''hard cider'' and the alcohol content would not be adequately marked to identify its tax class, so the tax class must be shown.

(5) The net content of the container unless the net content is permanently marked on the container as provided in 27 CFR part 4.

* * * * *

Dated: June 16, 1999.

John W. Magaw,

Director.

Dated: August 13, 1999.

John P. Simpson,

Deputy Assistant Secretary,

(Regulatory, Tariff and Trade Enforcement).

[FR Doc. 99–24834 Filed 9–24–99; 8:45 am]

BILLING CODE 4810–31–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA–014–7195C; FRL–6444–2]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision establishes and requires the implementation of a statewide enhanced motor vehicle inspection and maintenance program (I/M). The intended effect of this action is to propose approval of a program which meets the EPA requirements for I/M. This action is being taken under the Clean Air Act. 42 U.S.C. 7401, et seq. (CAA).

DATES: Comments must be received on or before October 27, 1999. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

ADDRESSES: Comments may be mailed to Susan E. Studlien, Deputy Director, Office of Ecosystem Protection (Mail Code-CAA), United States Environmental Protection Agency, Region I, One Congress St., Suite 1100, Boston, MA 02114–2023 and Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108. 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 02114–2023.

FOR FURTHER INFORMATION CONTACT: Peter X. Hagerty, (617) 918–1049.

SUPPLEMENTARY INFORMATION: On May 14, 1999 Massachusetts submitted a SIP revision for a motor vehicle I/M program. This submittal is a supplement to an I/M plan originally submitted on March 27, 1997 to meet the requirements of the Clean Air Act and the National Highway Systems Designation Act (NHSDA). Although the original NHSDA SIP submittal was disapproved on November 15, 1997, because the state failed to start up the program, elements of the 1997 submittal are still in effect as a matter of Massachusetts law and the Commonwealth is now relying on certain of those previously adopted measures as well as the newly submitted plan to meet EPA's I/M requirements.

I. Background

This action is being taken under the authority of section 110 and 182 of the CAA. EPA believes that proposing this action now under section 110 of the CAA is appropriate because this submittal includes adopted regulations to implement the program, a signed contract to start the program on October 1, 1999, and a description of all elements of the program. The deficiencies delineated below are plans and written procedures which must be developed and delivered by the contractor. For the purposes of this program, ''startup'' 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. Given the fact that the contract was not signed until late January 1999, and the magnitude of the Massachusetts program, it is not reasonable to expect startup before October 1, 1999.

EPA believes it is reasonable to propose approval and commence public comment now on the Massachusetts I/M program based on the combination of the authorizing statute and regulations plus a signed contract providing for actual implementation of the program. The contract represents a legally binding commitment to implement an approvable program that the public can evaluate as the basis for this proposal. As discussed further below, EPA will not grant final approval to the program until it has commenced operation and all the program elements discussed in the notice are completely documented as provided in the contract. However, issuing this proposal today will allow EPA to complete the public comment process so that we can proceed to final approval of the program once operation has commenced.

II. EPA's Analysis of Massachusetts's Submittal

On May 14, 1999, Massachusetts Department of Environmental Protection (DEP) submitted a revision to its SIP for an enhanced I/M program. This submittal is a revision to the March 27, 1997 I/M submittal. The revision consists of enabling legislation, Chapter 210 of The Acts of 1997, that will allow the Commonwealth to implement the I/M program, adopted regulations, and other required elements, including a signed contract for operating the program statewide, as described more fully below.

The program calls for biennial transient testing in test-and-repair or test-only facilities, however, most facilities are expected to be test-and-repair. The test equipment will be NYTEST (New York State) specifications connected to a contractor operated central computer. The program evaluation year is 2002. Massachusetts will have a systems contractor operating the central computer network and database. 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.

Massachusetts will rely heavily on a systems contractor to run the central computer system, monitor all emission testing facilities, conduct audits and take action to correct problems. The contractor will also conduct a public awareness program, develop much of the documentation and prepare many of the reports needed for the program. A contract, hereafter referred to as the contract, was signed with Keating Technologies on January 28, 1999 to be the systems contractor for the program for seven years. References in this notice to the contract will generally be to Articles or Schedules in the Scope of Services signed on January 28, 1999 that is part of the contract. Massachusetts will start transient emission testing as required in the contract on October 1, 1999. Massachusetts regulations call for IM240 testing with NYTEST equipment which has been determined to give equivalent emission reductions to

IM240 based on information submitted by NY state.

Based upon EPA's review of Massachusetts' submittal, EPA believes the Commonwealth has complied with many aspects of 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, the Commonwealth must correct those elements before EPA takes final action on the plan. The elements required are documentation and plan elements which must be developed and submitted by the contractor. In the alternative, if Massachusetts fails to submit corrections for the program elements described below, or fails to start the program on time, as discussed above, EPA proposes to issue a limited approval and limited disapproval of the I/M Plan. This would approve the program for its effect in strengthening the SIP but disapprove it for purposes of meeting the CAA I/M requirements. Final action on the I/M SIP is expected to be in the Fall of 1999.

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.

The Western Massachusetts ozone nonattainment area is classified as a serious ozone nonattainment area and is also 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, Boston is a maintenance area for carbon monoxide (CO). A basic I/M program is already included as a permanent and enforceable measure in the approved maintenance plan, 61 FR 2918 (January 30, 1996). An enhanced I/M program is included as a contingency measure of the plan.

Under the requirements of the Clean Air Act, all counties in Massachusetts would be subject to I/M program requirements. The Massachusetts I/M regulation requires that the enhanced I/M program be implemented statewide. In the Commonwealth's submittal, the Massachusetts I/M legislative authority in M.G.L. c.111, section 142M provides the legal authority to establish a statewide enhanced program. This 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 this proposed approval of the Massachusetts I/M SIP.

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 inspection, 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 MOBILE5ah. 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 or areas in the Ozone Transport Region, the performance standard must be met for both nitrogen oxides (NO_X) and hydrocarbons (HC). As required in the maintenance plan for carbon monoxide, the basic performance standard must be met for CO. This Massachusetts submittal must meet the enhanced I/M performance standard for HC and NO_X throughout the state and meet the basic standard for CO in the Boston area. The program also meets the enhanced performance standard for CO which could be used as a contingency measure if needed.

The 15% rate of progress (ROP) plan and the 9% ROP plan that Massachusetts is currently required to implement for ozone are being proposed for approval elsewhere in today's **Federal Register**. This allows the Commonwealth to meet the low enhanced I/M performance standard at a minimum rather than the high enhanced performance standard provided EPA proceeds to final action on those proposals. EPA intends to take final approval action on the 15% and 9% plans simultaneously with its final approval of the I/M program.

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—1984+, light and heavy duty, gasoline
Exhaust emission test type—transient
Emission standards—1.2 HC, 20.0 CO, 2.5 NO_X
Emission control device check—yes
Evaporative system function checks—81+
Stringency (pre-1981 failure rate)—N/A
Waiver rate—1%
Compliance rate—96%
Evaluation date(s)—2002

Massachusetts has submitted modeling demonstrations using the EPA computer model MOBILE5ah showing that the enhanced performance standard reductions will be met in 2002. This demonstration assumed a 96% compliance rate, 1% waiver rate, and IM 240 credits. The 1% waiver rate is supported by a description of a program which would not allow waivers for high emitters but only for marginal emitters and only after repairs have been done. This estimate is acceptable to EPA.

The Commonwealth's modeling shows that the program meets the ''low enhanced I/M performance standard'' for HC, NOx, and CO by 2002. This 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 proposed approval of the Massachusetts I/M SIP.

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 mass emission test of at least 0.1% of the vehicles subject to inspection each year, description of the sampling methodology, the data collection and analysis system and the legal authority enabling the evaluation program.

The Commonwealth has designed a hybrid network. Massachusetts has committed to meet the program evaluation requirements in the SIP submittal but failed to provide a detailed description of this part of the program. The contract in Article XXVII(E) requires development of a program evaluation plan to be developed in concert with the Commonwealth to meet the requirements of the CAA. The contract conditions this program element on the Commonwealth making additional funds available for developing a program evaluation plan. This element must be corrected through development of a program evaluation plan that meets the requirements of section 51.353 and the element must be fully funded prior to final action on the Massachusetts I/M SIP.

Adequate Tools and Resources—40 CFR 51.354

The federal regulation requires the Commonwealth 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 (M.G.L. c.10, section 61) to provide the resources needed to implement the program. A portion of the fee goes to the contractor ($4.85) and part of it goes to the state ($2.49) to support the program. The Commonwealth submitted a breakdown of funds and FTE's for the Registry of Motor Vehicles (RMV) and DEP to operate the program in the May 14, 1999 Response to Comments submitted as part of the SIP revision. These resources along with the contractor resources appear to be adequate to meet these needs. This 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 proposed approval of the Massachusetts I/M SIP.

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. The primarily test-and-repair structure is expected to provide customer convenience. The contractor has criteria to meet to provide convenient locations throughout the state. Legal authority is provided in M.G.L. c.111, section 142M, and the Massachusetts regulations at 310 CMR 60.02(4) Scheduling of Emissions Inspections. This 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 proposed approval of the Massachusetts I/M 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).

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 1984 and newer light and heavy duty gasoline vehicles. The mobile modeling contains a model year profile provided by the state for the Massachusetts vehicles included in the program. Legal authority is provided in M.G.L. c.111, section 142M, and the Massachusetts regulations at 310 CMR 60.02(3). Exemptions have been addressed in the modeling. This 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 proposed approval of the Massachusetts I/M SIP.

Federally owned vehicles operated in Massachusetts are required to meet the same requirements as Massachusetts registered vehicles. EPA is not requiring states to implement section 40 CFR 51.356(a)(4) dealing with federal installations within I/M areas at this time. The Department of Justice has recommended to EPA that this regulation be revised since it appears to grant states authority to regulate federal installations in circumstances where the federal government has not waived sovereign immunity. It would not be appropriate to require compliance with this regulation if it is not constitutionally authorized. EPA will be revising this provision in the future and will review state I/M SIPs with respect to this issue when this new rule is final. EPA is not proposing approval or disapproval of the specific requirements which apply to federal facilities at this time.

Test Procedures and Standards—40 CFR 51.357

Written test procedures and pass/fail standards 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–EPSD–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 section 51.357(d).

Massachusetts will use an IM240 test with NYTEST equipment but detailed test procedure has not been submitted by the State. The contractor is required to develop inspection protocols for all test procedures. This element must be corrected through development of protocols that meet the requirements of section 51.357 prior to final action on the Massachusetts SIP.

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 state in the May 14, 1999 Response to Comments that the NYTEST system will be used. The contractor is required in Article XXVI of the contract to develop equipment specifications and acceptance testing criteria. This element must be corrected through the development of specifications and criteria that meet the requirements of section 51.358 prior to final action on 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. The contractor is required in Schedule 10 and Articles IV, XXVI and XXVII to develop plans to address these areas. This element must be corrected through development of quality control plans that meet the requirements of section 51.359 prior to final action on 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 to allow cost waivers and compliance via diagnostic inspection. The Commonwealth waiver procedure as set forth at 310 CMR 60.02(11) provides for waivers of vehicles up to five years old after spending $400, five up to 10 year old vehicles after spending $300 and for vehicles ten years old and older $200. Only repairs performed by a registered repair technician can be credited toward a waiver. The Commonwealth regulation establishes a program which accomplishes the same end as the EPA program, which is to get very high emitting vehicles off the road. The Massachusetts waiver regulation provides that if the vehicle is not within five times the standard for the first two years, no waiver will be issued. After the first two years, this drops to three times the standard. 310 CMR 60.02(11)(c)(2). The Commonwealth estimates that this program will allow no more than the equivalent of a 1% waiver rate. This element of the submittal is part of the basis for proposed approval of the Massachusetts I/M SIP.

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 as specified in 310 CMR 60.02(16) Enforcement and 540 CMR 4.07(4). The data base will be maintained by the contractor and tied in with the Registry of Motor Vehicles database. The Commonwealth has specified a 96% compliance rate to be monitored in practice. This 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 proposed 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 contract Schedule 5, Database Plan details the coordination of data between the workstation and ALARS (the Registry database) to enforce, audit and evaluate this requirement. The details of this element of the program are addressed in the scope of services, evaluation, and management portions of the contract. This 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 proposed approval of the Massachusetts 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.

The quality assurance program is included as part of Schedule 7 of the Contract to be supplied which is designed to meet the auditing requirements of the federal I/M rule. Written procedures have not yet been developed and are required to be developed by the Contractor. This is an element which the Commonwealth must correct through development of a quality assurance program meeting the requirements of section 51.363 prior to final action on 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.

Regulation 310 CMR 60.02(16) and 540 CMR 4.08 provide for enforcement against stations and inspectors. The Registrar can enforce these regulations after a hearing with a 14 day notice required. There is an appeal board within the Registry structure to which appeals of the Registrar's or Commissioners decisions can be made. Sufficient resources have been provided to enforce the program and are addressed in the resources section. The contractor may disconnect inspection stations from the computer system without a prior hearing if there is a problem with calibration or if the station is suspected of conducting improper inspections. The contract terms provide for penalties against the contractor. In addition M.G.L. c. 111, section 142M(f) provides for fines and civil penalties of up to $25,000 per day or imprisonment for up to a year for falsely issuing or denying an inspection sticker or tampering with any emissions control device. This 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 proposed 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 in Schedule 5 of the Contact. Data collection for quality control is addressed in Article IV(E) and Schedule 7 of the contract. This 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 proposed 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 are required in many parts of the contract including the Scope of Services and Schedule 5 Database Plan. In the May 14, 1999 Response to Comments, the Commonwealth reiterated its commitment to meet these requirements for both annual and biennial reporting. This 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 proposed 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. Article XXVII(C) requires the contractor to train and test up to 4000 inspectors with the appropriate curriculum as specified in the federal I/M rule. This 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 proposed 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 detailed public awareness plan in Schedule 9 of the Contract. This 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 proposed 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.

Article XXVII(L) of the contract provides for adequate training, technical assistance and performance monitoring of mechanics. This 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 proposed 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 a emission related recall receive the required repairs prior to completing the emission test and/or renewing the vehicle registration.

EPA will adopt regulations to require submittal of this information by manufacturers to develop a database to support this requirement. This part of the I/M rule will be reevaluated after EPA adopts the needed rule.

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 in Article XXVII(F) of the Contract which meets the testing requirements of the federal I/M rule. DEP and RMV are authorized to use on-road testing for ''inspection and enforcement purposes.'' M.G.L. c. 111, section 142M(c). In addition, a statute governing the RMV provides that it is illegal to permit to escape from a motor vehicle smoke or pollutants in such amounts or at such levels as may violate motor vehicle air pollution control regulations, including the I/M program authorized in chapter 111 of the Massachusetts General Laws. M.G.L. c. 90, section 16. Motor vehicles can be immediately removed from the road for violation of this section. As a matter of courtesy, the state can issue a repair ticket which requires repair of the vehicle and passing a reinspection (out-of-cycle test) of the vehicle within a specified number of days. In addition, on August 20, 1999, EPA proposed in the **Federal Register** at 64 FR 45491 additional flexibility for I/M programs. One of these proposed revisions would allow approval of on-road testing programs not having mandated off-cycle testing for high emitting vehicles. The Massachusetts program would also meet this revised requirement if it is finalized prior to final action on the Massachusetts I/M SIP. Generally the RSD program elements would be approvable, but for a condition included in Article XXVII(F)(1) of the Contract. The condition provides that if the parties cannot agree on a price for remote sensing services, all or a portion of the RSD services may be eliminated. The parties must reach an agreement on RSD pricing that provides for a program consistent with EPA's requirements prior to final action on the Massachusetts I/M SIP.

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

The Massachusetts program provides for mandatory testing to begin on October 1, 1999 in accordance with the terms of the Contract Schedule 6. EPA believes that this date, is as soon as practicable for Massachusetts given the current stage of development of the Commonwealths program.

III. Discussion for Rulemaking Action

In order for EPA to approve the Massachusetts I/M SIP, the state must submit approvable plans for the following elements of the SIP prior to final EPA action on this submittal. These elements are: Network Type and Program Evaluation—40 CFR 51.353, Test Procedures and Standards—40 CFR 51.357, Test Equipment—40 CFR 51.358, Quality Control—40 CFR 51.359, Quality Assurance—40 CFR 51.363, and On-road Testing—40 CFR 51.371.

EPA expects that the Commonwealth will, by October 1, 1999, submit the required elements as identified in this document and also startup the program. If the Commonwealth does not submit the required elements and startup the I/M program by October 1, 1999, EPA proposes in the alternative to issue a limited approval and limited disapproval of the program. This would approve the program for its effect in strengthening the SIP but disapprove it for purposes of meeting the CAA I/M requirements.

EPA is soliciting public comments on the issues discussed in this notice 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.

IV. Proposed Action

EPA is proposing to approve this revision to the Massachusetts SIP for an enhanced I/M program. EPA will not take final action on this submittal until after the date Massachusetts is scheduled to start the I/M program and submit the items listed above which are required work outputs of the contract. If Massachusetts fails, EPA will instead issue a limited approval and limited disapproval of the program.

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.

V. Administrative Requirements

A. Executive Order 12866

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

The 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.

B. Executive Orders on Federalism

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation

with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132, (64 FR 43255 (August 10, 1999)), which will take effect on November 2, 1999. In the interim, the current Executive Order 12612, (52 FR 41685 (October 30, 1987)), on federalism still applies. This rule will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 12612. The rule affects only 1 State, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

C. Executive Order 13045

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

This rule is not subject to E.O. 13045 because it is not economically significant within the meaning of EO 12866 and it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small 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 requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

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 *et seq.*

Dated: September 17, 1999.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 99–25042 Filed 9–24–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA–25–7197c; A–1–FRL–6444–3]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Rate-of-Progress Emission Reduction Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the