

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 15, 1997.

Ronald C. Recker,

Acting Regional Director, Appalachian Regional Coordinating Center.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA014-7195b; FRL-5682-1]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts: Enhanced Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed interim rule.

SUMMARY: EPA is proposing a conditional interim approval and in the alternative, disapproval of a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts on March 27, 1996. This submittal is a supplement to the original enhanced inspection and maintenance submittal by the Commonwealth of Massachusetts on December 23, 1994. This revision establishes and requires the implementation of a statewide enhanced inspection and maintenance (I/M) program. EPA is proposing a conditional approval because the Commonwealth's SIP revision is deficient with respect to several requirements of the CAA and/or EPA's I/M program regulatory requirements.

DATES: Comments must be received on or before March 3, 1997.

ADDRESSES: Comments may be mailed to Susan E. Studlien, Deputy Director, Office of Ecosystem Protection (CAA), United States Environmental Protection Agency, JFK Federal Building, Boston, MA 02203. Copies of the documents relevant to this action are available for public inspection by appointment during normal business hours at the U.S. EPA, One Congress Street, Boston MA 02203.

FOR FURTHER INFORMATION CONTACT: Peter X. Hagerty, (617) 565-3571.

I. Background

A. Impact of the National Highway System Designation Act on the Design and Implementation of Enhanced Inspection and Maintenance Programs Under the Clean Air Act

The National Highway System Designation Act of 1995 (NHSDA) establishes two key changes to the enhanced I/M rule requirements previously developed by EPA. Under the NHSDA, EPA cannot require states to adopt or implement centralized, test-only IM240 enhanced vehicle inspection and maintenance programs as a means of compliance with section 182, 184 or 187 of the CAA. Also under

the NHSDA, EPA cannot disapprove a state SIP revision, nor apply an automatic discount to a state SIP revision under section 182, 184 or 187 of the CAA, because the I/M program in such plan revision is decentralized, or a test-and-repair program. Accordingly, the so-called "50% credit discount" that was established by the EPA's I/M Program Requirements Final Rule, (published November 5, 1992, and herein referred to as the I/M Rule) has been effectively replaced with presumptive equivalency criteria which place the emission reductions credits for decentralized networks on a par with credit assumptions for centralized networks, based upon a state's good faith estimate of reductions as provided by the NHSDA and explained below in this section.

EPA's I/M Rule established many other criteria unrelated to network design or test type for states to use in designing enhanced I/M programs. All other elements of the I/M Rule, and the statutory requirements established in the CAA continue to be required of those states submitting I/M SIP revisions under the NHSDA, and the NHSDA specifically requires that these submittals must otherwise comply in all respects with the I/M Rule and the CAA.

The NHSDA also requires states to swiftly develop, submit, and begin implementation of these enhanced I/M programs since the anticipated start-up dates developed under the CAA and EPA's rules have already been delayed. In requiring states to submit these plans within 120 days of the NHSDA passage, and in allowing these states to submit proposed regulations for this plan (which can be finalized and submitted to EPA during the interim period) it is clear that Congress intended for states to begin testing vehicles as soon as practicable, now that the decentralized credit issue has been clarified and directly addressed by the NHSDA.

Submission criteria described under the NHSDA allow for a state to submit proposed regulations for this interim program, provided that the state has all of the statutory authority necessary to carry out the program. Also, in proposing the interim credits for this program, states are required to make good faith estimates regarding the performance of their enhanced I/M program. Since these estimates are expected to be difficult to quantify, the state need only provide that the proposed credits claimed for the submission have a basis in fact. A good faith estimate of a state's program may be an estimate that is based on any of the following: the performance of any previous I/M program; the results of

remote sensing or other roadside testing techniques; fleet and vehicle miles traveled (VMT) profiles; demographic studies; or other evidence which has relevance to the effectiveness or emissions reducing capabilities of an I/M program.

This action is being taken under the authority of both the NHSDA and section 110 of the CAA. Section 348 of the NHSDA expressly directs EPA to issue this interim approval for a period of 18 months, at which time the interim program will be evaluated in concert with the appropriate state agencies and EPA. At that time, the Conference Report on section 348 of the NHSDA states that it is expected that the proposed credits claimed by the state in its submittal, and the emissions reductions demonstrated through the program data may not match exactly. Therefore, the Conference Report suggests that EPA use the program data to appropriately adjust these credits on a program basis as demonstrated by the program data.

Furthermore, EPA believes that in taking action under section 110 of the CAA, it is appropriate to grant a conditional approval to this submittal since there are some deficiencies with respect to CAA statutory and regulatory requirements (identified herein) that EPA believes can be corrected by the state during the interim period.

B. Interim Approvals Under the NHSDA

The NHSDA directs EPA to grant interim approval for a period of 18 months to approvable I/M submittals under this Act. This Act also directs EPA and the states to review the interim program results at the end of 18 months, 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 sufficient operational program data can be collected to evaluate the interim program. EPA believes that in setting such a strict timetable for program evaluations under the NHSDA, that Congress recognized and attempted to mitigate any further delay with the start-up of this program. For the purposes of this program, "start-up" is defined as a

fully operational program which has begun regular, mandatory inspections and repairs, using the final test strategy and covering each of a state's required areas. EPA proposes that if the state fails to start its program on schedule, the 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. EPA anticipates that such a program evaluation process will be developed by the Environmental Council of States (ECOS) group that is convening now and that was organized for this purpose. EPA further anticipates that in addition to the interim, short term evaluation, the state will conduct a long term, ongoing evaluation of the I/M program as required by the I/M Rule in §§ 51.353 and 51.366.

C. Process for Full Approvals of This Program Under the CAA

As per the NHSDA requirements, this interim rulemaking will expire within 18 months of the final interim approval, or the date of final full approval. A full approval of the state's final I/M SIP revision (which will include the state'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 state's submitted program evaluation, final rulemaking on the state's full SIP revision will occur.

II. EPA's Analysis of Massachusetts's Submittal

On March 27, 1996, Massachusetts Department of Environmental Protection (DEP) submitted a revision to its State Implementation Plan (SIP) for an enhanced I/M program to qualify under the NHSDA. The revision consists of enabling legislation that will allow the Commonwealth to implement the I/M program, proposed regulations, a description of the I/M program (including a modeling analysis and detailed description of program features), and a good faith estimate that includes the Commonwealth's basis in fact for emission reductions claims of the program. The Commonwealth's credit assumptions were based upon the removal of the 50% credit discount for all portions of the program that are based on a test-and-repair network, and the application of the Commonwealth's own estimate of the effectiveness of its hybrid test-and-repair program. The State has submitted three supplemental letters to EPA on September 17, 1996,

November 21, 1996 and November 27, 1996.

A. Analysis of the NHSDA Submittal Criteria

Transmittal Letter

On March 27, 1996, Massachusetts submitted an enhanced I/M SIP revision to EPA, requesting action under the NHSDA of 1995 and the CAA of 1990. The official submittal was made by the appropriate Commonwealth official, Mr. David Struhs, Commissioner of the Department of Environmental Protection, and was addressed to John DeVillars, Regional Administrator, the appropriate EPA official in the Region.

Enabling Legislation

The Commonwealth of Massachusetts has legislation, at M.G.L.c.21A and M.G.L.c.111, paragraph 142A–D, 142J, and 142M, enabling the implementation of an enhanced IM program.

Proposed Regulations

On March 27, 1996, the Commonwealth of Massachusetts proposed regulations in accordance with 40 CFR Part 51, establishing an enhanced I/M program. The regulations call for implementation of a hybrid enhanced I/M program starting in 1997, with the installation of new emission analyzers connected to a central computer and installation of dynamometers in 1999, with final cut points being implemented in 2001. The Commonwealth did not specify when the regulations will be adopted. Since in a letter dated September 17, 1996, Massachusetts has committed to start a full enhanced I/M program with dynamometer testing by November 15, 1997 or by January 1998 at the latest, then EPA can propose interim, conditional approval of the proposed Commonwealth regulations. These regulations must be adopted by the Commonwealth and submitted to EPA before final full approval of the I/M program.

Program Description

The program calls for biennial transient testing in either test-only or test-and-repair facilities. The test equipment will be either IG240 or RG240 connected to a contractor operated central computer. The program evaluation year is 2002. Massachusetts will have a systems contractor operating the central computer network. This contractor will have the ability to disconnect facilities which are conducting improper testing. The Commonwealth believes that having numerous dynamometers in the field in test-and-repair facilities available for

diagnostic work and repair confirmation will significantly improve the quality of repairs and emission reductions from the program.

Emission Reduction Claim and Basis for the Claim

Massachusetts will rely heavily on a systems contractor to run the central computer system, monitor all emission testing facilities, and take action to correct problems. Massachusetts will start transient emission testing by November 15, 1997, or by January 1998, at the latest, with a two year inspection cycle. Massachusetts is claiming full IM240 credit for an IG240 or RG240 program, which is not consistent with EPA policy as stated in an August 18, 1994, memo on this subject. Massachusetts has not submitted any other basis in fact such as data from another program for the credit claim. EPA allows the use of a 96% compliance rate for a well run enforcement program, while Massachusetts claims a 98% compliance rate without any additional measures to justify this higher rate. The Commonwealth has recently revised the estimated compliance rate to 96%. Massachusetts will not issue any waivers but will allow "grace periods" of unspecified length. The length of these "grace periods" must be defined and the emission reduction losses included in the emission reduction calculations. This has been clarified in a letter dated November 27, 1996, from the Commonwealth which stated "We will incorporate these modeling changes into the revised 15% plan". We expect future submittals from the Commonwealth will incorporate these assumptions. EPA guidance provides for 100% credit for mechanic training if the state makes provisions to ensure that only trained mechanics repair failed vehicles. Massachusetts has assumed 100% mechanic training credit. However, under the proposed program, although the Commonwealth will be providing a mechanic training program, no requirement exists to ensure vehicle owners obtain vehicle repairs by trained technicians.

B. Analysis of the EPA I/M Regulation and CAA Requirements

As previously stated, the NHSDA left those elements of the I/M Rule that do not pertain to network design or test type intact. Based upon EPA's review of Massachusetts' submittal, EPA believes the Commonwealth has not complied with all aspects of the NHSDA, the CAA and the I/M Rule. For those sections of the I/M rule or of the CAA identified below with which the Commonwealth

has not yet fully complied, EPA proposes to conditionally approve the SIP if the Commonwealth commits within 30 days of publication of this document to correct said deficiencies by a date (or dates) certain within 1 year of EPA interim approval.

The Commonwealth must correct these major deficiencies by the date specified in the commitment or this conditional approval will convert to a final disapproval under CAA section 110(k)(4). EPA has also identified certain minor deficiencies in the SIP, which are itemized below. EPA has determined that delayed correction of these minor deficiencies will have a de minimis impact on the Commonwealth's ability to meet clean air goals. Therefore, the state need not commit to correct those deficiencies in the short term and EPA will not impose conditions on interim approval with respect to these deficiencies. The Commonwealth must correct these deficiencies during the 18 month term of the interim approval, as part of the fully adopted rules that the Commonwealth will submit to support full approval of its I/M SIP. As long as the Commonwealth corrects the minor deficiencies prior to final action on the Commonwealth's full I/M SIP, EPA concludes that failure to correct the deficiencies in the short term is de minimis and will not adversely affect EPA's ability to give interim approval to the proposed I/M program.

Applicability—40 CFR 51.350

Sections 182(c)(3) and 184(b)(1)(A) of the Act and 40 CFR 51.350(a) require all states in the Ozone Transport Region (OTR) which contain Metropolitan Statistical Areas (MSAs) or parts thereof with a population of 100,000 or more to implement an enhanced I/M program. Massachusetts is part of the OTR and contains the following MSAs or parts thereof with a population of 100,000 or more: Boston-Lawrence-Salem, MA-NH CMSA, Providence-Pawtucket-Fall River, RI-MA CMSA, New Bedford, MSA, Springfield, MSA and Worcester, MSA.

Massachusetts is classified as a serious ozone nonattainment area statewide and is required to implement an enhanced I/M program per section 182(c)(3) of the CAA and 40 CFR 51.350(a)(2). In addition, the Boston area CO maintenance plan includes basic I/M as a control strategy.

Under the requirements of the Clean Air Act, all counties in Massachusetts would be subject to I/M program requirements. The proposed Massachusetts I/M regulation requires that the enhanced I/M program be

implemented statewide. As stated in the State submittal, the Massachusetts I/M legislative authority in M.G.L.c.21A, and M.G.L.c.111, paragraphs 142A–D, 142J and 142M provide the legal authority to establish a statewide enhanced program. EPA finds that the geographic applicability requirements are satisfied. The federal I/M rule requires that the state program not terminate until it is no longer necessary. EPA interprets the federal rule as stating that a SIP which does not sunset prior to the attainment deadline for each applicable area satisfies this requirement. The Massachusetts submittal does not address the length of time the program will be in effect. The program must continue past the attainment dates for all applicable nonattainment areas in Massachusetts. In the absence of a sunset date, EPA interprets the SIP submittal as requiring the I/M program to continue indefinitely, and proposes to approve the program on this basis. Once approved this unlimited term of the program will be federally enforceable as a requirement of the SIP.

Enhanced I/M Performance Standard—40 CFR 51.351

The enhanced I/M program must be designed and implemented to meet or exceed a minimum performance standard, which is expressed as emission levels in area-wide average grams per mile (gpm) for certain pollutants. The performance standard shall be established using local characteristics, such as vehicle age mix and local fuel controls, and the following model I/M program parameters: network type, start date, test frequency, model year, vehicle type coverage, exhaust emission test type, emission standards, emission control device, evaporative system function checks, stringency, waiver rate, compliance rate and evaluation date. The emission levels achieved by the state's program design shall be calculated using the most current version, at the time of submittal, of the EPA mobile source emission factor model. At the time of the Massachusetts submittal the most current version was MOBILE5h. Areas shall meet the performance standard for the pollutants which cause them to be subject to enhanced I/M requirements. In the case of ozone nonattainment areas, the performance standard must be met for both NO_x and HC. In the case of carbon monoxide areas, the performance standard must be met for CO. This Massachusetts submittal must meet the enhanced I/M performance standard for HC and NO_x statewide and meet the

basic standard for CO in the Boston CO maintenance area.

The Massachusetts submittal includes the following program design parameters:

Network type—Hybrid (test only credit claim)

Start date—1999

Test frequency—biennial

Model year/ vehicle type coverage—

1981+, light and heavy duty, gasoline

Exhaust emission test type—transient

Emission standards—0.8 HC, 15.0 CO, 2.0 NO_x

Emission control device check—yes

Evaporative system function checks—81+

Stringency (pre-1981 failure rate)—N/A

Waiver rate—0

Compliance rate—98%

Evaluation date(s)—2002

Massachusetts has submitted modeling demonstrations using the EPA computer model MOBILE5h showing that the enhanced performance standard reductions will be met in 2002. This demonstration assumed a 98% compliance rate, 0% waiver rate, and IM240 credits for an IG240 program. EPA questions the use of the 98% compliance rate given the lack of an adequate description of the motorist compliance enforcement system. EPA believes that a 96% compliance rate is achievable for a well operated program, but rates in excess of these require additional measures which go beyond normal enforcement and quality control measures. The Commonwealth has assumed a 0% waiver rate but did not estimate the impact of the proposed "grace periods" which will impact emissions. The modeling assumed IM240 credits when IG240 or RG240 will be used. This is inconsistent with the EPA policy specified in a memo dated August 18, 1994, as well as the ECOS recommendations dated October 4, 1996 which specify that ASM2 credits should be used for IG240 or RG240 programs.

EPA and the Commonwealth have been working to resolve these differences since submittal of the SIP package. In a letter dated September 17, 1996, Massachusetts committed to adjust the start date of dynamometer testing to be consistent with other NHTSA state programs. Since it was not clear from this letter on what date the program would start, EPA wrote back on October 7, 1996 to confirm the states intent that the program would start sometime in late 1997, but no later than January 1998. In another letter dated November 27, 1996, Massachusetts agreed to use a 96% compliance rate and 1% waiver rate for modeling

purposes. The 1% waiver rate was supported by a description of a program which would not allow any waivers, but would allow "time extensions" only for marginal emitters and only after repairs which result in a 50% reduction in emissions, costing up to \$300 have been done. These revised estimates are acceptable to EPA.

The Commonwealth has not revised the estimate for mechanic training and believes that there will be a large number of dynamometers in the Massachusetts repair network because of the hybrid system and these dynamometers can be utilized for diagnosis of emission failures and repair confirmation.

They also believe that there will be an extensive training network provided for mechanics. The Commonwealth insists that this will provide as much emission reduction as EPA's estimated reduction for mechanic training. Since EPA has no conflicting data to refute the Commonwealth's claim at this time, it will be considered a minor issue which must be resolved before final approval of the program. EPA is studying the technician training credit available, and expects to have further guidance available prior to final full approval of the program.

EPA and Massachusetts have not been able to agree on the appropriate emission reduction credit for the IG240 or RG240 test which the Commonwealth will use. This is a major deficiency. The Commonwealth claims 100% of the credit for an IM240 test without submitting any supporting data (basis in fact). In addition, Massachusetts intends to phase in the pass/fail standards so that those used during the initial cycles will not be as stringent as those the program will eventually use. Preliminary calculations done by the Commonwealth for a revised 15% plan indicate that the Commonwealth could achieve the needed 15% reduction but not the high enhanced standard utilizing the ASM2 credits recommended by EPA for IG240 and RG240 programs. The Commonwealth will be able to show that the program at least meets the "low enhanced I/M performance standard." If the Commonwealth's final program analysis indicates that use of these standards will not generate the emission reductions needed to allow the State to meet the goals of its 15% plan, Massachusetts will be required to redesign the I/M program to provide additional reductions, or implement other control strategies to reach 15%. The state is not eligible to use the low enhanced performance standard unless

it can meet 15% without the high enhanced standard.

EPA is proposing conditional interim approval of the Massachusetts program at this time consistent with the intent of the NHSDA that state I/M programs be promptly approved and implemented for an 18-month period. EPA proposes that this approval be conditioned upon the requirement that the Commonwealth perform and submit the necessary modeling and demonstration that the program will meet at a minimum the "low enhanced" performance standard and 15% plan requirements using MOBILE modeling input consistent with EPA guidance. This demonstration must show as a worst case analysis that the Commonwealth will achieve a 15% reduction if the program only achieves reductions equivalent to ASM2 credit or otherwise reduce the credit claimed by the State for I/M. EPA proposes that the I/M modeling and complete 15% plan revised SIP, be submitted by April 1, 1997. If the State fails to submit a complete 15% plan by April 1, 1997, EPA proposes that the conditional interim approval convert to a disapproval upon a finding letter from EPA indicating that the Commonwealth has failed to submit the modeling and demonstration of compliance with the performance standard by the required date.

If the Commonwealth cannot meet the high enhanced I/M performance standard, the Commonwealth may demonstrate compliance with the low enhanced performance standard established in 40 CFR 51.351(g). That section provides that states may select the low enhanced performance standard if they have an approved SIP for reasonable further progress in 1996, commonly known as a 15 percent reduction SIP or 15 percent plan. In fact, EPA approval of 15 percent plans has been delayed, and although EPA is preparing to take action on 15 percent plans in the near future, it is unlikely that EPA will have completed final action on most 15 percent plans prior to the time EPA believes it would be appropriate to give final or conditional interim approval to I/M programs under the NHSDA. Massachusetts is currently reassessing its 15 percent plan to include the above described I/M program changes. This reassessment is to be based on the current program design and its emission reduction benefit as of November 1999. If the results indicate that the Commonwealth will not achieve a 15 percent reduction in emissions, Massachusetts may choose to either make I/M program improvements that would allow the program to meet the enhanced I/M

performance standard or add other provisions to its overall 15% control plan.

In enacting the NHSDA, Congress evidenced an intent to have states promptly implement I/M programs under interim approval status to gather the data necessary to support state claims of appropriate credit for alternative network design systems. By providing that such programs must be submitted within a four month period, that EPA could approve I/M programs on an interim basis based only upon proposed regulations, and that such approvals would last only for an 18 month period, it is clear that Congress anticipated both that these programs would start quickly and that EPA would act quickly to give them interim approval.

Many states have designed a program to meet the low enhanced performance standard, and have included that program in their 15 percent plan submitted to EPA for approval. Such states anticipated that EPA would propose approval both of the I/M programs and the 15 percent plans on a similar schedule, and thus that the I/M programs would qualify for approval under the low performance standard. In light of delays in EPA action on 15 percent plans, EPA does not believe it would be consistent with the intent of the NHSDA to delay action on interim I/M approvals until the Agency has completed action on the corresponding 15 percent plans. Although EPA acknowledges that under its regulations final full approval of a low enhanced I/M program after the 18-month evaluation period would have to await final approval of the corresponding 15 percent plan, EPA believes that in light of the NHSDA it can grant either final or conditional interim approval of such I/M plans provided that the Agency has determined as an initial matter that approval of the 15 percent plan is appropriate, and has issued a proposed approval of that 15 percent plan.

The Commonwealth plans to submit a revised 15 percent plan. It is possible that Massachusetts' proposed I/M program may fall short of the enhanced I/M high performance standard but exceed the low enhanced performance standard. If this is the case and the emission reductions provided by the I/M program allow the Commonwealth to fulfill the requirements of its 15 percent plan, then EPA will review the 15 percent plan and propose action on it shortly thereafter. Should EPA propose approval of the 15 percent plan, EPA will proceed to take conditional interim approval action on the I/M plan. EPA proposes in the alternative that if the

Agency proposes instead to disapprove the 15 percent plan, EPA would then disapprove the I/M plan as well because the Commonwealth would no longer be eligible to select the low enhanced performance standard under the terms of 40 CFR 51.351(g).

Network Type and Program Evaluation—40 CFR 51.353

The enhanced program shall include an ongoing evaluation to quantify the emission reduction benefits of the program, and to determine if the program is meeting the requirements of the Act and the federal I/M regulation. The SIP shall include details on the program evaluation and shall include a schedule for submittal of biennial evaluation reports, data from a state monitored or administered and EPA approved mass emission transient test of at least 0.1% of the vehicles subject to inspection each year, description of the sampling methodology, the data collection and analysis system and the legal authority enabling the evaluation program. In order to determine whether the state's I/M program meets the applicable standard, the state needed to submit modeling of its program to reflect that it met the applicable performance standard. Because of delayed program start up and program reconfiguration, the existing modeling used by the state to demonstrate compliance with the performance standard is no longer accurate, as it is based on start up and phase-in of testing and cut-points that do not reflect the current program configuration or start dates that the state will actually implement. EPA believes, based on the available modeling, analysis of program elements in the SIP submittals and EPA's own extrapolation of expected emission reductions from the program, that the delayed program start up, as compared to that start up which was modeled by the state, will not jeopardize the state's ability to meet the low enhanced performance standard. However, the state must conduct new modeling using the actual program configuration to verify that the performance standard will in fact be met. For example, phase-in cut points corresponding to the test-type and correct program start up dates should be included in the new modeling.

EPA is proposing interim approval of the state program at this time consistent with the intent of the Highway Act that state I/M programs be promptly approved and implemented for an 18 month period. However, EPA proposes that this approval be conditioned upon the requirement that the state conduct and submit the necessary new modeling

and demonstration that the program will meet the performance standard by a date certain within one year from final interim approval. If the state fails to submit this new modeling by a date certain within one year, EPA proposes that the interim approval will convert to a disapproval upon a letter from EPA indicating that the state has failed to timely submit the modeling and demonstration of compliance with the performance standard. In addition, the existing I/M rules require that the modeling demonstrate that the state program has met the performance standard by fixed evaluation dates. The first such date is January 1, 2000. However, few state programs will be able to demonstrate compliance with the performance standard by that date as a result of delays in program start up and phase in of testing requirements. EPA believes that based on the provisions of the Highway Act, the evaluation dates in the current I/M rule have been superceded. Congress provided in the Highway Act for state development of I/M programs that would start significantly later than the start dates in the current I/M rule. Consistent with congressional intent, such programs by definition will not achieve full compliance with the performance standard by the beginning of 2000.

As explained above, EPA has concluded that the Highway Act superceded the start date requirements of the I/M rule, but that states should still be required to start their programs as soon as possible, which EPA has determined would be by November 15, 1997. Therefore, EPA believes that pursuant to the Highway Act, the initial evaluation date should be 2002. This evaluation date will allow states to fully implement their I/M programs and complete one cycle of testing at full cut points in order to demonstrate compliance with the performance standard.

The Commonwealth has designed a hybrid network. Based on the provisions of the NHSDA, there will be no automatic discount applied to the test-and-repair portion for this type of network. The Commonwealth has committed to meet the program evaluation requirements of 40 CFR 51.353 but failed to provide a detailed description of this part of the program in the SIP submission. The Commonwealth must describe in detail how these requirements will be met, including how the program evaluation vehicles will be selected and tested. This minor deficiency must be corrected before final full approval of the Massachusetts I/M SIP.

Adequate Tools and Resources—40 CFR 51.354

The federal regulation requires the state to demonstrate that adequate funding of the program is available. A portion of the test fee or separately assessed per vehicle fee shall be collected, placed in a dedicated fund and used to finance the program. Alternative funding approaches are acceptable if it is demonstrated that the funding can be maintained. Reliance on funding from the state or local General Fund is not acceptable unless doing otherwise would be a violation of the state's constitution. The SIP shall include a detailed budget plan which describes the source of funds for personnel, program administration, program enforcement, and purchase of equipment. The SIP shall also detail the number of personnel dedicated to the quality assurance program, data analysis, program administration, enforcement, public education and assistance and other necessary functions.

The Commonwealth has provided for a dedicated fund for the program, but there is no analysis of the staff or other resources needed to implement the program. The Commonwealth must submit a detailed evaluation of resource needs and establish a test fee which is adequate to meet these needs. The submittal does not meet the requirements of this section set forth in the federal I/M rule and this is a major deficiency. In the letter dated November 27, 1996 from the Commonwealth, it was stated that the March 27, 1996 and December 1994 submittals addressed these requirements, but neither submittal contains the detailed description required by this section. In addition, the December 1994 submittal was for a test-only program which required significantly different resource allocations from the hybrid now program anticipated by the Commonwealth. The Commonwealth, within 30 days of publication of this document, must commit to correct this deficiency by a date certain within one year of interim conditional approval of this submittal.

Test Frequency and Convenience—40 CFR 51.355

The enhanced I/M performance standard assumes an annual test frequency; however, other schedules may be approved if the performance standard is achieved. The SIP shall describe the test year selection scheme, how the test frequency is integrated into the enforcement process and shall include the legal authority, regulations

or contract provisions to implement and enforce the test frequency. The program shall be designed to provide convenient service to the motorist by ensuring short wait times, short driving distances and regular testing hours.

The Massachusetts program will provide biennial testing in a hybrid network. Many of the details of this section must still be developed by the Commonwealth before EPA can determine if the requirements are satisfied. Although the Commonwealth expects sufficient testing facilities to participate to provide adequate convenience, there are no provisions to provide additional testing if participation is lower than expected. This is a minor deficiency which must be corrected prior to final full approval of the SIP.

Vehicle Coverage—40 CFR 51.356

The performance standard for enhanced I/M programs assumes coverage of all 1968 and later model year light duty vehicles and light duty trucks up to 8,500 pounds GVWR, and includes vehicles operating on all fuel types. Other levels of coverage may be approved if the necessary emission reductions are achieved. Vehicles registered or required to be registered within the I/M program area boundaries and fleets primarily operated within the I/M program area boundaries and belonging to the covered model years and vehicle classes comprise the subject vehicles. Fleets may be officially inspected outside of the normal I/M program test facilities, if such alternatives are approved by the program administration, but shall be subject to the same test requirements using the same quality control standards as non-fleet vehicles and shall be inspected in the same type of test network as other vehicles in the state, according to the requirements of 40 CFR 51.353(a).

Vehicles which are operated on federal installations located within an I/M program area shall be tested, regardless of whether the vehicles are registered in the state or local I/M area.

The federal I/M regulation requires that the SIP shall include the legal authority or rule necessary to implement and enforce the vehicle coverage requirement, a detailed description of the number and types of vehicles to be covered by the program and a plan for how those vehicles are to be identified including vehicles that are routinely operated in the area but may not be registered in the area, and a description of any special exemptions including the percentage and number of vehicles to be impacted by the

exemption. Such exemptions shall be accounted for in the emissions reduction analysis.

The Commonwealth program proposes to test 1981 and newer light and heavy duty gasoline vehicles. The Massachusetts submittal does not provide a detailed description of the number and types of vehicles included in the program. This is a minor deficiency which must be corrected prior to final full approval of the Massachusetts I/M SIP.

Test Procedures and Standards—40 CFR 51.357

Written test procedures and pass/fail standards shall be established and followed for each model year and vehicle type included in the program. Test procedures and standards are detailed in 40 CFR 51.357 and in the EPA documents entitled "High-Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications", EPA-AA-EPSPD-IM-93-1, dated April 1994 and "Acceleration Simulation Mode Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications", EPA-AA-RSPD-IM-96-2, dated July 1996. The federal I/M regulation also requires vehicles that have been altered from their original certified configuration (i.e. engine or fuel switching) to be subject to the requirements of § 51.357(d).

Massachusetts will use a transient test but the test procedures have not been developed and submitted by the Commonwealth. This portion of the submittal does not meet the requirements of this section set forth in the federal I/M rule and is a major deficiency. The Commonwealth, within 30 days of publication of this document must commit to correct this major deficiency by a date certain within one year of interim conditional approval of this submittal.

Test Equipment—40 CFR 51.358

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

Although the Massachusetts submittal does not contain the written technical specifications for test equipment to be used in the program it does describe a

system which will utilize the latest computerized equipment.

This is a minor deficiency which must be corrected prior to final full approval of the Massachusetts SIP.

Quality Control—40 CFR 51.359

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

The Massachusetts submittal does not include provisions which describe and establish quality control measures for the emission measurement equipment, and record keeping requirements. This portion of the submittal does not meet the requirements of this section set forth in the federal I/M rule and is a major deficiency. The Commonwealth, within 30 days of publication of this document, must commit to correct this deficiency by a date certain within one year of final interim conditional approval of this submittal.

Waivers and Compliance Via Diagnostic Inspection—40 CFR 51.360

The federal I/M regulation allows for the issuance of a waiver, which is a form of compliance with the program requirements that allows a motorist to comply without meeting the applicable test standards. For enhanced I/M programs, an expenditure of at least \$450 in repairs, adjusted annually to reflect the change in the Consumer Price Index (CPI) as compared to the CPI for 1989, is required in order to qualify for a waiver. Waivers can only be issued after a vehicle has failed a retest performed after all qualifying repairs have been made. Any available warranty coverage must be used to obtain repairs before expenditures can be counted toward the cost limit. Tampering related repairs shall not be applied toward the cost limit. Repairs must be appropriate to the cause of the test failure. Repairs for 1980 and newer model year vehicles must be performed by a recognized repair technician. The federal regulation allows for compliance via a diagnostic inspection after failing a retest on emissions and requires quality control of waiver issuance. The SIP must set a maximum waiver rate and must describe corrective action that would be taken if the waiver rate exceeds that committed to in the SIP.

Massachusetts has chosen not to allow cost waivers or compliance via diagnostic inspection, but will allow a "grace period" for repairs. The length of these grace periods needs to be defined in order to evaluate the impact of this proposal. This part of the submittal does

not meet the requirements of this section set forth in the federal I/M rule and this is a major deficiency. In a letter dated November 27, the Commonwealth explained that it was now developing a procedure which would not allow waivers, but would allow a "time extension" for some marginal failures for one test cycle if \$300 is spent on repairs and other conditions are met. This procedure must be further developed and submitted to EPA for approval. The Commonwealth estimates that this program will allow no more than the equivalent of a 1% waiver rate. The Commonwealth, within 30 days of publication of this document, must commit to correct this major deficiency or clarify the procedure by a date certain within one year of interim conditional of this submittal.

Motorist Compliance Enforcement—40 CFR 51.361

The federal regulation requires that compliance shall be ensured through the denial of motor vehicle registration in enhanced I/M programs unless an exception for use of an existing alternative is approved. An enhanced I/M area may use either sticker-based enforcement programs or computer-matching programs if either of these programs were used in the existing program, which was operating prior to passage of the 1990 Clean Air Act Amendments, and it can be demonstrated that the alternative has been more effective than registration denial. The SIP shall provide information concerning the enforcement process, legal authority to implement and enforce the program, and a commitment to a compliance rate to be used for modeling purposes and to be maintained in practice.

The Commonwealth is planning on utilizing a sticker system for visible evidence of compliance, but registration will be suspended or not renewed for noncompliance. The initial Massachusetts SIP submittal uses a 98% compliance rate in the performance standard modeling demonstration, however, the Commonwealth has not committed to or described what measures will be used to achieve this higher compliance rate. In a letter dated November 27, 1996, the Commonwealth revised the compliance rate of 96% for modeling purposes. This revised part of the submittal meets the requirements of this section as set forth in the federal I/M rule and is part of the basis for conditional interim approval of the Massachusetts I/M SIP.

Motorist Compliance Enforcement Program Oversight—40 CFR 51.362

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

The details of this program have not been developed and submitted in order for EPA to evaluate it. This is a minor deficiency which Massachusetts must correct prior to EPA's final action on the full I/M SIP.

Quality Assurance—40 CFR 51.363

An ongoing quality assurance program shall be implemented to discover, correct and prevent fraud, waste, and abuse in the program. The program shall include covert and overt performance audits of the inspectors, audits of station and inspector records, equipment audits, and formal training of all state I/M enforcement officials and auditors. A description of the quality assurance program which includes written procedure manuals on the above discussed items must be submitted as part of the SIP.

Although Massachusetts has made a commitment to meet these requirements, a detailed quality assurance program which meets the requirements of the federal I/M rule must be developed and submitted. This portion of the submittal does not meet the requirements of this section set forth in the federal I/M rule and is a major deficiency. The Commonwealth, within 30 days of publication of this document must commit to correct this major deficiency by a date certain within one year of interim conditional approval of this submittal.

Enforcement Against Contractors, Stations and Inspectors—40 CFR 51.364

Enforcement against licensed stations, contractors and inspectors shall include swift, sure, effective, and consistent penalties for violation of program requirements. The federal I/M regulation requires the establishment of minimum penalties for violations of program rules and procedures which can be imposed against stations, contractors and inspectors. The legal authority for establishing and imposing penalties, civil fines, license suspensions and revocations must be included in the SIP. State quality assurance officials shall have the

authority to temporarily suspend station and/or inspector licenses immediately upon finding a violation that directly affects emission reduction benefits, unless constitutionally prohibited. An official opinion explaining any state constitutional impediments to immediate suspension authority must be included in the submittal. The SIP shall describe the administrative and judicial procedures and responsibilities relevant to the enforcement process, including which agencies, courts and jurisdictions are involved, who will prosecute and adjudicate cases and the resources and sources of those resources which will support this function.

A detailed description of this part of the program was not submitted. This is a minor deficiency which must be corrected prior to final full approval of the Massachusetts I/M SIP.

Data Collection—40 CFR 51.365

Accurate data collection is essential to the management, evaluation and enforcement of an I/M program. The federal I/M regulation requires data to be gathered on each individual test conducted and on the results of the quality control checks of test equipment required under 40 CFR 51.359.

The Massachusetts SIP provides a commitment to meet all of the data collection requirements and has listed all the required data which will be collected. This part of the submittal meets the requirements of this section set forth in the federal I/M rule and is part of the basis for conditional interim approval of the Massachusetts I/M SIP.

Data Analysis and Reporting—40 CFR 51.366

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

The Massachusetts data analysis and reporting procedures have not been developed. This is a minor deficiency which must be corrected prior to final

full approval of the Massachusetts I/M SIP.

Inspector Training and Licensing or Certification—40 CFR 51.367

The federal I/M regulation requires all inspectors to be formally trained and licensed or certified to perform inspections.

The Massachusetts proposed regulation at 310 CMR 60.02(14) requires training and certification of inspectors. This portion of the submittal meets the requirements of this portion of the federal I/M rule and is part of the basis for conditional interim approval of the Massachusetts I/M SIP.

Public Information and Consumer Protection—40 CFR 51.368

The federal I/M regulation requires the SIP to include public information and consumer protection programs. The Massachusetts SIP submittal contains a public awareness plan, however it does not provide for protection of whistle blowers. The plan also needs to be expanded to include information on state and federal laws and how motorists can maintain their vehicles to keep emissions low. This is a minor deficiency which must be corrected prior to final full approval of the Massachusetts I/M SIP.

Improving Repair Effectiveness—40 CFR 51.369

Effective repairs are the key to achieving program goals. The federal regulation requires states to take steps to ensure that the capability exists in the repair industry to repair vehicles. The SIP must include a description of the technical assistance program to be implemented, a description of the procedures and criteria to be used in meeting the performance monitoring requirements required in the federal regulation, and a description of the repair technician training resources available in the community.

This part of the submittal meets the requirements of this section set forth in the federal I/M rule and is part of the basis for conditional interim approval of the Massachusetts I/M SIP.

Compliance With Recall Notices—40 CFR 51.370

The federal regulation requires the states to establish methods to ensure that vehicles that are subject to enhanced I/M and are included in an emission related recall receive the required repairs prior to completing the emission test and/or renewing the vehicle registration.

Most of the requirements of this section are met by the Massachusetts

submittal except motorists are not notified of required recalls prior to inspection periods so that they can meet the requirements in the current rather than subsequent inspection cycle. This is a minor deficiency which must be corrected prior to final full approval of the Massachusetts SIP.

On-road Testing—40 CFR 51.371

On-road testing is required in enhanced I/M areas. The use of either remote sensing devices (RSD) or roadside pullovers including tailpipe emission testing can be used to meet the federal regulations. The program must include on-road testing of 0.5% of the subject fleet or 20,000 vehicles, whichever is less, in the nonattainment area or the I/M program area. Motorists that have passed an emission test and are found to be high emitters as a result of an on-road test shall be required to pass an out-of-cycle test.

The Massachusetts SIP submittal describes an on-road testing program which meets the requirements of the federal I/M rules and is part of the basis for conditional interim approval of the Massachusetts I/M SIP.

State Implementation Plan Submissions/Implementation Deadlines—40 CFR 51.372 through 51.373

The Massachusetts submittal proposes to start two speed idle testing in 1997 and dynamometer testing in 1999. This is not consistent with EPA's interpretation of the required start date under the NHSDA. In a letter dated September 17, 1996, the Commonwealth agreed to move up the dynamometer start date to be consistent with other NHSDA states. Since this letter did not specify a precise date, EPA wrote back on October 7, 1996 to confirm the state's intent that the start date would be sometime in late 1997 but no later than January, 1998. EPA proposes that Massachusetts must start the dynamometer testing by November 15, 1997, or this conditional approval will convert to a disapproval after a findings letter is sent by EPA.

III. Discussion for Rulemaking Action

In order for EPA to conditionally approve the Massachusetts I/M SIP, the state must commit within 30 days of publication of this document to correct the following major elements of the SIP that EPA considers deficient by a date certain within one year of final interim approval of this submittal. These elements are:

(1) Credit claims: In several areas, Massachusetts has claimed credit for emission reductions which overstate the

emission reductions which will occur, with no clear basis for those claims. These are beyond the issue of test-only versus test-and-repair network types. Revision of these factors as discussed above will necessitate recalculation of emission reductions from the program. The Commonwealth, within 30 days of publication of this document must commit, to revise and submit to EPA, by April 1, 1997, a complete revised 15% plan utilizing appropriate waiver, compliance rates, test type and the phase-in emission standards which will be used in November 1997 (i.e. ASM2 emission credits with phase in cutpoints.)

(2) The Commonwealth has now proposed a "time extension" program which restricts noncompliance with the program severely. This program must be further defined and submitted to EPA as a SIP revision by a date certain within one year of publication of final interim approval of this submittal. Other major deficiencies as outlined above must also be corrected in §§ 51.351 (Enhanced IM Performance Standard), 51.354 (Adequate Tools and Resources), 51.357 (Test Procedures and Standards), 51.359 (Quality Control), 51.360 (Waivers and Compliance via Diagnostic Inspection), 51.360 (Motorist Compliance Enforcement), and 51.363 (Quality Assurance). The Commonwealth, within 30 days of publication of this notice, must commit to correct these deficiencies by a date certain within one year of conditional interim approval by EPA.

If the Commonwealth does not make such a commitment within 30 days, EPA proposes in the alternative to disapprove this SIP. If these conditions are not met within the time specified, EPA today is proposing that this SIP revision convert to a disapproval.

If the Commonwealth makes the commitment within 30 days, EPA's conditional approval of the plan will continue for 18 months under the Highway Act if the Commonwealth has committed to cure all of the conditions specified in this document. EPA expects that within this period the Commonwealth will not only correct the deficiencies as committed to by the Commonwealth, but that the Commonwealth will also begin program start-up by November 15, 1997. If the Commonwealth does not correct deficiencies by the date(s) certain and implement the interim program by November 15, 1997, EPA is proposing in this document that the interim approval will convert to a disapproval after a finding letter is sent to the Commonwealth.

IV. Explanation of the Interim Approval

At the end of the 18 month interim period, the approval status for this program will automatically lapse pursuant to the NHSDA. It is expected that the Commonwealth will at that time be able to make a demonstration of the program's effectiveness using an appropriate evaluation criteria. As EPA expects that these programs will have started on or before November 15, 1997, the Commonwealth will have at least 6 months of program data that can be used for the demonstration. If the Commonwealth fails to provide a demonstration of the program's effectiveness to EPA within 18 months of the final interim rulemaking, the interim approval will lapse, and EPA will be forced to disapprove the Commonwealth's permanent I/M SIP revision if the Commonwealth does not demonstrate the interim program's effectiveness. If the Commonwealth's program evaluation demonstrates a lesser amount of emission reductions actually realized than were claimed in the Commonwealth's previous submittal, EPA will adjust the Commonwealth's credits accordingly and use this information to act on the Commonwealth's permanent I/M program.

V. Further Requirements for Permanent I/M SIP Approval

At the end of the 18 month period, final full approval of the Commonwealth's plan may 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 state'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 Massachusetts I/M program meets all of the requirements of EPA's I/M rule, including those minor deficiencies found to be de minimis for purposes of interim approval.

VI. EPA's Evaluation of the Interim Submittal

EPA's review of this material indicates that the Massachusetts I/M SIP meets the requirements for conditional interim approval under the National Highway Systems Designation Act and the Clean Air Act. EPA is proposing a conditional interim approval of the Massachusetts SIP revision for motor vehicle inspection and maintenance,

which was submitted on March 27, 1996. EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the ADDRESSES section of this document.

Proposed Action

EPA is proposing to conditionally approve this revision to the Massachusetts SIP for an interim enhanced I/M program. The conditions for approvability are as follows:

Within 30 days of this document, Massachusetts commits to submit by April 1, 1997 a complete approvable revised 15% plan which shows sufficient reductions from an enhanced I/M program utilizing emission credit estimates agreeable to EPA as discussed earlier in this document. This includes MOBILE modeling with a worst case analysis showing that the Commonwealth will meet the needed 15% reductions if the program only achieves reductions equivalent to ASM2 credit at "phase-in" cut points or the Commonwealth must reduce the credit claimed for the I/M program. Also, within 30 days of this document Massachusetts commits to submit by a date certain within one year of final interim approval, revised program evaluation modeling showing achievement of at least the low enhanced I/M standard by 2002.

In addition, within 30 days Massachusetts commits to submit by a date certain within one year of final interim approval, revisions to meet the requirements for Enhanced I/M Performance Standard—40 CFR 51.351, Adequate Tools and Resources—40 CFR 51.354, Test Procedures and Standards—40 CFR 51.357, Quality control—40 CFR 51.359, Waivers and Compliance via Diagnostic Inspection—40 CFR 51.360, Quality Assurance—40 CFR 51.363 and a revised modeling analysis showing achievement of the performance standard by 2002.

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.

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.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies 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).

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

EPA has determined that the approval action proposed 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 Federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal

Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of section 110(a)(2)(A)-(K) and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

List of Subjects in 40 CFR Part 52

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

Authority: 42 U.S.C. 7401-7671q.

Dated: January 15, 1997.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 97-2194 Filed 1-29-97; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

[CO-001-0009b; FRL-5674-8]

Approval and Promulgation of Air Quality Implementation Plans; Colorado; Revisions to Regulation No. 3 and 7 for Pioneer Metal Finishing Inc. and a Revision to Regulation No. 7 for Lexmark International Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing approval of the revisions to the Colorado State Implementation Plan (SIP) to Regulation No. 3, "Air Contaminant Emissions Notices," and Regulation No. 7, "Regulation To Control Emissions of Volatile Organic Compounds." The revisions to Regulations Nos. 3 and 7 for Pioneer Metal Finishing Inc. (PMF) consist of a source specific SIP revision to allow PMF to purchase banked Volatile Organic Compound (VOC) emission reduction credits (ERC) from Coors Brewing Company (Coors), to enable PMF to come into compliance with the VOC Reasonable Available Control Technology (RACT) requirements of Regulation No. 7 (Reg. 7). The revision to Reg. 7 for Lexmark International Inc. (Lexmark) consists of a source-specific SIP revision to allow Lexmark to utilize the provisions of Reg.