10 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $60 an hour. Parts will be provided at no cost to the owners/operators of the affected airplanes until June 1997 (after that the cost will be $6,452). Based on these figures and utilizing the assumption that all owners/operators of the affected airplanes will obtain parts prior to June 1997, the total cost impact of the AD on U.S. operators is estimated to be $119,400. This figure is based upon the assumption that no affected airplane owner/operator has already accomplished this action.

Regulatory Impact

The regulations adopted herein 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. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

97–03–01 Raytheon Aircraft Company (formerly Beech Aircraft Corporation): Amendment 39–9907; Docket No. 96–CE–43–AD.

Applicability: Model 1900D airplanes (serial numbers UE–1 through UE–225), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 1,000 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent wing skin de-bonding or warping of the cabin windows because of the heat generated by the engines' right-hand exhaust stacks, accomplish the following:

(a) Replace the right-hand exhaust stack for both the left and right engines in accordance with the INSTALLATION INSTRUCTIONS included in Raytheon Kit No. 129–9013–1, as referenced in Raytheon Mandatory Service Bulletin No. 2686, dated June 1996.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(d) The replacement required by this AD shall be done in accordance with the INSTALLATION INSTRUCTIONS to Raytheon Kit No. 129–9013–1, as referenced in Raytheon Mandatory Service Bulletin No. 2686, dated June 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment (39–9907) becomes effective on March 14, 1997. Issued in Kansas City, Missouri, on January 16, 1997.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–1964 Filed 1–27–97; 8:45 am]

BILLING CODE 4910–13–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 091–4050; FRL–5679–9]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania; Enhanced Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: EPA is granting conditional interim approval of a State Implementation Plan (SIP) revision submitted by Pennsylvania. This revision establishes and requires the implementation of an enhanced inspection and maintenance (I/M) program in twenty-five Pennsylvania counties. The intended effect of this action is to conditionally approve the Commonwealth's proposed enhanced I/M program for an interim period to last 18 months, based upon the Commonwealth's good faith estimate of the program's performance. This action is being taken under section 110 of the Clean Air Act and section 348 of the National Highway Systems Designation Act.

EFFECTIVE DATE: This final rule is effective on February 27, 1997.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. They are also available for inspection at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Brian Rehn, by telephone at: (215) 566–2176, or via e-mail at: Rehn.Brian@epamail.epa.gov. The

mailing address is U.S. EPA Region III, 841 Chestnut Street, Philadelphia, PA, 19107.

SUPPLEMENTARY INFORMATION:

II. Background

On October 3, 1996 (61 FR 51638), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed conditional interim approval of Pennsylvania's enhanced inspection and maintenance program, submitted to satisfy the applicable requirements of both the Clean Air Act (CAA) and the National Highway Safety Designation Act (NHDSA). The formal SIP revision was submitted by the Pennsylvania Department of Environmental Protection on March 22, 1996.

As described in that document, the NHSDA directs EPA to grant interim approval for a period of 18 months to approvable I/M submittals under this Act. The NHSDA also directs EPA and the states to review the interim program results at the end of that 18-month period, and to make a determination as to the effectiveness of the interim program. Following this demonstration, EPA will adjust any credit claims made by the state in its good faith effort, to reflect the emissions reductions actually measured by the state during the program evaluation period. The NHSDA is clear that the interim approval shall last for only 18 months, and that the program evaluation is due to EPA at the end of that period. Therefore, EPA believes Congress intended for these programs to start up as soon as possible, which EPA believes should be on or before November 15, 1997, so that at least six months of operational program data can be collected to evaluate the interim programs. EPA believes that in setting such a strict timetable for program evaluations under the NHSDA, Congress recognized and attempted to mitigate any further delay with the start-up of this program. If the Commonwealth fails to start its program according to this schedule, this conditional interim approval granted under the provisions of the NHSDA will convert to a disapproval after a finding letter is sent to the state.

The program evaluation to be used by the state during the 18-month interim period must be acceptable to EPA. The Environmental Council of States (ECOS) group has developed such a program evaluation process which includes both qualitative and quantitative measures, and this process has been deemed acceptable to EPA. The core requirement for the quantitative measure is that a mass emission transient test (METT) be performed on 0.1% of the subject fleet, as required by the I/M Rule at 40 CFR 51.353 and 366. As discussed in detail in the Response to Comments portion of today's rulemaking action, EPA believes METT evaluation testing is not precluded by the NHSDA, and therefore, is still required to be performed by states implementing I/M programs under the NHSDA and the CAA.

As per the NHSDA requirements, this conditional interim rulemaking will expire on July 27, 1998. A full approval of Pennsylvania's final I/M SIP revision (which will include the Commonwealth's program evaluation and final adopted state regulations) is still necessary under section 110 and under section 182, 184 or 187 of the CAA. After EPA reviews the Commonwealth's submitted program evaluation and regulations, final rulemaking on the Commonwealth's full SIP revision will occur.

Specific requirements of the Pennsylvania enhanced I/M SIP and the rationale for EPA's proposed action are explained in the NPR and will not be restated here.

At the same time EPA published its NPR for interim approval of the Commonwealth's I/M program, EPA issued an interim final rule to defer imposition of sanctions on the Commonwealth for failure to submit and receive federal SIP approval of its I/M program (61 FR 51598). That interim final rule served to toll the imposition of sanctions during EPA's rulemaking process related to the Commonwealth's I/M SIP. EPA solicited comments on that interim final determination, and received adverse comments during the public comment period. EPA intends, in the near future, to take rulemaking action upon that interim final determination separately from today's final action. EPA will address the comments received on that action in its separate rulemaking.

III. Public Comments/Response to Comments

This section discusses the content of the comments submitted to the docket during the Federal comment period for the notice of proposed rulemaking, published in the October 3, 1996 Federal Register, and provides EPA's responses to those comments. Submissions were received from approximately 50 commenters, including the Commonwealth, environmental organizations, industry groups, and from members of the general public. Copies of the original comment letters, along with EPA's summary and response to comments, are available at EPA's Region III office at the address listed in the **ADDRESSES** section of this document. EPA has first grouped similar comments and summarized them, followed by EPA's response to specific comments. For clarity, in some cases EPA has provided background information within a comment on its requirements or its proposed action relevant to Pennsylvania's SIP, prior to summarizing the comment itself.

Comment—Pennsylvania's ''Good Faith Estimate'' under the NHSDA

One commenter alleges that EPA does not have the statutory authority to grant interim approval to Pennsylvania's proposed I/M SIP. Specifically, the commenter asserts that the NHSDA provides states authority to craft decentralized I/M plans if the state satisfies certain requirements. The NHSDA requires such states to make a good faith estimate regarding the expected performance of their proposed program. The commenter argues that Pennsylvania has claimed 100% credit for its plans performance (compared to EPA's model centralized, enhanced I/M program), but offers no meaningful explanation to substantiate its emissions reductions claim.

In a related comment, the Commonwealth argues that they have made significant program enhancements to increase the effectiveness of Pennsylvania's current decentralized I/M program, which satisfy the good faith estimate requirements of section 348(c)(1) of the NHSDA. The Commonwealth also commented that the basis of its good faith estimate was eight program improvement measures listed in its SIP submittal, and that EPA had inappropriately only included five of these measures towards its good faith estimate in the proposed rulemaking. The items which the Commonwealth claims EPA excluded from its proposed rulemaking include: integrating the safety and emission inspection, increased effectiveness of test equipment, and enhanced training and certification for both repair technicians and inspectors.

Response to Comment: In its October 3, 1996 proposed rulemaking, EPA proposed conditional interim approval of the Commonwealth's I/M program under the authority of section 348 of the NHSDA and section 110 of the CAA. The NHSDA grants authority for EPA to approve a state's program based on the full amount of credits proposed by the state if the credits reflect a good faith estimate by the state and if the revision otherwise complies with such Act.

As stated in the Conference Report to the NHSDA, states were expected to have a difficult time quantifying the good faith estimate required under the NHSDA. Therefore, the Conference Report indicates that a state need only demonstrate that the proposed emission reduction credit claims for the program have a basis in fact. Some specific examples of means for states to generate a good faith estimate based on existing or easily obtained historical data were also outlined in the Conference Report. States could also include any other evidence that has relevance to the effectiveness of a program within the good faith estimate. The Conference Report states that ''EPA is to approve State programs based on the emissions reduction credits as estimated by a State, if the State's estimates reflect a good faith expectation of performance.'' EPA believes that the NHSDA grants authority to approve Pennsylvania's SIP, in the interim, on the basis of the good faith estimates contained in this portion of their SIP.

Pennsylvania supplemented its I/M SIP submittal on June 27, 1996 to include its formal ''good faith estimate'' required by the NHSDA. EPA's proposed rulemaking cites the five factors listed in that SIP revision as the Commonwealth's good faith estimate, which are: (1) increased oversight through auditing; (2) additional on-road testing using remote sensing; (3) use of State Police for visible enforcement; (4) instantaneous data collection for swift enforcement; and (5) automation of inspector data input to avoid errors or abuse.

Pennsylvania also committed (in the Good Faith Estimate portion of that SIP addendum) to ''fully integrate its emissions testing program with the long standing safety inspection program * * *''. EPA interprets this commitment to mean that the Commonwealth will require that emissions testing shall be performed prior to completion of a safety inspection. Since the Commonwealth's good faith estimate refers only to perceived respect commanded by the existing safety inspection program, and does not establish how this perceived respect would be transferred to the combined programs, EPA cannot ascertain whether this integration would contribute to improving network effectiveness. While integration of the safety and emissions programs may serve as a means to achieve the motorist compliance rate committed to in the SIP, EPA does not consider this argument, in and of itself, a means to improve program effectiveness or to achieve the Commonwealth's claims for additional emissions reductions for the emissions program.

The Commonwealth commented that increased effectiveness of test equipment was a basis of its good faith estimate. However, the June 27, 1996 SIP supplement, which detailed the Commonwealth's good faith estimate for the first time, did not include this argument as part of Pennsylvania's basis in fact. These test equipment improvements, including the use of dynamometers and advanced analyzers for testing, as well as the addition of evaporative system testing will greatly enhance the emissions inspection program, and these improved test methods are accounted for in the performance standard modeling demonstrating the emission reduction claims for the program. With the lack of specificity in Pennsylvania's comments, EPA presumes that Pennsylvania is not claiming that EPA models and guidance currently provide insufficient credit for these test improvements, nor does EPA believe that Pennsylvania is claiming that these test improvements serve to improve the effectiveness of the Commonwealth's decentralized program—beyond the levels attributed to this equipment in the Commonwealth's modeling demonstration. Pennsylvania's good faith estimate already claims improved network effectiveness for improvements brought about by instantaneous data collection equipment and automation of data entry by inspectors, both of which serve to improve network effectiveness. The Good Faith Estimate section of Pennsylvania's SIP does not presently contain the argument presented in Pennsylvania's comment, and EPA does not believe based on the comment that this argument would serve to improve the good faith estimate were it present in the SIP.

Finally, Pennsylvania commented that enhanced training and certification of repair technicians was part of its good faith estimate, and that EPA overlooked the contribution of this element of the program. The June 27, 1996 SIP addendum did not include this provision as a basis for the Commonwealth's estimate. EPA agrees that additional training and certification of repair technicians is crucial to achieving the emissions reductions associated with the emission testing program, as well as for maintaining public support for the program. EPA cited as a deficiency in its proposal that Pennsylvania's proposed regulations lack a requirement for mandatory technician training and certification (although Pennsylvania's performance standard demonstration claims full credit for this program). EPA proposed that this deficiency be remedied by adoption of final regulations which must include a mandatory technician training program, to mirror the Commonwealth's modeled performance standard demonstration. In the face of that SIP deficiency, and by the lack of inclusion of this element in the formal Good Faith Estimate portion of the Commonwealth's SIP, EPA did not consider this element when considering the Commonwealth's good faith estimate.

Nevertheless, the Commonwealth's arguments to include these three elements in their good faith estimate are moot, as these three elements were not critical to EPA's acceptance of the state's good faith estimate. EPA proposed to accept the good faith estimate under the NHSDA without the benefit of those elements, although these elements do benefit the SIP, serving to satisfy other statutory and regulatory I/M requirements.

Comment—EPA's Decision to Conditionally Approve the Commonwealth's SIP

One commenter asserted that Pennsylvania's SIP suffers from numerous major deficiencies that prevent approval of the SIP by EPA. The examples cited correspond to those elements EPA cited as major deficiencies in its proposed rulemaking. Furthermore, the commenter adds that there are numerous other serious deficiencies, which EPA deemed minor in its proposal, but which must eventually be corrected. The commenter asserts that in light of the many deficiencies, this SIP revision does not warrant conditional approval.

Response to Comment: In its proposal, EPA proposed five major conditions which must be satisfied prior to issuance of final full approval of the SIP, under the authority of section 110 of the CAA. Additionally, EPA cited fourteen minor conditions, which do not affect interim approval of the Commonwealth's SIP, but which must be corrected prior to final full approval of the SIP.

EPA's ability to issue conditional approvals for SIPs having correctable deficiencies was upheld in the case of NRDC v. EPA, 22 F.3d 1125, 1134–1135 (D.C. Circuit, 1994). In that case the court found that the language of section 110(k)(4) of the CAA authorizes use of conditional approval of a substantive SIP revision, which although not approvable, can be made so by adopting specific EPA-required changes within the prescribed conditional period. The court concluded that the conditional approval mechanism was intended by Congress to provide EPA with an alternative to disapproving substantive, but not entirely satisfactory, SIPs submitted by the statutory deadlines, but not as a means of circumventing those deadlines.

As indicated in the proposed rulemaking, EPA has reviewed Pennsylvania's I/M SIP, and determined that this SIP is substantive and the deficiencies are not insurmountable within the time frames of the conditional approval period. Therefore, EPA's choice of conditional approval is appropriate for this SIP. EPA also believes that the minor deficiencies cited as de minimus do not detract from EPA's ability to conditionally approve the Commonwealth's SIP, and need not be satisfied until the end of the interim approval period granted under the authority of the NHSDA. EPA believes that, due to the minor nature of these deficiencies, allowing states the full term of the 18-month interim approval period to correct these deficiencies will not cause an adverse environmental impact.

Comment—Requirement for I/M in Mercer County

Numerous commenters expressed concern over implementation of an inspection and maintenance (I/M) program in Mercer County, Pennsylvania. The thrust of the comments was that this area is not classified as a CAA nonattainment area, and the area is not violating EPA's health-based NAAQS. Most of the commenters asserted that Mercer is primarily a rural county, with only one small urban center having no large industry base, i.e., Sharon. Several commenters pointed out that none of the Pennsylvania counties surrounding Mercer is subject to emissions testing, nor are the neighboring counties in Ohio.

Several commenters also contend that much of the pollution is transported from across the Ohio border and/or from out-of-state vehicles traversing several large interstate highways that bisect Mercer County. Several commenters blamed large diesel trucks for the pollution problem, citing black smoke spewed from those vehicles.

Many commenters also cited economic hardship that implementation of this program would add to a county already suffering from the effects of a poor economy.

Finally, several commenters cite a request from Governor Ridge to remove Mercer County from the ''Northeast Ozone Transport Region'', requesting that EPA approve this request and eliminate the requirement for an I/M program for this area.

Response to Comment: Requirements for I/M programs are set forth in section 182 and section 184 of the Clean Air Act (the CAA), as well as in EPA's ''Regulation for I/M Program Requirements'', hereafter referred to as the I/M rule, codified in the Code of Federal Regulations (CFR) at 40 CFR Part 51, Subpart S. Section 182(c)(3) of the CAA requires states to enact enhanced I/M programs in certain metropolitan areas based upon the severity of those areas' ozone problem and their populations.

Section 184(a) of the CAA establishes a Northeast Ozone Transport Region (the OTR), to address ozone pollution caused by transport of both ozone precursors and ozone between closely spaced urbanized areas. The Commonwealth of Pennsylvania lies in the OTR. Section 184(b)(1)(A) of the CAA requires that states lying in the OTR implement an enhanced I/M program in any metropolitan areas having a population of over 100,000 persons—regardless of the severity of the ozone pollution problem in that area. Mercer County comprises an MSA which has a population over 100,000 persons, and therefore is subject to this I/M requirement. Since Ohio does not lie in the Northeast OTR, Ohio counties bordering Mercer are not subject to the same I/M requirements.

Section 51.350(b)(1) of EPA's I/M rule requires that the I/M program be implemented in the entire OTR portion of a subject MSA. Since MSAs are defined on a county-wide basis in Pennsylvania, the entire county is subject to the program. While EPA's I/M rule does allow for exceptions for extremely rural areas, the rule does not provide for exclusion of an entire MSA on this basis.

Several of the Pennsylvania counties surrounding Mercer were not defined as metropolitan statistical areas by the U.S. Office of Management and Budget (OMB) as of 1990 (i.e., the enactment date of the CAA and the date this I/M requirement was established). As a result, no contiguous county to Mercer is required to adopt an enhanced I/M program.

The Clean Air Act allows states to petition EPA to remove a state or portions of a state from an OTR. On October 11, 1995, Pennsylvania Governor Ridge submitted a petition to EPA to remove 37 western Pennsylvania counties from the ozone transportation region—including Mercer County. The Commonwealth contends that regional attainment ozone NAAQS efforts are not significantly dependent upon control measures from those counties. EPA has not yet acted upon the Governor's request. Since EPA is compelled to take final action upon the Commonwealth's I/M program, under a court settlement agreement filed October 1, 1996 pertaining to the case of Delaware Valley Citizens for Clean Air v. EPA, EPA cannot wait for final action upon the Commonwealth's OTR opt-out petition, before taking action upon the I/M program.

While many commenters believe that heavy-duty diesel trucks are primarily responsible for ozone pollution, EPA does not agree with that position. The pollutant stream emitted by a diesel engine differs greatly from that of a gasoline-powered engine. While both engine types emit nitrogen oxide emissions—a precursor to ozone, diesels typically emit very low levels of hydrocarbons, another ozone precursor. Diesels emit much greater levels of particulates, which are readily identifiable as black or gray smoke, but are not ozone precursors. While an individual heavy diesel truck typically emits a greater mass of emissions compared to a passenger car, as a whole these trucks comprise a much smaller portion of the vehicle fleet and as a whole fleet, travel fewer vehicle overall miles than passenger cars. EPA supports efforts to reduce emissions from diesels, such as emission testing. However, this type of testing is not presently required under any Federal statute. Adoption of such a program is currently the purview of the states, and is therefore not the subject of today's action.

For all the reasons set forth above, EPA cannot remove the requirement for Mercer County to implement an OTR enhanced I/M program, at this time. Should EPA accept Pennsylvania's petition to remove 32 counties, including Mercer, from the OTR, implementation of an I/M program would no longer be required under federal law in those counties.

Comment—EPA's I/M Program Evaluation Requirements

The Commonwealth commented that EPA has taken too narrow an

interpretation of authority provided by the NHSDA by focusing on its prohibition against EPA's requiring states to adopt test-only programs which utilized IM240 test equipment and methods; its abolition of EPA's presumed ''50% credit discount'' previously assumed for decentralized programs; and its ban of EPA's ability to disapprove such programs on the basis of any presumed discount. Specifically, Pennsylvania states that the NHSDA overrides I/M requirements which EPA established for use in a centralized approach to the I/M program. In particular, this includes the use of centralized mass-based emission, transient test (METT) equipment to conduct the ongoing program evaluation required by 40 CFR 51.353. While the Commonwealth indicated in its comments that it intends to perform an ongoing I/M evaluation program, per the CAA, the Commonwealth has requested that it be allowed to use its own I/M program test criteria and equipment to conduct such an evaluation in place of the METT equipment required by EPA's regulation.

The Commonwealth's rationale for use of non-METT testing for its evaluation equipment is set forth in its comment letter. Pennsylvania believes that EPA's position is inconsistent with Congressional intent, specifically in light of language from the Conference Report to the NHSDA which provides that ''testing technology called I/M240 * * * is not practical in the decentralized system of emissions testing * * *'' Furthermore, since EPA has proposed acceptance of Pennsylvania's decentralized network design, Pennsylvania believes its alternative test procedure should be found by EPA to be equivalent to meet the evaluation requirements of 40 CFR 51.353. Pennsylvania does not believe Congress intended for a centralized approach to evaluating the success of the I/M program, since the Commonwealth maintains it would be costly, inconvenient, and would not provide a clear evaluation of Pennsylvania's decentralized program and equipment.

Pennsylvania requests that EPA agree, in its final rulemaking, that the NHSDA authorizes states to use their control equipment to perform a program evaluation, specifically allowing use of ASM evaluation equipment in Philadelphia and two-speed idle testing equipment for use in the Pittsburgh area.

Even if EPA refuses the above request, the Commonwealth asks that EPA provide in the final rule that METT testing only be mandated in the five-county Philadelphia area. Pennsylvania believes that since the Pittsburgh area is not required to have as rigorous a program as required in the Philadelphia area, it should not be held to the same high standards for program evaluation. Further, Pennsylvania asserts that the METT evaluation requirement is to be used as a benchmark to ensure reductions equivalent to IM240 reductions, and this benchmark is not necessary in Pittsburgh, where an idle test is to be used for routine emissions inspection. The Commonwealth generally supports the use of routine inspection equipment and procedures for use in performing the ongoing program evaluation.

Response to Comment: EPA believes that the Commonwealth, in its comments with respect to METT testing requirements, has misinterpreted the CAA's rationale for requiring an ongoing program evaluation. While the NHSDA prohibits mandatory IM240 testing on a centralized basis as the inspection method used for passing and failing vehicles in I/M programs, it is silent on the issue of program evaluation testing and EPA believes that it clearly does not prohibit the Agency from requiring METT sampling on a small, random subset of vehicles in order to confirm the level of effectiveness of the program as authorized under section 182(c)(3)(C) of the CAA. While Pennsylvania argues that a test which is adequate for routine inspections should be good enough for the purpose of program evaluation, EPA disagrees. The reason is that the two tests are intended for two wholly different purposes, and therefore have completely independent criteria for acceptability.

The routine, non-METT I/M inspection used to pass and fail vehicles does not need to correlate very closely to the EPA Federal Test Procedure (FTP), which has been used by EPA and vehicle manufacturers for the last several decades for the purpose of determining actual vehicle emissions; it need only be precise enough to make broad pass/fail decisions, for the purpose of identifying grossly polluting vehicles, with respect to ozone precursor pollutants. The program evaluation test, on the other hand, is not used to make pass/fail decisions; instead, it is used to measure actual total mass of emissions (i.e., in tons), which requires a more precise measurement tool. Since the purpose of the program evaluation is to determine specifically the mass quantity of vehicle-related pollutants that are eliminated as a result of implementation of the I/M program, the broad pass/fail estimates provided by non-METT equipment are inadequate for this purpose. For vehicle testing, precision is a function of how closely the test correlates to the FTP—the best test method currently available. Since the FTP itself is a mass-emission, transient test, other METTs, of which there are several available in addition to the IM240, tend to correlate well with the FTP, with some correlating better than others. Non-METT tests, such as Pennsylvania's ASM and two-speed idle tests, tend to have very low correlations to the FTP.

Since program evaluation is a means to determine the overall emission reduction impact of an I/M program, and not a means of comparing test equipment or network design, EPA believes the decision to approve Pennsylvania's decentralized network design (including use of ASM and idle test types) is independent of EPA's decision to conditionally approve the program evaluation methodology portion of the Commonwealth's SIP.

METT evaluation testing need not be performed on a centralized basis. The I/M rule required such testing in all programs, whether centralized or decentralized, prior to passage of the NHSDA. In response to the Commonwealth's comments on costs, inconvenience, and inaccuracy of centralized evaluation systems, it may help to clarify that the I/M rule does not require the 0.1% program evaluation sample to be conducted on a centralized basis or at a centralized location. Furthermore, since evaluation testing need only be performed on a minute fraction of the vehicle population (i.e., 0.1% of all subject vehicles), few actual analyzers are needed to perform the evaluation, and thus purchase or leasing of METT evaluation equipment is not nearly as significant a financial burden as is implied by the Commonwealth's comment. The possible availability of transportable METT equipment provides states with a range of non-centralized options for undertaking evaluation testing, so a state can provide a consumer-friendly evaluation process.

The use of a METT evaluation on a 0.1% random sample will provide states and EPA with quantitative assessments of how well I/M programs are actually performing, with respect to overall emission reduction benefits that result from all program elements (i.e. test type, network design, enforcement mechanism, etc.) working together. The purpose of the 0.1% METT is not to segregate the effectiveness of any individual program element, such as test type. Specifically, it is not EPA's intention to use the results of the 0.1% METT requirement to force states to

switch to IM240 testing for their routine inspection process.

EPA believes Congress required an ongoing I/M program evaluation in the CAA in order to measure, for the first time the actual effectiveness of states' programs in achieving air pollution reductions. METT testing provides mass-based fleet-wide emission factors that are more reliable, reputable, and objective than any broad, concentration-based results that any non-METT test (e.g. idle or ASM testing) could provide. Section 182(c)(3)(C) of the CAA specifically authorizes EPA to establish the methods for evaluating I/M programs. EPA believes that nothing in the NHSDA prohibits EPA from continuing to require METT as the appropriate evaluation method.

EPA does not agree that the program evaluation applies only to high enhanced I/M areas. The CAA, which establishes the program evaluation requirement for enhanced I/M programs, does not distinguish between high or low enhanced I/M programs. Furthermore, the EPA I/M Flexibility Rule, which established the low enhanced performance standard (which the Commonwealth has chosen to use in Pittsburgh) did not change the program evaluation requirements for state programs. EPA disagrees with Pennsylvania's assertion that METT is only to be used as a benchmark to ensure that reductions equivalent to IM240 reductions are achieved in a program. Rather, as explained above, program evaluations whether in high or low enhanced areas are intended to gauge the overall effectiveness of how well a state's program is reducing emissions. EPA does not believe that the purpose of a program evaluation is to verify how well the state's inspectors are performing the test type as required by the design of the network—that is the function of inspector audit—rather, the program evaluation helps to determine the overall emission reduction impact of the program with all the program elements working together. For this reason, the requirement for METT testing still applies all enhanced I/M areas, including the Pittsburgh area.

Therefore, for the reasons set forth above, EPA does not agree with Pennsylvania's arguments for use of non-METT based program evaluation. In turn, the condition related to the Commonwealth's METT-based program evaluation methodology remains in EPA's final interim approval. Please refer to the **SUPPLEMENTARY INFORMATION** section of this document for more information on the actual condition. Since Pennsylvania has committed to comply with this requirement, EPA can conditionally approve this aspect of the I/M SIP.

Comment—EPA's Requirements for I/M Inspection Network Design

Pennsylvania commented that EPA's proposed rulemaking requires the state to demonstrate that its program meets the network evaluation criteria found in 40 CFR 51.353(b)(1). This provision includes a 50% discount for decentralized programs which is inconsistent with the NHSDA.

Response to Comment: EPA agrees with the Commonwealth's comment. EPA's October 3, 1996 proposed rulemaking mistakenly conditioned approval of the Commonwealth's SIP on compliance with program evaluation requirements of 40 CFR 51.353(b) (1) and (c). However, EPA believes the requirements of § 353(b)(1) have been superseded by the NHSDA. Therefore, the condition upon the Commonwealth's SIP is amended to require compliance with the program evaluation requirements found in 40 CFR 51.353(c).

Comment—Use of a Low-Enhanced I/M Program Without an Approved Reasonable Further Progress Plan

One commenter asserted that EPA cannot approve the plan because it does not comply with EPA's requirements in 40 CFR 51.351(g), which allows states, under certain conditions related to a separate CAA requirement, to utilize a less stringent ''low'' enhanced performance standard. This I/M program flexibility may be applied if a state has an approved plan to demonstrate reasonable further progress (RFP) towards attainment of the ozone air quality standard, and that plan does not rely upon additional reductions from enhanced I/M—beyond those projected from a ''low'' enhanced program. The commenter asserts that Pennsylvania currently does not have such an approved RFP plan for any nonattainment area, and therefore does not qualify to design a low enhanced I/M program.

In a separate but related comment, the Commonwealth also raised the inconsistency between the I/M program implementation schedule established by the NHSDA and EPA's requirements in 40 CFR 51.351(g) for approval of the RFP SIP revisions prior to approval of the low enhanced I/M programs. Additionally, Pennsylvania does not agree that proposed approval of the 15% RFP plan submission for Pittsburgh is necessary prior to final interim approval of the I/M program under the NHSDA. Since the NHSDA modified the schedule for submission and final approval of states' I/M programs, Pennsylvania believes that EPA cannot block interim approval of the I/M SIP submissions on the basis of the approval status of a 15% RFP submission.

Response to Comment: EPA amended its I/M program requirement regulation (i.e., the I/M Flexibility Rule) on September 18, 1995 (60 FR 48029) to allow states additional flexibility in designing I/M programs in cases where the full magnitude of reductions from implementation of a ''high'' enhanced performance standard I/M program are not necessary to make reasonable progress towards or to obtain the national ambient air quality standard (NAAQS) for ozone. The result was a less stringent performance standard called the ''low enhanced'' performance standard.

To ensure that a state wishing to use the low enhanced standard did not need the additional emissions reductions afforded by high enhanced I/M, EPA limited use of the low enhanced standard to areas that could meet the requirements of the CAA for reasonable further progress, and had not failed to meet CAA requirements for attaining the NAAQS. Specifically, 40 CFR 51.351(g) requires, among other things, that states have an approved SIP pursuant to CAA requirements related to 1996 RFP.

However, since the publication of EPA's I/M Flexibility Rule, Congress passed the NHSDA, which set forth new time frames and deadlines for adoption and implementation of I/M programs. Since the NHSDA provided qualifying states only 120 days to submit proposed I/M programs, and since the time frames for implementation and evaluation of NHSDA I/M programs are triggered by EPA interim approval of such I/M SIP revisions, EPA believes Congress intended for EPA to approve these programs, on an interim basis, as soon as possible. Since in many cases EPA has not yet been able to approve states' RFP SIPs for 1996, the administrative process of taking final approval action upon these SIPs could serve to delay approval of I/M SIPs submitted under the NHSDA. Therefore, EPA interprets Congressional intent under the NHSDA to supersede the requirement of 40 CFR 51.351(g) requiring full approval of 1996 RFP SIPs that demonstrate that use of low enhanced I/M will not jeopardize RFP requirements under the CAA prior to interim approval of I/M SIPs under the NHSDA. Such final approval will be necessary prior to full approval of I/M SIPs after the 18-month NHSDA evaluation period. However, to ensure that use of the low enhanced performance standard is appropriate, EPA believes that I/M plans for any area

relying upon the low enhanced standard cannot receive final interim approval until such time as EPA concludes that an RFP plan containing a low enhanced I/M program is appropriate and proposes approval of any required 1996 RFP plan for that area. With relation to Pennsylvania's I/M SIP revision, concurrent with issuance of this final interim rulemaking action, EPA is proposing, via a separate rulemaking action, conditional approval of the Pittsburgh 1996 RFP SIP, which demonstrates the suitability of the low enhanced performance standard to that area.

Comment—EPA's Mechanism for Converting its Conditional Approval Action to a Disapproval

One commenter asserts that EPA's conditional approval action should automatically convert to a disapproval, unless EPA sends a finding letter to the Commonwealth that all conditions have been fully satisfied in a timely manner (as established by the final conditional rulemaking). The commenter believes that EPA has a history of delay and equivocation related to enforcement of the CAA upon the states.

Response to Comment: Under section 110(k)(4) of the CAA, EPA agrees with the commenter that conditional approvals are automatically treated as disapprovals, by operation of law, if a state fails to comply with the commitments to correct SIP deficiencies. However, for purposes of notice to the public concerning the official status of a SIP as of any given date, EPA issued a policy memorandum on July 9, 1992 from John Calcagni, Director, Air Quality Management Division, Office of Air Quality Planning and Standards, entitled ''Processing of State Implementation Plan Submittals''. In this memorandum, EPA indicated that it would send a letter to the state indicating that the condition had not been met, and that the approval status of the SIP had automatically converted to a disapproval. It is important to note that the conversion occurs by operation of law; the letter serves only to notify the state and the public that the conversion has occurred.

EPA does not agree with the commenter's assertion that all conditional approvals should convert to disapprovals, unless EPA issues a letter indicating that all conditions of EPA's rulemaking action have been met. Under the CAA, a SIP can only convert to a disapproval if the conditions have not been met, in a timely fashion. Where a state has satisfied the conditions of a conditional approval, it would not be consistent with the CAA to have conditional approvals convert to disapprovals merely because EPA failed to timely issue a confirmatory letter. It should be noted that EPA intends to provide, in writing, notification to the Commonwealth as to whether or not a condition has been satisfied. EPA intends to do so within 30 days after the due date of a condition.

Comment—Pennsylvania's Ability to Ensure Participation by a Sufficient Number of Inspection Stations

One commenter was concerned about EPA's ability to ensure that Pennsylvania's program will have sufficient participation to smoothly operate the program. The commenter also questioned what contingency measures Pennsylvania would implement if an insufficient number of stations choose to participate in the program.

Response to Comment: While EPA recognizes the commenter's concern, in that the Commonwealth was unable to disclose the number of stations that it anticipates will participate in the program as of November 1997, EPA believes it remains appropriate to grant a conditional approval to Pennsylvania's program at this time under the authority of the NHSDA.

Furthermore, EPA believes the state has taken reasonable measures to ensure that adequate station participation will be available to accommodate the number of vehicles in the program. In addition to establishing support for the program through the formation of two stakeholders groups in the state to address the need for enhanced I/M testing and other air quality control measures; the state has also formed an I/M Working Group, comprised of repair shop owners, educators and state regulators to address, among other issues, adequate participation in the program by the repair station community.

While the Commonwealth has not submitted contingency measures in its submittal under the NHSDA, provisions do exist under this rulemaking that subject the state's program to further scrutiny at the end of the interim approval period. EPA, as directed by Congress under the NHSDA, will review Pennsylvania's program to ensure that the level of credit claimed in its SIP submittal is accurate. If the state's program fails this evaluation for any reason, the state will need to take corrective action before a final full approval of the enhanced I/M SIP revision will be granted.

Comment—Adequate Funding to State Police for Enforcement Activities Related to the Program

One commenter was concerned that the State Police, to which Pennsylvania has delegated primary enforcement responsibilities for the program (both against testing stations and against motorists) has not been given adequate additional resources to adequately enforce the program.

Response to Comment: In its proposed approval, EPA cited a failure on the Commonwealth's part to demonstrate adequate tools and resources for the program, as required by 40 CFR 51.354. Specifically, states are required to provide a detailed budget plan, and a plan describing the personnel resources dedicated to the enhanced program. EPA considers this a minor deficiency that must be corrected prior to full approval of the SIP revision at the end of the 18-month interim approval period provided under the NHSDA. In part, EPA's proposed rulemaking cited a failure to detail personnel and equipment dedicated to the enforcement portion of the program. Since the SIP revision calls for use of State Police in the primary enforcement role, EPA expects the Commonwealth to detail the State Police resources to be dedicated to this program prior to issuance of final full approval.

Comment—The Commonwealth's Funding of the Program

One commenter was concerned that without a dedicated source of funding the Commonwealth may not make sufficient expenditures to properly implement the program. This commenter alleges that the Commonwealth has a long history of not meeting its I/M commitments.

In a related comment, the Commonwealth asserted that it intends to provide a detailed I/M program budget and personnel plan identifying the personnel dedicated to quality assurance under the EPA I/M rule. Specifically, the Commonwealth indicated its intent to issue requests for proposal (RFPs) to contract with private vendors to provide some of these services, and to submit the contractor's proposal that is eventually accepted to perform this function.

Response to Comment: EPA's I/M requirements under 40 CFR 51.354 require states to demonstrate that adequate funding is available to ensure proper operation of the program. A dedicated fund is also to be created for use in oversight and operation of the program. However, EPA's I/M rule allows for alternative funding

mechanisms (including reliance upon a general fund) for those states which are constitutionally blocked from creating a dedicated fund, and which demonstrate that funding can otherwise be maintained.

As indicated in EPA's proposed rulemaking, Pennsylvania has established that it is constitutionally barred from creating a dedicated I/M fund, and must instead rely upon annual appropriations from the General Assembly. The Commonwealth must therefore submit an annual budget for the first year of program operation detailing its I/M program budget and personnel resources dedicated to the program.

However, EPA's proposal cited as a minor deficiency the lack of a detailed budget plan describing funding sources for: I/M oversight personnel, program administration, program enforcement, and purchase of equipment, as required by 40 CFR 51.354. Also, a detailed personnel plan describing human resources dedicated to: the quality assurance program, data analysis, program administration, enforcement, public education and assistance and other necessary functions.

The Commonwealth has not yet provided these detailed budget and human resources plans, but has expressed a willingness to submit this information in its final I/M SIP revision. If these functions are to be performed by the Commonwealth, EPA requires detailed plans containing that information. If these functions are contracted to private vendors, EPA expects the Commonwealth will provide either a detailed RFP, a binding proposal or bid from the contractor or contractors selected to perform these functions, or final legal contracts between the selected contractor or contractors and the Commonwealth that contain budget plans and personnel allocations for these responsibilities. Therefore, EPA is leaving the de minimus deficiency related to Pennsylvania's demonstration of adequate resources intact in today's action.

Comment—Implementation Dates

EPA proposed commencement of I/M testing in the Philadelphia and Pittsburgh areas by no later than November 15, 1997; and in all other subject I/M areas by no later than November 15, 1999. The Commonwealth commented that it supports EPA's proposed implementation dates for those areas.

Response to Comment: This comment supports EPA's proposed action, thus it does not change EPA's final decision or rulemaking action.

Comment—Performance Standard Modeling Issues

In its proposed interim conditional approval, EPA cited differences between the Commonwealth's I/M regulation and the program design parameters used in the modeling to demonstrate compliance with the performance standard, as required under 40 CFR 51.351. Specifically, the modeling assumed credit for features not found in the Commonwealth's proposed regulations.

Among other things, Pennsylvania's modeling, as of the time of proposal, included full credit for a mandatory repair technician training and certification program in all subject counties. However, at that time the proposed regulations did not provide for such a program. Pennsylvania agrees in its comment letter that the state regulations must be consistent with the modeling demonstration. Pennsylvania noted that it intends to adopt regulations to provide for, among other things, a mandatory technician training program, and provided draft regulatory language for a repair training program in its comments to EPA.

Pennsylvania states that its revised modeling, submitted November 1, 1996, demonstrates that the performance standard will be met as long as its regulation, as finally adopted, is consistent with the assumptions used in the performance standard modeling. Pennsylvania claims that it will ensure consistency between the performance standard modeling assumptions and its final regulation through the draft regulatory revisions provided within its comment letter.

Pennsylvania claims that the result of all of the draft regulatory amendments provided in its comment letter will ensure consistency between the final regulations and the revised performance standard modeling.

Response to Comment: EPA supports the Commonwealth's draft regulatory language, as it adequately addresses the conflict between the performance standard modeling assumptions and the Commonwealth's I/M regulation.

However, as Pennsylvania indicated in its comments, the Commonwealth intends to obtain input from the Pennsylvania I/M Working Group on all redrafted regulatory language prior to adopting these changes through the state's regulatory adoption process. These revisions are also subject to public participation at the state level, as well as changes through the rule adoption process, itself. Therefore, EPA considers the Commonwealth's revised regulatory language to be draft, until final regulations are adopted and submitted to EPA as a SIP revision, and therefore cannot remove the minor deficiency until the Commonwealth formally adopts and submits to EPA its final regulations.

Comment—Remodeling the Performance Standard Using Updated ASM Test Credits

Pennsylvania commented that it agrees with the EPA's proposal to conditionally approve the Commonwealth's I/M SIP upon a requirement that the Commonwealth remodel the performance standard to reflect the newest ASM credit estimates. On November 1, 1996, Pennsylvania supplemented its SIP with revised MOBILE modeling for the performance standard demonstration.

Pennsylvania also committed to modify its regulations to incorporate actual program startup dates and testing standards, or ''cutpoints'', to match those contained in its modeling demonstration. Specifically, Pennsylvania provided comments containing draft regulatory language to address a condition in EPA's proposed rulemaking regarding I/M test equipment specifications and test procedures (i.e., for the ASM, idle, and 2-speed idle tests), in addition to providing draft regulatory language to more clearly define the one-mode ASM test to be used in the Philadelphia area. Pennsylvania also included in a November 1, 1996 supplement to the SIP draft specifications for test equipment to be used in the I/M program.

Response to Comment: This commenter supports EPA's proposed action, and thus the comment does not alter EPA's final rulemaking action.

Pennsylvania indicated in its comments that it will obtain input from the Pennsylvania I/M Working Group on all draft regulatory amendments prior to adopting those changes through the state's regulatory adoption process. Regulatory revisions are also subject to public participation at the state level, as well as to changes at any stage of the rule adoption process. Therefore, EPA considers the Commonwealth's revised regulatory language to be draft, until final regulations are adopted and submitted to EPA as a SIP revision, and therefore cannot remove the minor deficiency until the Commonwealth formally adopts and submits its final regulations to EPA. Since the performance standard modeling must mirror the I/M program parameters described in the Commonwealth's

regulation, EPA believes it would not be prudent to remove the de minimus deficiency tied to modeling the I/M performance standard, until Pennsylvania finalizes its regulatory requirements supporting that modeling demonstration.

Therefore, EPA is maintaining the cited minor deficiency in its final interim rulemaking action. Upon submission of final regulations to remedy this deficiency, EPA will review the change and make a final decision in its full approval action to be taken upon expiration of the interim approval period afforded this SIP under the NHSDA.

Comment—Functional Evaporative System Testing

The Commonwealth commented that logistical problems exist with the current functional evaporative system pressure and purge testing procedures outlined in EPA's 1996 guidance. While Pennsylvania continues to take credit for both purge and full pressure tests, as currently allowed under EPA policy, the Commonwealth commented that it will not require tests that are impractical to implement or which may cause damage to evaporative system components. Pennsylvania further alleges that over half of the vehicles subject to evaporative system testing cannot be tested with EPA's current test method. Pennsylvania claims that these tests are exceedingly difficult to implement in real world testing environments because it is difficult to identify where to hook up the testing equipment on many of the vehicles being tested. Pennsylvania expects that EPA will work to develop an alternative test that achieves all the emission reductions originally projected by EPA for these tests. The Commonwealth adds in its comments that EPA technical staff have acknowledged problems with the pressure test and that there is currently no proven purge test procedure.

The Commonwealth further objected to EPA's conditioning of the interim approval upon adoption of procedures for the purge and pressure tests, as currently described in EPA guidance.

To address the lack of functional evaporative test procedures and test equipment specifications, which EPA cited as a condition in its proposed rulemaking, Pennsylvania provided draft regulatory language in its comments.

Finally, the Commonwealth adds that to date, no alternative test procedure has proven to be a viable substitute for EPA's test method.

Response to Comment: On November 5, 1996, EPA issued a policy memorandum from Margo Oge, Director of EPA's Office of Mobile Sources (OMS), entitled ''I/M Evaporative Emissions Tests''. This memo outlines the difficulties related to functional pressure and purge functional testing, in practice in I/M programs. The memo provides that EPA will accept states' credit claims for the benefits from implementing purge testing, although many states are not expected to begin using this test for 12–18 months. EPA hopes a suitable test will be available by the time states begin testing.

On December 20, 1996, EPA issued an addendum to the November 5 memo. This memorandum from Leila Cook, Regional and States Program Group Leader of EPA's OMS, serves to clarify the policy set forth in the November 5, 1996 memo. Specifically, this memo requires states to actually perform an available pressure test to receive credits claimed for such a program in their SIP revision. Full modeled credit (i.e., from the MOBILE model) for the performance of pressure testing is available only if a state performs an Arizona-like pressure test from the fillpipe *and* a separate gas cap check. States performing only a gas cap check will receive only 40% of the available MOBILE-modeled credits for pressure testing.

EPA has acknowledged problems with the current purge test. Therefore, states such as Pennsylvania that committed to perform a purge test may continue to take 100% of the credit for the purge test, without actually performing such testing, until such time as EPA develops a viable purge test procedure. EPA expects Pennsylvania will require some form of evaporative system pressure testing to receive credit for implementation of this program element, and is interpreting the Commonwealth's comments as a commitment to perform this testing. If the Commonwealth chooses to enact only a gas cap check, the performance standard demonstration must be amended to reflect the lower credit levels attributed to that type of testing, as described above and in the November 5, 1996 and December 20, 1996 memos. The final Pennsylvania I/M regulation must include test procedures and emissions standards for pressure testing, in addition to a requirement for purge testing when such testing is readily available and is viable.

Comment—Definition of Light Duty Trucks

In its proposed rulemaking, EPA cited as a minor deficiency that the Pennsylvania I/M regulation did not adequately define I/M program vehicle coverage, per the requirements of 40 CFR 51.356. Specifically, the regulatory definition of light-duty trucks differed from modeling parameters found in the Commonwealth's performance standard demonstration by not requiring vehicles up to 9,000 pounds gross vehicle weight rating (GVWR) to be subject to the program.

Pennsylvania provided draft regulatory language in its comments to address this problem, which would change the definition of light duty trucks to include trucks up to 9,000 pounds GVWR.

Response to Comment: EPA supports the Commonwealth's draft regulatory language. This correction will address the conflict between the performance standard modeling assumptions and the Commonwealth's regulatory requirements regarding vehicles subject to this program.

However, Pennsylvania also indicated in its comments that the Commonwealth intends to obtain input from the Pennsylvania I/M Working Group on all redrafted regulatory language prior to adopting these changes through the Commonwealth's regulatory adoption process. These revisions are also subject to public participation at the state level, as well as changes through the rule adoption process, itself. Therefore, EPA considers the Commonwealth's revised regulatory language to be draft, until final regulations are adopted and submitted to EPA as a SIP revision, and therefore cannot remove the minor deficiency until the Commonwealth formally adopts and formally submits its final regulations to EPA.

Comment—I/M Inspection Test Procedures

EPA cited as a condition of its proposed approval of Pennsylvania's SIP the lack of procedures for certain I/M tests, including two-speed idle, one-mode ASM, and functional evaporative system purge and pressure tests, and for a lack of testing standards or ''cutpoints'' associated with those tests, per 40 CFR 51.357. EPA's proposed interim approval was conditioned upon the Commonwealth submitting proposed ASM and two-speed idle test procedures within 30 days, and upon the Commonwealth's adoption of a final regulation incorporating those test procedures within one year of EPA's final interim approval rulemaking. EPA also cited the SIP's lack of phase-in test cutpoints for ASM and two-speed idle testing.

Pennsylvania commented that it would modify its regulations to include all test procedures, specifications, and standards to be used in the Commonwealth's I/M program.

Additionally, the Commonwealth provided draft regulatory language to incorporate idle and two-speed idle test procedures and standards. On November 1, 1996, Pennsylvania submitted a formal amendment to its SIP including draft specifications for ASM test procedures and ASM cutpoints.

Response to Comment: By submitting its proposed ASM test procedures in November of 1996, the Commonwealth has met the first of the requirements set forth in EPA's October 3, 1996 proposed interim conditional approval for a commitment needed to allow EPA to provide a conditional approval. Under the terms of EPA's proposal, if those requirements were not satisfied, EPA could not proceed with its final interim rulemaking action.

To satisfy the condition for interim approval, the Commonwealth must submit its final test equipment specifications and test procedures for the ASM and two-speed idle tests, as well as the regulations which require those tests as defined in the performance standard, within twelve months of today's action. The condition, amended to reflect the fact that the Commonwealth has provided a commitment to satisfy this condition by a date certain, is being maintained in today's action.

Comment—Requirement for Real-Time Data Link Between Inspection Stations and the Commonwealth

Pennsylvania commented that it will include a real-time computer data link between test stations and the Commonwealth, or its contractor. The Commonwealth also provided in its comments draft regulatory language to require this real-time connection.

Response to Comment: EPA supports the Commonwealth's draft regulatory language requiring a real-time data link between inspection stations and the state. This amendment would satisfy EPA's related de minimus deficiency cited in the October 3 proposal.

However, elsewhere in its comments the Commonwealth indicated that it intends to obtain input from the Pennsylvania I/M Working Group on all redrafted regulatory language prior to adopting these changes through the state's regulatory adoption process. These revisions are also subject to public participation at the state level, as well as changes through the rule adoption process. Therefore, EPA considers the Commonwealth's revised regulatory language to be draft, until final regulations are adopted and submitted to EPA as a SIP revision, and therefore cannot remove the minor deficiency until the Commonwealth formally adopts and submits its final regulations to EPA.

Comment—Use of One-Mode ASM Test Procedure

In its proposed rulemaking, EPA stated that the Commonwealth was considering use of a two-mode ASM test in the Philadelphia area, instead of the one-mode ASM test described in the Commonwealth's SIP revision. Pennsylvania commented that it is not proposing to implement the two-mode ASM procedure at this time, opting instead to perform the one-mode ASM test.

Response to Comment: EPA supports Pennsylvania's use of the one-mode ASM test, as long as the Commonwealth can demonstrate that it meets the performance standard requirements of 40 CFR 51.351. EPA will make that determination upon submission of finally adopted regulations which correspond to the Commonwealth's final performance standard modeling. This determination will be made in the final SIP approval action for Pennsylvania's I/M program, which EPA will promulgate after all requirements specified in the interim approval have been satisfied.

Comment—Lack of Quality Control Procedures for ASM Testing

EPA's proposed rulemaking cited as a de minimus deficiency a lack of quality control procedures for one-mode ASM testing, as required under 40 CFR 51.359. Pennsylvania commented that it contemporaneously submitted ASM quality control procedures with its ASM test procedures, specifications, and standards. The SIP was amended by Pennsylvania to include proposed ASM standards on November 1, 1996.

Pennsylvania stipulates that lack of quality control procedures is not a SIP approval issue, but is instead a SIP implementation, or compliance issue. Pennsylvania therefore argues that it has met the quality control requirement at 40 CFR 51.359.

Response to Comment: EPA's requirements for I/M program quality control are set forth in EPA's I/M regulation, at 40 CFR 51.359. Specifically, the SIP shall include the procedure manual, rule, ordinance, or law describing and establishing the quality control procedures and requirements. EPA believes that establishment of quality control procedures is a SIP approval issue, and is necessary to maintain an effective program. In practice, EPA believes that compliance oversight with these established procedures is critical to the program's success.

The Commonwealth's proposed ASM equipment specifications submitted in November of 1996 describe and establish quality control measures related to that emissions measurement equipment. Since these specifications are subject to change until the Commonwealth submits its final SIP approval, EPA will make a final determination regarding this de minimus deficiency when it takes final rulemaking action at the end of the interim approval period provided for under the NHSDA.

Comment—Issuance of Waivers by the State: Waivers may be granted to motorists whose vehicles fail to meet I/M testing standards after spending a reasonable amount of money to obtain repairs to that effect, after applying any available warranty coverage and excluding repairs needed for ''tampered'' vehicles. EPA's I/M regulation at 40 CFR 51.360(c)(1) requires that if waivers are allowed under a state's I/M program, then such waivers may be granted only by the state or by a single contractor to the state.

The Commonwealth's proposed regulation allows qualified emission inspection stations to issue waivers. In its proposed rulemaking on the Commonwealth's I/M program, EPA cited as a de minimus deficiency the Commonwealth's allowance of I/M test waivers.

Pennsylvania commented that it believes the NHSDA modified the requirement for waiver issuance, and thus overrides EPA's I/M rule requirement for centralized waiver issuance. The Commonwealth's basis for this argument is that the NHSDA authorizes states to develop decentralized I/M programs, and that centralized waiver issuance is not compatible with Congress's intent. Pennsylvania argues that stringent safeguards have been built-in to its I/M program (i.e., technician certification, real-time data links between test stations and the state, and strict enforcement requirements) which allow inspection station personnel to issue waivers. Therefore, while Pennsylvania commits to correct its regulations to provide for waiver issuance by a single entity, the Commonwealth expressly requests that EPA allow decentralized waiver issuance.

Response to Comment: To assure quality control of the issuance of waivers, EPA required either the state or a single contractor to issue waivers under 40 CFR 51.360(c). EPA believes this requirement was not altered by the NHSDA. While the NHSDA does allow

for states to implement decentralized test networks, EPA does not believe that Congress intended this to alter the requirements of the I/M rule for quality assurance of the program. Further, EPA believes that issuance of waivers by one authority would provide an effective deterrent against fraud in decentralized or centralized testing networks, as well as to ensure consumer protection through consistency in waiver issuance criteria. EPA believes it is important for quality assurance purposes that waiver control remains in the hands of one entity. It is important to note that even prior to the advent of ''enhanced'' I/M programs, EPA has always maintained this requirement for centralized waiver issuance for both centralized and decentralized I/M programs. This requirement could also bolster public confidence in the repair industry by providing an objective verification of the appropriateness of test results and repairs.

Third-party verification of waiver eligibility serves to reinforce both the inspection test results and the capabilities of repair technicians within the program through positive reinforcement of the professionalism of the repair industry and the emissions testing program. Moreover, maintaining one waiver issuance authority provides an extra incentive for the vehicle repair industry to maintain integrity, leading to increased repair revenues and air quality benefits from the I/M program, itself. Additionally, since a centralized waiver system is not a new requirement, there is little reason to expect an increase in frustration and/or delays for the public.

Prior to passage of the NHSDA, EPA's I/M rule required centralized waiver issuance for all programs, both centralized and decentralized. Although the NHSDA increases flexibility to use decentralized programs, it in no way indicates that requirements applicable to all programs, such as waiver issuance should be altered. Therefore, EPA rejects the Commonwealth's request to eliminate the requirement for waiver issuance by a single entity, and urges the Commonwealth to consider means to comply with the quality assurance requirement of 40 CFR 51.360(c).

Comment—Demonstration of the Effectiveness of the Commonwealth's Sticker-Based Enforcement Mechanism

The CAA requires that states ensure compliance through the denial of vehicle registration, with the exception of states having an existing enforcement alternative that demonstrates to the EPA Administrator that the alternative is more effective than registration denial in ensuring that non-complying vehicles are not operated on public roads.

Pennsylvania's SIP relies upon a sticker-based means of enforcement to ensure motorist compliance with the program. In its proposal, EPA conditioned interim approval of the SIP upon the Commonwealth's satisfaction of the requirements of 40 CFR 51.361(b) related to demonstration of compliance enforcement effectiveness.

The Commonwealth commented that its SIP contains a demonstration of the effectiveness of sticker enforcement. The basis of the demonstration is that the Commonwealth has statistical data from the existing program indicating a motorist compliance rate of 97% (i.e., 97% of all registered subject vehicles actually comply with I/M testing requirements). However, for the same period, only 90.8% of the vehicles subject to a separate state requirement to have a valid auto insurance liability policy prior to obtaining re-registration actually complied with this requirement. The Commonwealth therefore concludes that the I/M program enforcement mechanism is more effective than a registration-based mechanism used to enforce a separate insurance requirement. A report contained in the SIP, as well as additional comments provided by the Commonwealth on EPA's proposed rule, provide details of the Commonwealth's comparative analysis. Finally, Pennsylvania comments that its proposed I/M program contains enhancements over the existing program which will ensure that the Commonwealth can maintain a 96% motorist compliance rate, in accordance with the Commonwealth's performance standard demonstration and the commitment provided in the Commonwealth's SIP to maintain that level of compliance. Therefore, the Commonwealth requests that EPA remove the proposed condition.

Another commenter indicated that EPA should require the Commonwealth to use registration denial as its means for motorist compliance enforcement. The Commonwealth's sticker enforcement effectiveness demonstration is based, in part, upon the Commonwealth's proposed integration of safety and emissions inspections into one process (i.e., safety inspections cannot be completed prior to completion of emissions testing). The commenter contends that with the expense and other constraints of enhanced I/M testing, many inspection stations in the existing I/M program may not participate in the enhanced I/M program, particularly in the Philadelphia area where more expensive and space-consuming ASM equipment is required. Therefore, it would be unfair and unreasonable to penalize safety-only inspection stations by placing them in a position to lose income because they do not perform emissions testing. Furthermore, this commenter also contends that it is not the responsibility of testing stations to act as ''policemen'' and serve as the front line for enforcement of the program. Therefore, the commenter supports registration denial as the only palatable means of motorist enforcement.

Response to Comment: While section 182 of the CAA compels states to adopt registration denial enforcement, it does provide certain states the option to demonstrate alternatives to the satisfaction of the EPA Administrator. EPA's I/M regulation at 40 CFR 51.361 defines criteria for states' use in demonstrating the effectiveness of pre-existing alternatives to registration denial enforcement.

EPA reviewed the demonstration provided in the Commonwealth's I/M SIP, including a formal supplement to the SIP on June 27, 1996 to clarify the sticker enforcement demonstration. EPA concluded in its proposed rulemaking that the Commonwealth had not fully satisfied the specific requirements of 40 CFR 51.361(b) (1) and (2). EPA therefore proposed to condition its interim approval of the Commonwealth's I/M SIP revision on the condition that the Commonwealth demonstrate to the Administrator's satisfaction that the Commonwealth's sticker enforcement program is more effective at deterring noncompliance than denial of vehicle registration.

EPA believes the Commonwealth has made a compelling demonstration for an alternative to registration denial under the provisions of 40 CFR 51.361(b)(1)(iii), relating to general requirements for alternative enforcement mechanisms. However, the sticker enforcement / registration compliance study submitted in Pennsylvania's SIP and subsequent supplements provides only cursory information in relation to some of the specific requirements under 40 CFR 51.361 (b)(1) and (b)(2) necessary to demonstrate the effectiveness of a sticker-based enforcement alternative, and does not in and of itself fully satisfy EPA's requirements. Use of this type of generalized demonstration for its alternative enforcement mechanism does not remove the additional requirements specific to sticker-based enforcement alternatives set forth in 40 CFR 51.361(b)(2). Pennsylvania's SIP

does not yet comply with all of these requirements to EPA's satisfaction.

Therefore, EPA cannot remove the condition for approval related to the Commonwealth's choice of a sticker-based alternative to registration denial-based motorist compliance enforcement mechanism. However, Pennsylvania committed in its November 1, 1996 SIP supplement to submit any additional information needed to demonstrate the effectiveness of its sticker enforcement program. Since the CAA authorizes states to continue to use this type enforcement mechanism if a state can demonstrate the adequacy of that mechanism to EPA's satisfaction, EPA is compelled to allow the state to continue its use. Should a state pursue sticker enforcement, it is the state's, not EPA's, responsibility to consider equity and fairness issues for those affected by the state's choice for an I/M motorist enforcement mechanism. Therefore, EPA is today approving the Commonwealth's SIP, conditioned upon the Commonwealth remedying the deficiencies related to Pennsylvania's sticker enforcement mechanism, as described above.

Comment—Performance of Motorist Compliance Enforcement Program Oversight

In its proposed rulemaking, EPA indicated that if the Commonwealth chooses to contract out the responsibilities for motorist compliance enforcement program oversight, as allowed by 40 CFR 51.362, Pennsylvania must submit an RFP that adequately addresses how such a private vendor will comply.

Pennsylvania commented that it intends to issue an RFP which requires submission of a proposal to demonstrate how the selected contractor will satisfy the required oversight requirements. The Commonwealth also indicated that such an RFP will require bidding contractors to describe how they intend to comply with the applicable federal requirements. Pennsylvania's comments also indicated that it intends to submit a copy of the proposal of the contractor selected to conduct this oversight, and that this submission will satisfy EPA's requirements for a description of the enforcement program oversight and information management activities.

Response to Comment: EPA supports the Commonwealth's approach to remedying this minor deficiency, with regard to a description of the motorist compliance enforcement oversight program, as required by 40 CFR 51.362.

Until such time that the Commonwealth amends its SIP to describe the motorist compliance enforcement oversight program in detail, or to supplement the SIP with a legally binding contractual document that describes how a vendor will satisfy this federal requirement, EPA cannot consider the de minimus deficiency described in the October 3, 1996 proposed rulemaking to be remedied.

Comment—Performance of Quality Assurance Auditing

EPA's proposal cited as a *de minimus* deficiency the lack of a requirement by the Commonwealth to annually audit their quality assurance auditors, as required under 40 CFR 51.363. Pennsylvania commented that it will modify its regulations to add such a requirement. In addition, the Commonwealth provided draft regulatory language in its comments to provide a partial means of remedying this deficiency.

Pennsylvania commented that it intends to have auditing functions performed by a private contractor. Again, Pennsylvania plans to issue an RFP to any interested vendors which requires a private vendor to comply with applicable federal requirements. Pennsylvania will then submit to EPA the proposal for the selected vendor, which it believes will satisfy EPA's requirement for a description of this program.

Response to Comment: EPA supports the Commonwealth's approach to remedying this minor deficiency, with regard to the federal requirement for the state to audit its own quality assurance auditors.

Until such time that the Commonwealth amends its SIP to describe in detail its quality assurance auditing process, or to supplement the SIP with a legally binding contractual document that describes how a vendor will comply with this federal requirement, EPA cannot consider the *de minimus* deficiency described in the October 3, 1996 proposed rulemaking to be remedied. Therefore, EPA is retaining in its final interim approval the *de minimus* deficiency related to this requirement.

In regard to the proposed regulatory revision to require this auditing of the Commonwealth's auditors, EPA finds the language acceptable. However, the Commonwealth intends to obtain input from the Pennsylvania I/M Working Group on all amendments to its I/M regulation prior to adopting these changes through the the regulatory adoption process. These revisions are also subject to public participation at the state level, as well as changes through the rule adoption process. Therefore, EPA considers the Commonwealth's revised regulatory language to be draft, until final regulations are adopted and submitted to EPA as a SIP revision.

Therefore EPA cannot remove the minor deficiency until the Commonwealth formally adopts and submits to EPA its final regulations and the RFP or other legal document describing this I/M program function to the detail required under federal law.

Comment—Recordkeeping Requirements for Enforcement Actions

EPA's proposed rulemaking cited that the Commonwealth's SIP does not include provisions for Pennsylvania to maintain and submit to EPA records of enforcement actions taken by the Commonwealth against emission inspection stations. The Commonwealth comments assert that EPA's regulations at 40 CFR 51.364 require *only* that the state maintains such records, not that the state is required to submit such records to EPA. Pennsylvania contends that its regulations, as submitted in the March SIP submittal, currently require that these records be maintained by the Commonwealth, and that such records are available to EPA for inspection at any time.

Response to Comment: EPA agrees with this comment. EPA's proposal mistakenly cited the Commonwealth's failure to submit records of inspection station enforcement including warnings, fines, suspensions, revocations, etc., in addition to maintenance of such records. This is not a requirement of 40 CFR 51.364, and therefore EPA accepts the Commonwealth's comment. Recordkeeping may be limited to maintenance of such enforcement records, and inclusion of such related enforcement statistics in summary reports to EPA, per requirements of 40 CFR 51.366(b).

EPA is amending its *de minimus* requirement related to maintenance and submission of such records to require only maintenance of those records.

Comment—Data Collection and Data Analysis Reporting

EPA indicated in its proposed rulemaking that Pennsylvania must provide the RFP for how the data collection and data analysis and reporting requirements at 40 CFR 51.365 and 366. The Commonwealth commented that there is no federal requirement for how data is to be collected, only that the SIP must describe the type of data to be collected. The Commonwealth argues that since EPA raised no objections in its proposed rulemaking to the type of data to be

collected, Pennsylvania meets the SIP requirements of EPA's regulations.

Pennsylvania commented that it intends to issue an RFP which requires the vendor's proposal to demonstrate how the vendor will comply with federal data collection and data analysis and reporting requirements. Pennsylvania contends that analysis and submittal of reports is an implementation issue, and not a SIP approval requirement, and that submission of this information in the SIP is neither necessary nor a basis for approval.

Response to Comment: EPA's proposal cites a failure by the Commonwealth to address in its SIP how the state, or its contractor, will comply with the data collection requirements of 40 CFR 51.365 and 51.366, as well as how it will comply with the reporting requirements of § 51.366.

Until the Commonwealth either amends its SIP to describe the data elements that will be collected under 40 CFR 51.365, or to submit an RFP or other legally binding document to describe how a contractor to the Commonwealth will fulfill this function, EPA does not consider this requirement to be satisfied. Contrary to the Commonwealth's assertion, EPA noted in its proposal that the Commonwealth's SIP submittal does not adequately address how a private vendor will comply with the specific requirements of 40 CFR 51.365. Therefore, EPA refutes the Commonwealth's allegation that EPA raised no objections to the type of data to be collected by the Commonwealth.

At this time, the Commonwealth has not submitted either an RFP, or a legally binding document, which demonstrates that the contractor selected by the Commonwealth to perform data analysis and reporting to EPA will satisfy the requirements for those responsibilities described within 40 CFR 51.366. While the performance of data analysis and submission of such data summary reports to EPA are both implementation issues, the SIP must describe the type of data to be collected, including a detailed description of the specific elements to be included in the state's reports required to be compiled and submitted under 40 CFR 51.366. While data analysis and reporting are implementation functions, the specific description of what is to be reported must be included in the SIP, and is thus a SIP approvability issue.

Until such time that the Commonwealth amends its SIP to describe in detail the data collection, analysis, and reporting functions, or to supplement the SIP with an RFP or other legal contractual document that describes how a vendor will satisfy this federal requirement, EPA cannot consider the de minimus deficiency, as described in the October 3, 1996 proposed rulemaking, to be remedied.

Comment—Requirement for Inspector Training

EPA's proposal cites as de minimus the failure on the part of the Commonwealth in its SIP to require inspectors to complete refresher training or to pass a skills re-test prior to being recertified. The SIP also cites a lack of commitment on the Commonwealth's part to monitor and evaluate the delivery of the inspector training program. Pennsylvania provided draft regulatory language to remedy these deficiencies in its comments to EPA's proposal.

Response to Comment: EPA supports the Commonwealth's draft regulatory language. Once the regulatory language is finalized, this correction would remedy the minor deficiency set forth in EPA's October 3, 1996 proposed rulemaking.

However, Pennsylvania also indicated in its comments that the Commonwealth intends to obtain input from the Pennsylvania I/M Working Group on all redrafted regulatory language prior to adopting these changes through the state's regulatory adoption process. These revisions are also subject to public participation at the state level, as well as to changes through the rule adoption process, itself. Therefore, EPA considers the Commonwealth's revised regulatory language to be draft, until final regulations are adopted and submitted to EPA as a SIP revision, and therefore cannot remove the minor deficiency until the Commonwealth formally adopts and formally submits its final regulations to EPA.

Comment—Public Information and Consumer Protection Plan

In its October 3, 1996 rulemaking, EPA found the SIP's lack of a description of a public information plan and a consumer protection plan to be de minimus deficiency. Since the SIP indicates that these responsibilities are to be privatized through contract with a vendor, EPA proposed that the RFP describing how that vendor would comply with those requirements of 40 CFR 51.368 should be submitted to EPA as part of the SIP revision.

Pennsylvania commented that it intends to issue an RFP which will require vendors to adopt a plan to include the following public information: the air quality problem, requirements of federal and state law, role of motor vehicles in the air quality problem, the need for and benefits of an I/M program, how to maintain a vehicle in a low-emission condition, how to find a qualified repair technician, and the requirements of the I/M program.

The Commonwealth intends to provide alternative repair statistical information to motorists, as required by 40 CFR 51.368(a). The separate requirement to conduct performance monitoring of repair stations is found at 40 CFR 51.369(b)(1). Rather than providing detailed statistics on a repair facility's ability to repair specific vehicles, the Commonwealth intends to convey to the public similar information on the relative ability of a repair facility to perform repairs on specific emission systems components, in relation to average costs for those repairs across an entire county.

In a related comment, Pennsylvania indicated that it will amend its regulation to require inspection stations to provide software generated interpretive diagnostic information to vehicle owners failing a test, as a partial means of complying with the performance monitoring requirements for improving repair effectiveness found at 40 CFR 51.369.

Response to Comment: The Commonwealth has not yet provided an adequately detailed description of its public awareness plan in its SIP, as required by EPA's regulation at 40 CFR 51.368(a). While inclusion of the specific information described above (and in the Commonwealth's comments) would in an RFP or other legally binding contractual document would serve, in part, to satisfy the federal requirement, the Commonwealth has not yet provided either.

Further, Pennsylvania has not yet amended the SIP, or submitted an RFP to describe, in detail, its approach to satisfying the performance monitoring requirements of 40 CFR 51.369(b)(1). Pennsylvania must develop an approvable performance monitoring plan in order to satisfy the public information plan requirements of 40 CFR 51.368 which depend upon performance monitoring information.

Pennsylvania does assert in its comments that it believes this performance monitoring approach will satisfy the requirements of 40 CFR 51.369(b)(1). This does not remedy the minor deficiency cited in EPA's proposed rulemaking related to the requirements of 40 CFR 51.369(b)(1) for a performance monitoring plan.

EPA will not accept an alternative to the performance monitoring function required under 40 CFR 51.369(b)(1),

unless that alternative focuses not only upon the cost of repairs, but also upon the facility-specific effectiveness of those repairs in relation to the purpose of the I/M program (i.e., reducing emissions levels for the vehicle for the pollutant for which it failed an I/M test).

The Commonwealth must amend its SIP to describe in detail the performance monitoring function, and its application to consumer information and consumer protection; per the requirements of 40 CFR 51.368(a) and 40 CFR 51.369(b)(1). Until then, EPA must maintain the related *de minimus* deficiency, as described in the October 3, 1996 proposed rulemaking, in its final interim approval action.

Comment—Description of On-Road Testing Requirements

EPA's proposed rulemaking cited as a minor deficiency the SIP's lack of information regarding the Commonwealth's proposed on-road testing program. Specifically, EPA cited a lack of information on resource allocations, methods of analyzing and reporting the results of the testing, and information on staffing requirements for both the Commonwealth and any vendor to perform on-road testing.

Pennsylvania commented that its RFP will address the issue of compliance by a private vendor and will comply with federal on-road testing requirements. That RFP is to require vendors bidding on the contract to submit a proposal demonstrating compliance with federal on-road testing requirements. Pennsylvania commented that it would then submit to EPA the proposal for the selected vendor, which it believes will satisfy EPA's requirement for a detailed description of this program.

Pertaining to the requirement for demonstrating adequate resources to perform on-road testing functions, Pennsylvania commented that it will provide detailed staffing requirements for Commonwealth staff committed to this function.

Response to Comment: EPA supports the Commonwealth's approach to remedying this minor deficiency, with regard to the on-road testing program description and the resources to operate that program.

Until such time that the Commonwealth amends its SIP to describe the on-road testing program in detail, or to supplement the SIP with a legal contractual document that describes how a vendor will satisfy this federal requirement, EPA cannot consider the de minimus deficiency, as described in the October 3, 1996 proposed rulemaking, to be remedied. Additionally, the deficiency cannot be remedied until Pennsylvania amends the SIP to adequately describe the resources allocated to on-road testing.

IV. Final Rulemaking Action

EPA is conditionally approving the enhanced I/M program as a revision to the Pennsylvania SIP, based upon certain conditions. Should the Commonwealth fail to fulfill the conditions by the deadlines contained in each condition, the latest of which is no more than one year after the date of EPA's final interim approval action, this conditional, interim approval will convert to a disapproval pursuant to CAA section 110(k)(4). In that event, EPA would issue a letter to notify the Commonwealth that the conditions had not been met.

V. Conditional Interim Approval

Under the terms of EPA's October 3, 1996 proposed interim conditional approval rulemaking, the Commonwealth was required to make commitments (within 30 days) to remedy five major deficiencies with the I/M program SIP (as specified in the NPR), within twelve months of final interim approval. On November 1, 1996, Pennsylvania submitted a letter from James M. Seif, Secretary of the Pennsylvania Department of Environmental Protection, to EPA committing to satisfy the major deficiencies cited in the NPR, by dates certain specified in the letter. Since EPA is in receipt of the Commonwealth's commitments, EPA is today taking final conditional approval action upon the Pennsylvania I/M SIP, under section 110 of the CAA. As discussed in detail later in this notice, this approval is being granted on an interim basis, for an 18-month period under authority of the NHDSA.

The conditions for approvability of the SIP are as follows:

(1) By no later than September 15, 1997, a notice must be published in the *Pennsylvania Bulletin* by the Secretary of the Pennsylvania Department of Transportation which certifies that the enhanced I/M program is required in order to comply with federal law and also certifies the geographic areas which are subject to the enhanced I/M program (the geographic coverage must be identical to that listed in Appendix A–1 of the March 22, 1996 SIP submittal), and certifies the commencement date of the enhanced I/M program. The I/M program for the five-county Philadelphia area and for the four-county Pittsburgh area must commence by no later than November 15, 1997, and the I/M program for the remaining 16 counties must commence no later than November 15, 1999.

(2) The Commonwealth must submit to EPA as a SIP amendment, within twelve months of EPA's final interim rulemaking action, the final Pennsylvania I/M regulation which requires a METT-based evaluation be performed on 0.1% of the subject fleet each year as per 40 CFR 51.353(c)(3) and which meets all other program evaluation elements specified in 40 CFR 51.353(c). EPA is amending this condition from that of its proposed rulemaking to remove the portion of the condition which would require the Commonwealth to comply with the requirements of 40 CFR 51.353(b)(1).

(3) By no later than November 15, 1997, the Commonwealth must submit a demonstration to EPA as an amendment to the SIP that meets the requirements of 40 CFR 51.361 (b)(1) and (b)(2) and demonstrates that Pennsylvania's existing sticker enforcement system is more effective than registration denial enforcement.

(4) Within twelve months of EPA's final interim rulemaking action, Pennsylvania must adopt and submit a final Pennsylvania I/M regulation which requires and which specifies the following: exhaust test procedures, standards, and equipment specifications; and evaporative system functional test methods, standards and procedures; a visual inspection procedure for determining the presence of or tampering with of vehicle emission control devices; and a repair technician training and certification (TTC) program. The test methods and procedures established under the Commonwealth's I/M regulation must be acceptable to EPA, as well as to the Commonwealth. The test methods and standards provided for by the Commonwealth's final regulation must reflect the modeling assumptions found in the Commonwealth's final performance standard modeling demonstration (which must satisfy the requirements of 40 CFR 51.351).

Within the same time frame, detailed test equipment specifications and standards (which are acceptable to EPA, as well as to the Commonwealth) for all of the I/M evaporative and exhaust tests provided for by the Commonwealth's regulation (as described above) must be finalized and submitted as a SIP revision to EPA.

(5) The Commonwealth must perform and submit the final modeling demonstration that its program will meet the relevant enhanced performance standard, within twelve months of today's final interim rulemaking.

In addition to the above conditions, the Commonwealth must correct several

minor, or *de minimus*, deficiencies related to CAA requirements for enhanced I/M. Although satisfaction of these deficiencies does not affect the conditional interim approval status of the Commonwealth's rulemaking, these deficiencies must be corrected in the final I/M SIP revision, to be submitted at the end of the 18-month interim period:

(1) The final I/M SIP submittal must detail the number of personnel and equipment dedicated to the quality assurance program, data collection, data analysis, program administration, enforcement, public education and assistance, on-road testing and other necessary functions as per 40 CFR 51.354;

(2) The definition of light duty truck in the definitions section of the final Pennsylvania I/M regulation must provide for coverage up to 9,000 pounds GVWR;

(3) The final Pennsylvania I/M regulation must require implementation of the final full stringency emission standards at the beginning of the second test cycle so that the state can obtain the full emission reduction program credit prior to the first program evaluation date;

(4) The final Pennsylvania I/M regulation must require a real-time data link between the state or contractor and each emission inspection station as per 40 CFR 51.358(b)(2);

(5) The final I/M SIP submittal must provide quality control requirements for one-mode ASM (or two-mode ASM if the Commonwealth opts for it);

(6) The Pennsylvania I/M regulation must *only* allow the Commonwealth or a single contractor to issue waivers as per 40 CFR 51.360(c)(1);

(7) The final I/M SIP submittal must include the RFP, or other legally binding document, which adequately addresses how the private vendor selected to perform motorist compliance enforcement responsibilities for the Commonwealth's program will comply with the requirements as per 40 CFR 51.362;

(8) The final I/M SIP submittal must include the RFP that adequately addresses how the private vendor will comply with 40 CFR 51.363, a procedures manual which adequately addresses the quality assurance program and a requirement that annual auditing of the quality assurance auditors will occur as per 40 CFR 51.363(d)(2);

(9) The final I/M SIP submittal must include provisions to maintain records of all warnings, civil fines, suspensions, revocations, violations and penalties against inspectors and stations, per the requirements of 40 CFR 51.364;

(10) The final I/M SIP submittal must include a RFP, or other legally binding document, which adequately addresses how the private vendor selected by the Commonwealth to perform data collection and data analysis and reporting will comply with all the requirements of 40 CFR 51.365 and 51.366;

(11) The final Pennsylvania I/M regulation must require that emissions inspectors complete a refresher training course or pass a comprehensive skill examination prior to being recertified and the final SIP revision must include a commitment that the Commonwealth will monitor and evaluate the inspector training program delivery, per the requirements of 40 CFR 51.367;

(12) The final I/M SIP submittal must include a RFP, or other legally binding document, which adequately addresses how the Commonwealth's selected contractor will comply with the public information requirements of 40 CFR 51.368;

(13) The Pennsylvania I/M regulation must include provisions that meet the requirements of 40 CFR 51.368(a) and 51.369(b) for a repair facility performance monitoring program plan and for providing the motorist with diagnostic information based on the particular portions of the test that were failed; and

(14) The final I/M SIP submittal must contain sufficient information to adequately address the on-road test program resource allocations, methods of analyzing and reporting the results of the on-road testing, and information on staffing requirements for both the Commonwealth and the private vendor for the on-road testing program.

VI. Further Requirements for Permanent I/M SIP Approval

This approval is being granted on an interim basis for a period of 18 months, under the authority of section 348 of the National Highway Systems Designation Act of 1995. At the end of this period, the approval will lapse. At that time, EPA must take final rulemaking action upon the Commonwealth's SIP, under the authority of section 110 of the Clean Air Act. Final approval of the Commonwealth's plan will be granted based upon the following criteria:

(1) The Commonwealth has complied with all the conditions of its commitment to EPA;

(2) EPA's review of the Commonwealth's program evaluation confirms that the appropriate amount of program credit was claimed by the Commonwealth and achieved with the interim program;

(3) Final program regulations are submitted to EPA; and

(4) The Commonwealth's I/M program meets all of the requirements of EPA's I/M rule, including those de minimis deficiencies identified in the October 3, 1996 proposal (61 FR 51638) as minor for purposes of interim approval.

VII. Administrative Requirements

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

A. Executive Order 12866

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 (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Conditional approvals of SIP submittals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a 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).

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new federal requirement.

C. 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 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 the approval action proposed/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.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

E. 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 March 31, 1997.

Filing a petition for reconsideration by the Administrator of this final rule to conditionally approve the Pennsylvania I/M SIP, on an interim basis, 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) of the Administrative Procedures Act).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: January 13, 1997.

W. Michael McCabe,

Regional Administrator, Region III.

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 NN—Pennsylvania

2. Section 52.2026 is added to read as follows:

§ 52.2026 Conditional Approval.

The Commonwealth of Pennsylvania's March 27, 1996 submittal for an enhanced motor vehicle inspection and maintenance (I/M) program, as amended on June 27, 1996 and July 29, 1996, and November 1, 1996, is conditionally approved based on certain contingencies, for an interim period to last eighteen months.

(a) The conditions for approvability are as follows:

(1) By no later than September 15, 1997, a notice must be published in the *Pennsylvania Bulletin* by the Secretary of the Pennsylvania Department of Transportation which certifies that the enhanced I/M program is required in order to comply with federal law and also certifies the geographic areas which are subject to the enhanced I/M program (the geographic coverage must be identical to that listed in Appendix A–1 of the March 22, 1996 SIP submittal), and certifies the commencement date of the enhanced I/M program. The I/M program for the five-county Philadelphia area and for the four-county Pittsburgh area must commence by no later than November 15, 1997, and the I/M program for the remaining 16 counties must commence no later than November 15, 1999.

(2) The Commonwealth must submit to EPA as a SIP amendment, within twelve months of EPA's final interim rulemaking action, the final Pennsylvania I/M regulation which requires a mass-based emission, transient testing-based evaluation be performed on 0.1% of the subject fleet each year as per 40 CFR 51.353(c)(3) and which meets the program evaluation elements as specified in 40 CFR 51.353(c).

(3) By no later than November 15, 1997, the Commonwealth must submit a demonstration to EPA as an amendment to the SIP that meets the requirements of 40 CFR 51.361(b)(1) and (b)(2) and demonstrates that Pennsylvania's existing sticker enforcement system is more effective than registration denial enforcement.

(4) Within twelve months of EPA's final interim rulemaking action, Pennsylvania must adopt and submit a final Pennsylvania I/M regulation which requires and which specifies the following: exhaust test procedures, standards, and equipment specifications; and evaporative system functional test methods, standards and procedures; a visual inspection procedure for determining the presence of or tampering with of vehicle emission control devices; and a repair technician training and certification (TTC) program. The test methods and procedures established under the Commonwealth's I/M regulation must be acceptable to EPA, as well as to the Commonwealth. The test methods and standards provided for by the Commonwealth's final regulation must reflect the modeling assumptions found in the Commonwealth's final performance standard modeling demonstration (which must satisfy the requirements of 40 CFR 51.351). Within the same time frame, detailed test equipment specifications and standards (which are acceptable to EPA, as well as to the Commonwealth) for all of the I/M evaporative and exhaust tests provided for by the Commonwealth's regulation (as described above) must be finalized and submitted as a SIP revision to EPA.

(5) The Commonwealth must perform and submit the final modeling demonstration that its program will meet the relevant enhanced performance standard, within twelve months of EPA's final interim rulemaking.

(b) In addition to the above conditions for approval, the Commonwealth must correct several minor, or *de minimus* deficiencies related to CAA requirements for enhanced I/M. Although satisfaction of these deficiencies does not affect the conditional approval status of the Commonwealth's rulemaking granted under the authority of section 110 of the Clean Air Act, these deficiencies must be corrected in the final I/M SIP revision prior to the end of the 18-month interim period granted under the National Highway Safety Designation Act of 1995:

(1) The final I/M SIP submittal must detail the number of personnel and equipment dedicated to the quality assurance program, data collection, data analysis, program administration, enforcement, public education and assistance, on-road testing and other necessary functions as per 40 CFR 51.354;

(2) The definition of light duty truck in the definitions section of the final Pennsylvania I/M regulation must provide for coverage up to 9,000 pounds GVWR;

(3) The final Pennsylvania I/M regulation must require implementation of the final full stringency emission standards at the beginning of the second test cycle so that the state can obtain the full emission reduction program credit prior to the first program evaluation date;

(4) The final Pennsylvania I/M regulation must require a real-time data link between the state or contractor and each emission inspection station as per 40 CFR 51.358(b)(2);

(5) The final I/M SIP submittal must provide quality control requirements for one-mode ASM (or two-mode ASM if the Commonwealth opts for it);

(6) The Pennsylvania I/M regulation must *only* allow the Commonwealth or a single contractor to issue waivers as per 40 CFR 51.360(c)(1);

(7) The final I/M SIP submittal must include the RFP, or other legally binding document, which adequately addresses how the private vendor selected to perform motorist compliance enforcement responsibilities for the Commonwealth's program will comply with the requirements as per 40 CFR 51.362;

(8) The final I/M SIP submittal must include the RFP that adequately addresses how the private vendor will comply with 40 CFR 51.363, a procedures manual which adequately addresses the quality assurance program and a requirement that annual auditing of the quality assurance auditors will occur as per 40 CFR 51.363(d)(2);

(9) The final I/M SIP submittal must include provisions to maintain records of all warnings, civil fines, suspensions, revocations, violations and penalties against inspectors and stations, per the requirements of 40 CFR 51.364;

(10) The final I/M SIP submittal must include a RFP, or other legally binding document, which adequately addresses how the private vendor selected by the Commonwealth to perform data collection and data analysis and reporting will comply with all the requirements of 40 CFR 51.365 and 51.366;

(11) The final Pennsylvania I/M regulation must require that emissions inspectors complete a refresher training course or pass a comprehensive skill examination prior to being recertified and the final SIP revisions must include a commitment that the Commonwealth will monitor and evaluate the inspector training program delivery, per the requirements of 40 CFR 51.367;

(12) The final I/M SIP submittal must include a RFP, or other legally binding document, which adequately addresses how the Commonwealth's selected contractor will comply with the public information requirements of 40 CFR 51.368;

(13) The Pennsylvania I/M regulation must include provisions that meet the requirements of 40 CFR 51.368(a)and 51.369(b) for a repair facility performance monitoring program plan and for providing the motorist with diagnostic information based on the particular portions of the test that were failed; and

(14) The final I/M SIP submittal must contain sufficient information to adequately address the on-road test program resource allocations, methods of analyzing and reporting the results of the on-road testing and information on staffing requirements for both the Commonwealth and the private vendor for the on-road testing program.

[FR Doc. 97–1846 Filed 1–27–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 20, 22, 24, 80, and 90

[GEN Docket No. 93–252, FCC 96–473]

Implementation of Sections 3(n) and 332 of the Communications Act Regarding Regulatory Treatment of Mobile Services

AGENCY: Federal Communications Commission.

ACTION: Final rule, petitions for reconsideration.

SUMMARY: This *Order* on partial reconsideration of the *Second Report and Order* implementing Sections 3(n) and 332 of the Communications Act of 1934 denies two petitions for reconsideration concerning the right of cellular resellers to interconnect their switching facilities with those of facilities-based cellular carriers, the Commission's authority to defer decision on these matters to a separate proceeding, and interim relief with respect to the reseller switch issue. The action is taken to resolve these petitions.

EFFECTIVE DATE: January 28, 1997.

FOR FURTHER INFORMATION CONTACT: Jane Phillips, (202) 418–1310, Policy Division, Wireless Telecommunications Bureau.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Memorandum Opinion and Order on Partial Reconsideration of Second Report and Order* in GN Docket No. 93–252, FCC 96–473, adopted December 11, 1996, and released December 20, 1996. The complete text of this Memorandum Opinion and Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Service, at (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

Synopsis of the Memorandum Opinion and Order

1. In the *CMRS Second Report and Order* (59 FR 18493, April 19, 1994), the Commission determined that it did not have a sufficient record to consider adequately the circumstances in which CMRS providers may be required to provide interconnection to other carriers, including resellers. Recognizing the conflicting claims of affected parties, the complexity of the issues relating to interconnection, and the need to develop a more thorough record on those issues, the Commission