131, Wisconsin Administrative Code.
- July 3, 1997—final version of TRANS 131.
- August 11, 1998—submittal addressing federal on-board diagnostic (OBD) testing of motor vehicles.
- December 30, 1998—revisions to NR 485 with revised emissions cutpoints.
- December 22, 2000—revisions to NR 485 authorizing the implementation of oxides of nitrogen tailpipe testing.
- July 27, 2001—revisions to TRANS 131 detailing final procedures for OBD testing and performance standard modeling.

These submittals revise the Wisconsin SIP for the enhanced I/M program, which is required by EPA's I/M regulation, codified at 40 CFR part 51, subpart S—Requirements for Preparation, Adoption, and Submittal of Implementation Plans (I/M regulation). This approval will apply to the I/M program that is now operating in the state and will not require any changes to the program. Motor vehicle testing is required in the Milwaukee-Kenosha-Racine severe ozone nonattainment area, comprised of Kenosha, Racine, Milwaukee, Waukesha, Ozaukee, and Washington Counties, and in the Sheboygan moderate ozone nonattainment area (Sheboygan County). Wisconsin's rules require testing every two years, using the IM240 loaded mode, transient emission test using a dynamometer. Starting in July 2001, Wisconsin will test 1996 and newer vehicles through a computer link

to the OBD system, instead of the tailpipe test. Wisconsin enforces the program through registration denial.

#### **III. What Are the Major Items Included in This State Submittal?**

The revisions include a narrative description of the program, copies of the pertinent Wisconsin statutes, the WDNR and Wisconsin Department of Transportation (WDOT) regulations, equipment and test specifications, emission factor modeling, the I/M contract, which contains information on vehicle inspection procedures, the quality assurance and quality control plan, technician training information, and a public awareness plan.

#### **IV. What Are the EPA Requirements for Approving the Wisconsin I/M Program and How Has the State Addressed Each?**

On January 12, 1995 (60 FR 2882), EPA approved many of the Wisconsin I/M program elements. At that time, however, EPA could not approve the entire program because the state had not finalized all of its I/M regulations and had not yet signed a formal contract with the contractor that performs the I/M inspections. Wisconsin has now completed these activities and EPA has reviewed Wisconsin's revised submittal to ensure that the program meets all aspects of the CAA and EPA's I/M regulation. The I/M program requirements and the analysis of Wisconsin's program are summarized below:

##### *Applicability—40 CFR 51.350*

Sections 182(c)(3) of the CAA and 40 CFR 51.350(a)(2) require states that contain ozone nonattainment areas, which are classified as serious or worse, with populations of over 200,000 to implement enhanced I/M programs. In addition, section 182(b)(4) of the CAA and 40 CFR 51.530(a)(3) require states that contain moderate ozone nonattainment areas, which were required to implement I/M programs prior to November 15, 1990, to upgrade those programs to meet the basic I/M program requirements.

Wisconsin contains two nonattainment areas that meet these criteria, the Milwaukee-Kenosha-Racine severe ozone nonattainment area and the Sheboygan moderate ozone nonattainment area. Wisconsin's program covers all required areas, and EPA approved Wisconsin's authorities establishing program boundaries in the January 1995 (60 FR 2882) approval of the program.

*Enhanced and Basic I/M Performance Standards—40 CFR 51.351 and 40 CFR 51.351*

The 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 standards are established using local characteristics, such as vehicle age mix and local fuel controls, and the following model I/M program parameters: network type, start date, test frequency, model year, vehicle type coverage, exhaust emission test type, emission standards, emission control device inspection, evaporative system function checks, stringency, waiver rate, compliance rate and evaluation date. The emission levels achieved by the state's program design must be calculated using the most current version of the EPA's computerized mobile source emission factor model at the time of submittal, MOBILE5a. Areas must meet the performance standard for the pollutants which cause them to be subject to enhanced I/M requirements. In the case of ozone nonattainment areas, the performance standard must be met for both nitrogen oxides (NO<sub>x</sub>) and hydrocarbons (HC). Since the Milwaukee-Kenosha-Racine area is a severe ozone nonattainment area, Wisconsin must meet the enhanced I/M performance standard for HC and NO<sub>x</sub>. The state must meet the basic I/M performance standard for the Sheboygan moderate ozone nonattainment area.

The Wisconsin submittal includes a MOBILE5a analysis with the following program design parameters:

- Network type—Test only
- Start date—1984
- Test frequency—biennial
- Model year/vehicle type coverage—1968 and newer, light and heavy duty, gasoline
- Exhaust emission test type—IM240
- Emission standards—1968–1986 = 1.2 HC, 20.0 CO, 3.0 NO<sub>x</sub> 1987 and newer = 0.8 HC, 15 CO, 2.0 NO<sub>x</sub>
- Emission control device check—yes
- Evaporative system function checks—gas cap only
- Stringency (pre-1981 failure rate)—N/A
- Waiver rate—3%
- Compliance rate—96%
- Evaluation date(s)—2000, 2003, 2006, and 2008

Wisconsin has submitted modeling demonstrations using the EPA computer model MOBILE5a showing that the low enhanced performance standard reductions will be met in 2000, 2003, 2006, and 2008, (the years required by EPA's I/M regulation) with the existing

program, as well as with planned program changes. This demonstration assumed a 96% compliance rate, 3% waiver rate, and full IM240 credits.

Wisconsin's modeling shows that the program will meet the low enhanced I/M performance standard for HC and NO<sub>x</sub> for all evaluation years. This part of the submittal meets the requirements of 40 CFR 51.351 of the federal I/M regulation.

*Network Type and Program Evaluation—40 CFR 51.353*

The enhanced program must include an ongoing evaluation to quantify the emission reduction benefits of the program, and to determine if the program is meeting the requirements of the CAA and the federal I/M regulation. The SIP must include details on the program evaluation and must include a schedule for submittal of biennial evaluation reports, data from a state monitored or administered mass emission test of at least 0.1% of the vehicles subject to inspection each year, description of the sampling methodology, the data collection and analysis system and the legal authority enabling the evaluation program.

Wisconsin operates a centralized I/M program and has made all necessary commitments and schedules for program evaluation. EPA approved these program elements in the January 1995 approval of the program.

*Adequate Tools and Resources—40 CFR 51.354*

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

EPA approved this program element in the January 1995 approval of the program.

*Test Frequency and Convenience—40 CFR 51.355*

The enhanced I/M performance standard assumes an annual test frequency; however, other schedules may be approved if the performance standard is achieved. The SIP must describe the test year selection scheme and how the test frequency is integrated into the enforcement process, and must include the legal authority, regulations or contract provisions to implement and enforce the test frequency. The program must be designed to provide convenient service to the motorist by ensuring short wait times, short driving distances and regular testing hours.

The Wisconsin program calls for biennial testing in a centralized, test-only network. The state has included this test frequency in its performance standard modeling and still meets the applicable standards. EPA approved this program element in the January 1995 approval of the program.

*Vehicle Coverage—40 CFR 51.356*

The performance standard for enhanced I/M programs assumes coverage of all 1968 and later model years light duty vehicles and light duty trucks 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 year 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 must be subject to the same test requirements using the same quality control standards as non-fleet vehicles and must be inspected in the same type of test network as other vehicles in the state, according to the requirements of 40 CFR 51.353(a).

The federal I/M regulation requires that the SIP 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. Such exemptions must be accounted for in the analysis of the program's potential emission reduction.

The Wisconsin program tests 1968 and newer light and heavy duty gasoline vehicles. Legal authority is provided in section 110.20(6)(a) of the Wisconsin Statutes and TRANS 131.03(2). In the July 3, 1997 submittal letter, Wisconsin provides an estimate of covered vehicles, the methods for identifying covered vehicles, and a description of exempted vehicles. The MOBILE5a modeling uses this data in making the performance standard demonstration. Starting in July 2001, Wisconsin will exempt 1996 and newer model year vehicles from the tailpipe portion of the emissions test. Instead, Wisconsin will perform an inspection of the OBD systems on these vehicles. This is consistent with recent changes to 40 CFR 51.356 that EPA published on April 5, 2001 (66 FR 18156). This part of the submittal meets the requirements of 40 CFR 51.356.

Federally owned vehicles operated in Wisconsin are required to meet the same requirements as Wisconsin registered vehicles. However, EPA is not requiring states to implement 40 CFR 51.356(a)(4) dealing with federal installations within I/M areas at this time. The Department of Justice has recommended to EPA that this 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 constitutionally authorized. EPA 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, EPA is not proposing approval or disapproval of the specific requirements which apply to federal facilities at this time.

#### *Test Procedures and Standards—40 CFR 51.357*

Written test procedures and pass/fail standards must be established and followed for each model year and vehicle type included in the program. Test procedures and standards are detailed in 40 CFR 51.357 and in the EPA documents entitled "High-Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications," EPA-AA-EPSPD-IM-93-1, dated April 1994. EPA's test procedure requirements were recently revised on April 5, 2001 (66 FR 18156) to incorporate new OBD test procedures for 1996 and newer vehicles.

These new requirements provide detailed procedures and pass/fail standards for performing tests on OBD equipped vehicles as a replacement to the tailpipe test.

Wisconsin submitted its test procedures to EPA in its February 16, 1996, July 3, 1997, and July 27, 2001 submittals. Test procedures and standards are specified in: (1) Section C.7.b of the final I/M contract; (2) TRANS 131.03(4)–(9); and (3) NR 485.04. The OBD test procedures are contained in TRANS 131.03(6)(d). This part of the rule contains detailed procedures for connecting to the OBD system in 1996 and newer vehicles, information on readiness codes for OBD tests, and pass/fail standards for OBD equipped vehicles. This part of the submittal meets the requirements of 40 CFR 51.357 of the federal I/M regulation.

#### *Test Equipment—40 CFR 51.358*

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

Wisconsin provides the technical specifications for program test equipment in section C.4 of the I/M contract and in TRANS 131.12(2). These requirements mirror EPA's requirements and guidance on test equipment specifications. This part of the submittal meets the requirements of 40 CFR 51.358 of the federal I/M regulation.

#### *Quality Control—40 CFR 51.359*

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

Wisconsin's quality control requirements are specified in section C.7.g of the I/M contract and in TRANS 131.12(1) and (3). In addition, quality control procedures are outlined in the document entitled "Wisconsin Vehicle Inspection Program, Quality Assurance Procedures", which Wisconsin submitted in the July 3, 1997 submittal. These requirements mirror EPA's recommended quality control procedures contained in the EPA "High Tech Guidance" document and include detailed procedures on system calibration surveillance and equipment

maintenance. This part of the submittal meets the requirements of 40 CFR 51.359 of the federal I/M regulation.

#### *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. An expenditure of at least \$450 in repairs, adjusted annually to reflect the change in the Consumer Price Index (CPI) as compared to the CPI for 1989, is required in order to qualify for a waiver in enhanced I/M areas. An expenditure of at least \$75 for pre-1981 vehicles and \$200 for 1981 and newer vehicles is required in order to qualify for a waiver in basic I/M areas. 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 must 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 committed to in the SIP.

Wisconsin establishes waiver limits in section 110.20(13) of the Wisconsin Statutes and in NR 485.045(1). This regulation requires an expenditure of at least \$75 for pre-1981 vehicles and \$200 for 1981 and newer vehicles is required in order to qualify for a waiver in Sheboygan County and an expenditure of at least \$450 in repairs, adjusted annually to reflect the change in the Consumer Price Index (CPI) as compared to the CPI for 1989, as established by the EPA, for the remaining I/M counties. Wisconsin is not currently making the CPI adjustment, pending the resolution of several issues associated with it. The Wisconsin regulation provides for this adjustment once the issues are resolved. Actual waiver rates in the area remain within the 3% assumed in the performance standard modeling, and emission reduction credit is unaffected. Therefore, EPA is approving this part of the regulation.

A description of the corrective action if waiver rates assumed in the

performance standard modeling are not met are contained in the document entitled "U.S. EPA's Enhanced I/M Performance Standard, Wisconsin's Demonstration with Discussion," written by the Wisconsin Department of Natural Resources and dated July 28, 1994, which is part of "Exhibit C" of the July 28, 1994, submittal. Waiver issuance procedures are specified in TRANS 131.04. This part of the submittal is part of the basis for EPA's approval of the I/M SIP.

#### *Motorist Compliance Enforcement—40 CFR 51.361*

The federal regulation requires that compliance 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.

Wisconsin's program uses registration denial and has committed to a 96 percent compliance rate. EPA approved this program element in the January 1995 approval of the program.

#### *Motorist Compliance Enforcement Program Oversight—40 CFR 51.362*

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

Contractor requirements pertaining to these enforcement program oversight activities are specified in section C.7.j of the I/M contract. This part of the contract requires the contractor to report test data to a centralized computer database which the state uses to ensure effective performance of the enforcement system. The contract also contains provisions regarding proper document handling and inspection procedures. This part of the submittal satisfies the requirements of 40 CFR 51.362 of the federal I/M regulation.

#### *Quality Assurance—40 CFR 51.363*

The state must implement an ongoing quality assurance to discover, correct and prevent fraud, waste, and abuse in the program. The program must 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. The

state must submit as part of the SIP a description of the quality assurance program that includes written procedure manuals on the above discussed items.

Requirements for audits of testing equipment, procedures, personnel and records are specified in TRANS 131.11 and 131.13(4). Section C.7.g(2) of the I/M contract sets forth the contractor requirements pertaining to 40 CFR 51.363. The requirements in the state rules and the I/M contract mirror EPA's recommendations for quality assurance procedures. In addition, the contractor's quality assurance procedures are presented in the document entitled "Wisconsin Vehicle Inspection Program, Quality Assurance Procedures" and the state's quality assurance and auditing procedures are presented in "Section 6000—Contractor Audit Procedures," which Wisconsin included in its July 3, 1997 submittal. This part of the submittal meets the requirements of 40 CFR 51.363.

#### *Enforcement Against Contractors, Stations and Inspectors—40 CFR 51.364*

Enforcement against licensed stations, contractors and inspectors must include swift, sure, effective, and consistent penalties for violations of program requirements. The federal I/M regulation requires the establishment of minimum penalties for violations of program rules and procedures that can be imposed against stations, contractors and inspectors. The state must include in the SIP the legal authority for establishing and imposing penalties, civil fines, license suspensions and revocations. State quality assurance officials must have the authority to temporarily suspend station and/or inspector licenses immediately upon finding a violation that directly affects emission reduction benefits, unless constitutionally prohibited. An official opinion explaining any state constitutional impediments to immediate suspension authority must be included in the submittal. The SIP must 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 that will support this function.

The requirements for penalties for stations, contractors, and inspectors are specified in TRANS 131.11(3) and 131.13(5). Appendix G of the I/M contract sets forth the penalty schedules for stations, contractors, and inspectors. Appendix G includes penalties for a broad variety of improper practices, including failure to calibrate equipment,

improper test procedures, extended wait times at test stations, and failure to provide proper training to technicians. Penalties are clearly specified and increase with subsequent violations. This part of the submittal meets the requirements of 40 CFR 51.364.

#### *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.

A detailed description of these data is contained in section C.7.l of the I/M contract. This section requires data to be collected for each test, including data on waivers, quality control, repairs, and other program features. This part of the submittal meets the requirements of 40 CFR 51.365.

#### *Data Analysis and Reporting—40 CFR 51.366*

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

These procedures, including provisions for all required reports, are specified in section C.8 of the I/M contract. The state also commits to submit annual and biennial reports to the EPA in accordance with the I/M regulation and any ensuing EPA guidance in its July 3, 1997 submittal. This part of the submittal meets all of the requirements of 40 CFR 51.366 of the federal I/M regulation and is part of the basis for approving the Wisconsin I/M SIP.

#### *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.

Requirements for the training and licensing of inspectors are specified in TRANS 131.13 and in section C.5.i of the I/M contract. This section requires all inspectors to undergo training prior to performing vehicle inspections. The training requires inspectors to pass a written and a practical exam administered by a third party for inspector licensing. In addition, Attachment I of the July, 3, 1997 submittal contains the contractor's training plan and Attachment J contains part of the contractor's training manual for new employees. This part of the submittal meets the requirements of 40 CFR 51.367 of the federal I/M regulation.

*Public Information and Consumer Protection—40 CFR 51.368*

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

Public information provisions are specified in appendix E of the I/M contract, and in TRANS 131.03(15)(b) and (c) and 131.15(3)(b). Consumer protection program elements are specified in TRANS 131.13(6) and in sections C.5.c, and C.7.h(2) of the I/M contract. Wisconsin operates an extensive public information program that notifies the public of testing requirements, program changes, and environmental benefits of I/M testing. In addition, the I/M contract has detailed provisions for handling customer complaints, customer challenge mechanisms, and dispute resolution mechanisms. This part of the submittal meets the requirements of 40 CFR 51.368 of the federal I/M regulation.

*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, the procedures and criteria to be used in meeting the performance monitoring requirements of the federal regulation, and the repair technician training resources available in the community.

Requirements and procedures pertaining to technical assistance and repair facility monitoring are specified in TRANS 131.03(10)(a)2., 131.15, and 131.16 and in section C.9 of the I/M contract. In addition, WDOT periodically publishes a newsletter, "The Analyzer," which presents information on the state's I/M program and vehicle diagnosis and repair. The

last page of this newsletter lists the repair technician training resources available in the program area. This part of the submittal meets the requirements of 40 CFR 51.369 of the federal I/M regulation.

*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 and/or renewing the vehicle registration.

EPA will adopt regulations to require submittal of this information by manufacturers to develop a database to support this requirement.

Requirements and procedures for compliance with recall notices are presented in TRANS 131.03(11)(j) and in section C.7.a(3) of the I/M contract. These procedures call for the operation of a recall database on the centralized host computer system. This database will be used to notify motorists of recall issues, as well as to determine whether vehicles have been repaired in accordance with recall notices. This part of the submittal meets the requirements of 40 CFR 51.370 of the federal I/M regulation.

*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.

Requirements and procedures for the onroad testing program are presented in TRANS 131.14 and in appendix J of the I/M contract. The on-road testing program meets the minimum testing requirements of the federal I/M regulation.

**V. Where is the Public Record and Where do I Send Comments?**

The official record for this direct final rule is located at the addresses in the **ADDRESSES** section at the beginning of this document. The addresses for sending comments are also provided in the **ADDRESSES** section at the beginning of this document. If EPA receives adverse written comments on this action, we will withdraw this final rule and address the comments received in response to this action in a final rule on the related proposed rule. We will not

open a second public comment period. Parties interested in commenting on this action should do so at this time.

**VI. EPA Action**

EPA is approving the Wisconsin I/M program as a revision to the Wisconsin SIP.

Nothing in this action should be construed as permitting or establishing a precedent for any future request for a revision to any SIP. Each request for a revision to the SIP must be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

**VII. What Administrative Requirements did EPA Consider?**

*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 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.

*C. 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, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to 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 officials 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. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

#### *D. 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 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.

#### *E. Executive Order 13175*

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, 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 in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

#### *F. Executive Order 13211*

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

#### *G. Regulatory Flexibility*

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 SIP approvals under section 110 and subchapter I, part D, of the Clean Air 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 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).

#### *H. Unfunded Mandates*

Under sections 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 costs to state, local, or tribal governments in the aggregate; or to the 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 government that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated 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 pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

#### *I. 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 action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective October 15, 2001 unless EPA receives adverse written comments by September 17, 2001.

#### *J. 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, because it does not require the public to perform activities conducive to the use of VCS.

#### K. 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 October 15, 2001. 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, Intergovernmental relations, Hydrocarbons, Incorporation by reference, Volatile organic compounds, Ozone.

**Authority:** 42 U.S.C. 7401–7671 *et seq.*

Dated: July 31, 2001.

**David A. Ullrich,**

*Acting Regional Administrator, Region 5.*

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 YY—Wisconsin

2. Section 52.2570 is amended by adding paragraph (c)(101) to read as follows:

##### § 52.2570 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(101) On November 15, 1992, the state of Wisconsin submitted a revision to the Wisconsin State Implementation Plan for ozone establishing an enhanced motor vehicle inspection and maintenance program in Southeast Wisconsin. The state made several supplements to the original plan, dated January 15, 1993, November 15, 1993, July 28, 1994, February 13, 1996, July 3,

1997, August 11, 1998, December 30, 1998, December 22, 2000, and July 27, 2001. This revision included Wisconsin statutes providing authorities for implementing the program, Wisconsin Administrative Rules, the contract between the state of Wisconsin and the vehicle testing contractor, schedules for implementation, and technical materials related to test equipment specifications, reports, and quality assurance procedures.

(i) Incorporation by reference.

(A) Wisconsin Statutes, Section 110.20, effective January 1, 1996, Section 285.30, effective January 1, 1997.

(B) Wisconsin Administrative Code, Chapter NR 485, effective February 1, 2001.

(C) Wisconsin Administrative Code, Chapter TRANS 131, effective June 1, 2001.

\* \* \* \* \*

[FR Doc. 01–20503 Filed 8–15–01; 8:45 am]

**BILLING CODE 6560–50–P**

#### ENVIRONMENTAL PROTECTION AGENCY

##### 40 CFR Part 52

[FRL–7034–3]

##### Notice of Prevention of Significant Deterioration Final Determination for Three Mountain Power, LLC, Burney, CA

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of final action.

**SUMMARY:** The purpose of this document is to announce that, on May 30, 2001, the U.S. Environmental Protection Agency (EPA) Environmental Appeals Board ("Board") dismissed the petition for review filed by the Burney Resources Group of a permit issued to Three Mountain Power, LLC ("TMP") by the Shasta County Air Quality Management District ("Shasta" or "District") pursuant to the Prevention of Significant Deterioration of Air Quality (PSD) regulations under 40 CFR 52.21. This document also announces that a final PSD permit has been issued to TMP by the Shasta pursuant to the terms and conditions of the District's delegation of authority from the U.S. EPA under 40 CFR 52.21(u).

**DATES:** The effective date for the Board's decision is May 30, 2001.

**FOR FURTHER INFORMATION CONTACT:** Duong Nguyen, Permits Office (AIR3), Air Division, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1142.

**SUPPLEMENTARY INFORMATION:** On February 20, 2001, the District issued a revised Authority to Construct (ATC) to TMP for the construction of a new electricity generating plant in Burney, CA. The revised ATC reflected information and comments provided by TMP, interested parties, and the public through February 20, 2001. The revised ATC also constituted a final PSD Permit pursuant to 40 CFR 52.21, the terms and conditions of the District's delegation of authority from the U.S. EPA under 40 CFR 52.21(u), and Section 7 of the federal Endangered Species Act. Subsequent to the issuance of the revised ATC, the Burney Resources Group filed a petition for review of the ATC with the Board on March 21, 2001. On May 30, 2001, the Board denied review of the petition for the following reasons: (1) Petitioner has not shown that the District's selection of a 2.5 ppm (averaged over one hour) NO<sub>x</sub> limit as BACT to be clearly erroneous or an exercise of discretion or an important policy consideration that the Board should, in its discretion, review; (2) the District's selection of a 4 ppm (averaged over three hours) CO limit is consistent with the BACT limit established for other sources in Region IX; (3) the District's elimination of SCONOX, a new control technology, during the BACT review did not materially affect the final determination of the limit constituting BACT, since this limit would be achieved with either a selective catalytic reduction (SCR) system or SCONOX; (4) the District's selection of a 5 ppm ammonia slip is the most stringent ammonia control in PSD permits issued in Region IX and Petitioner's argument that the ammonia slip will form secondary PM<sub>10</sub> is highly speculative in nature; and (5) issues regarding PM<sub>10</sub> and SO<sub>2</sub> offsets and mitigation measures are not within the purview of the federal PSD program. (*See In re: Three Mountain Power, LLC*, PSD Appeal No. 01–05.)

Pursuant to 40 CFR 124.19(f)(1), for purposes of judicial review, final Agency action occurs when a final PSD permit is issued and Agency review procedures are exhausted. This document is being published pursuant to 40 CFR 124.19(f)(2), which requires notice of any final agency action regarding a permit to be published in the **Federal Register**. This action being published today in the **Federal Register** constitutes notice of the final Agency action denying review of the PSD permit and, consequently, notice of the District's issuance of final PSD permit No. 99–PO–01 to Three Mountain Power, LLC, on February 20, 2001.