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Dated: September 12, 1996.

William T. Wisniewski,

Acting Regional Administrator, Region III.

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40 CFR Part 52

[TX55–1–6879; FRL–5611–6]

Approval and Promulgation of Air Quality State Implementation Plans (SIP); Texas: Motor Vehicle Inspection and Maintenance (I/M) Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed interim rule.

SUMMARY: The EPA is proposing a conditional interim approval of an I/M program proposed by the State, based upon the State's good faith estimate of emission reductions indicating that the State's network design credits are appropriate and the revision is otherwise in compliance with the Clean Air Act (the Act). This action is being taken under section 348 of the National Highway System Designation Act of 1995 (NHSDA) and section 110 of the Act. The EPA is proposing a conditional approval because the State's SIP revision is lacking legislative authority needed to implement certain elements of the program.

If the State corrects these deficiencies within 1 year of the final interim ruling, then this interim approval shall expire on the earlier of 18-months from final interim approval, or on the date of EPA action taking final full approval of this program. If the conditions are not met within 1 year, EPA proposes in the alternative to disapprove the SIP revision. The EPA will notify the State by letter that the conditions have not been met and that the conditional approval has converted to a disapproval. Furthermore, EPA proposes that the State's program must start no later than November 15, 1997 in all I/M program areas. The EPA also proposes that if the State fails to start its program as defined in this document, the approval granted under the provisions of the NHSDA will convert to a disapproval. The EPA will notify the State by letter that the approval has converted to a disapproval for failure to start the program according to the schedule.

The EPA is also proposing removal of the previously approved I/M program from the SIP which was approved on August 22, 1994.

DATES: Comments must be received on or before November 4, 1996.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas 78711–3087.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Davis, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7584.

SUPPLEMENTARY INFORMATION:

I. Background

A. Previous State Submittal Under the 1990 Act

On November 12, 1993, and in several later submittals, the State of Texas made its submission of an I/M program which met the requirements of the Act and Federal I/M rule promulgated on November 5, 1992. This program was given final approval by EPA in a Federal Register notice dated August 22, 1994 (59 FR 43046–43048). The program was designed to be a test-only testing program with most vehicles receiving an I/M loaded mode transient emission test known as the IM240. The program was designed, developed and began operation in January 1995 before being halted by the Texas Legislature and Governor.

While EPA fully supported this program and believes it would have been very effective in reducing mobile source emissions if continued, various states including Texas desired greater flexibility in implementing their I/M programs. In response to this desire, on September 18, 1995, EPA revised and finalized I/M rules which gave states much greater flexibility in implementing their I/M programs. One element of the I/M flexibility amendments included a provision for a new low enhanced performance standard which would allow for less stringent I/M programs if other required air quality goals were met. Also, included in these rules was a provision that nonattainment areas with populations under 200,000 such as Beaumont/Port Arthur would not need to implement an I/M program if other required air quality goals were met. In addition, on November 28, 1995, the NHSDA was signed which allowed even greater flexibility in I/M programs for states especially in the area of emission reduction estimates. The revised Texas I/M program, while meeting the minimum of Federal requirements (with the exceptions identified in this notice), represents a substantially less effective I/M program than the previously approved program.

B. Impact of the National Highway System Designation Act on the Design and Implementation of Inspection and Maintenance Programs under the Clean Air Act

The 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 I/M programs as a means of compliance with section 182, 184 or 187 of the Act. 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 Act, because the I/M program in such plan revision is decentralized, or a test-and-repair program. Accordingly, the so-called ''50 percent credit discount'' that was established by the EPA's I/M Program Requirements Final Rule, (published November 5, 1992, at 57 FR 52950, and herein referred to as the I/M Rule) has been effectively replaced with a presumptive equivalency criteria, which places the emission reductions credits for decentralized networks on 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 Act continue to be required of those states submitting I/M SIP revisions under the NHSDA, and the NHSDA requires that these submittals must otherwise comply in all respects with the I/M Rule and the Act.

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 Act 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 allows 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 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 Act. 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. 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 at that time. 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 also taking action under section 110 of the Act, it is appropriate to propose granting a conditional approval to this submittal since there are some deficiencies with respect to Act statutory and regulatory requirements (identified herein) that EPA believes can be corrected by the State during the interim period.

C. 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 emission reductions actually measured by the state during the program evaluation period. The NHSDA is clear that the interim approval period 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 at the latest by November 15, 1997. The 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. The EPA proposes that if the State fails to start its program on this 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. The EPA anticipates that such a program evaluation process will be developed by the Environmental Council of States group that has convened and that was organized for this purpose. The 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 sections 51.353 and 51.366.

D. Process for Full Approvals of This Program Under the Act

In accordance with NHSDA requirements, this interim rulemaking will expire 18 months of the final interim approval, or the date of final full approval, whichever comes first. A full approval of the State's final I/M SIP revision (which will include the State's program evaluation) is still necessary under section 110 and under section 182, 184 or 187 of the Act. After EPA reviews the State's submitted program evaluation, final rulemaking on the State's SIP revision will occur.

II. EPA's Analysis of Texas's Submittal

In response to this flexibility, in a letter dated March 12, 1996, Texas submitted its revised I/M program to EPA Region 6 within the submission deadlines contained in the NHSDA. The submission was received in our office on March 14, 1996. It contained a SIP narrative, proposed Texas Natural Resource Conservation Commission (TNRCC) I/M rules, and several appendices addressing the requirements of the I/M program. In addition, the I/M SIP including finalized TNRCC regulations, revised SIP narrative and responses to comments received during the State's public comment period was received in the Region 6 office on June 27, 1996. The submittals were intended to fulfill the requirements of the Act and the NHSDA for the nonattainment areas of Texas which are required to implement I/M programs. The SIP revision also contains enabling legislation that will allow the State to implement most of the elements of the I/M program (with the exceptions noted in this conditional rulemaking), their modeling analysis, and a good faith estimate that includes the State's basis for emission reductions claims of the program. The State's credit assumptions were based upon the removal of the 50 percent credit discount for all portions of the program that are based on a test-and-repair network, and the application of the State's own good faith estimate of the effectiveness of its decentralized test and repair program.

The EPA has reviewed the State's submittal against the requirements contained in the NHSDA, the Act, and Federal I/M rules (40 CFR part 51 subpart S). On April 10, 1996, the Region provided its comments to the State resulting from this review. The Region highlighted the need for the State to obtain all of the additional legislative and regulatory authority required to implement the proposed program.

As outlined in the Governor's Executive Order, the additional legislative authority that the Governor intends to support includes: (1) The denial of reregistration of vehicles that have not complied with I/M program requirements, (2) the establishment of a class C misdemeanor penalty for operating a gross polluting vehicle in a nonattainment area, and (3) the requirement for an inspection within 60 days of resale and prior to transfer of title to nonfamily member consumers in Dallas, Tarrant, or Harris counties. In addition, the Region commented that the Texas Department of Safety (DPS) rules for the I/M program were needed before EPA could take a final full approval action on this plan. The other comments and questions stated in our letter reflected a comparison of the

revised Texas I/M SIP with the Federal I/M rules.

The EPA has reviewed the State responses to comments which were in large part satisfactory to EPA. The major deficiencies of legislative authority outlined in this notice can be corrected in the next Texas legislative session. The State must correct these major deficiencies within 12 months of final action by EPA, or this approval will automatically convert to a disapproval under the Act section 110(k)(4). The EPA has also identified certain minor deficiencies in the SIP, which are itemized below. In the response to EPA comments at the State's public hearing, the State has made commitments to correct two minor deficiencies concerning the future submittal a State Attorney General's opinion regarding State constitutional impediments to immediate suspension authority of inspectors (and seek additional immediate suspension authority if needed) and a penalty schedule. The EPA has determined that delayed correction of these minor deficiencies will have a *de minimis* impact on implementation of the I/M program. Therefore, EPA will not impose conditions on interim approval with respect to these deficiencies. However, the State must correct these deficiencies during the 18-month term of the interim approval to support full approval of its I/M SIP. So long as the State corrects these minor deficiencies prior to final action on the State'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.

The following analysis addresses how the State intends to fulfill the requirements of the Federal I/M rules. A more detailed analysis of the State submittals and copy of EPA's comments on the plan are included in the Technical Support Document for this action and may be obtained from the EPA Region 6 office. A summary of the EPA's findings follows.

Section 51.350 Applicability

The SIP needs to describe the applicable areas in detail and, consistent with § 51.372 of the Federal I/M rule, shall include the legal authority or rules necessary to establish program boundaries.

The revised Texas I/M regulations specify that I/M programs will be implemented in Dallas, Tarrant, Harris, and El Paso counties. A basic I/M program will be implemented in Dallas and Tarrant counties, while low enhanced I/M programs will be implemented in Harris and El Paso counties. As the State's submittal indicates, vehicles traveling in from counties surrounding the Dallas, Tarrant and Harris counties will be subject to the I/M program through remote sensing to ensure that the entire urbanized area coverage requirements are minimally met. Without the additional remote sensing coverage the Dallas/Fort Worth area would have fallen approximately 147,000 vehicles short of the requirements, while the Houston area would have fallen about 65,000 vehicles short. The State has committed to cover at least these amounts of commuting vehicles in the remote sensing program. The Federal I/M flexibility rule promulgated September 18, 1995, allowed for the removal of the Beaumont/Port Arthur area from the I/M program. Currently, the State does not have the legislative authority to enforce the remote sensing program, but the Governor's Executive Order states the Governor intends to support such legislation in the next State legislative session. If the remote sensing program proves to be ineffective or not practicable by the end of this interim approval action, the Texas I/M program area will need to be expanded to make up the urbanized area shortfall. The State submittal meets the applicability requirements of the Federal I/M regulations for conditional interim approval.

Section 51.351–2 Enhanced and Basic I/M Performance Standard

The I/M programs provided for in the SIP are required to meet a performance standard, either basic or enhanced as applicable. The performance standard sets an emission reduction target that must be met by a program in order for the SIP to be approvable. The SIP must also provide that the program will meet the performance standard in actual operation, with provisions for appropriate adjustments if the standard is not met. Equivalency of the emission levels which need to be achieved by the I/M program design in the SIP to those of the model program described in this section must be demonstrated using the most current version of EPA's mobile source emission model, or an alternative approved by the Administrator.

The State has submitted a modeling demonstration using the EPA computer model MOBILE5a showing that the low enhanced performance standard is met in the Houston and El Paso areas, and the basic I/M performance standard is met in the Dallas/Fort Worth area. The low enhanced performance standard is 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. 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 interim approval to I/M programs under the NHSDA.

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. The 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, full final approval of a low enhanced I/M program after the 18-month evaluation period would have to await approval of the corresponding 15 percent plan, EPA believes that in light of the NHSDA it can take final 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 State has adopted and submitted a revised 15 percent plan which includes the low enhanced I/M program. The EPA is currently reviewing that plan and plans to propose action on it shortly. The EPA here proposes to approve the I/M program as satisfying the low enhanced

performance standard provided that EPA does propose to approve the 15 percent plan containing that program. Should EPA propose approval of the 15 percent plan, EPA will proceed to take final interim approval action on the I/M plan. The EPA proposes in the alternative that if EPA proposes instead to disapprove the 15 percent plan, EPA would then disapprove the I/M plan as well because the State would no longer be eligible to select the low enhanced performance standard under the terms of 51.351(g).

The State's modeling originally assumed 40 percent of the vehicles received loaded mode tests. However, the State is removing loaded mode testing commitments from its SIP. While EPA fully supports the use of loaded mode testing and believes loaded testing to be more effective, revised modeling has been submitted to EPA which shows that removing loaded mode testing from the SIP will still enable the State to meet the low enhanced and basic performance zstandard for each respective area. Neither the low enhanced or basic performance standard modeling input parameters include a loaded mode component or requirement. Under the provisions of the NHSDA, the State is claiming full credit for vehicles that are tested at test-and-repair stations based on the State's program design, and claiming full credit for self-testing of fleets. At the end of the 18-month approval, the program demonstration will have to verify the appropriateness of the State's credit estimates.

In its submittals, the State has claimed more credit for its gas cap evaporative system pressure test than can be justified by EPA's own current data or any other source of data provided to the EPA. The EPA's guidance for emission reduction credit for the gas cap check is expressed in a December 1994 policy memorandum entitled, ''Credit for Gas Cap Check plus Purge Test.'' However, the additional credit claimed does not make a difference with regard to the general approvability of the I/M program under the NHSDA, since the program appears to meet the low enhanced I/M performance standard with or without the additional credit claimed for the gas cap test. The EPA anticipates the State will gather data during the operation of its program or may choose to seek out alternative data sources to share with EPA which potentially could justify a higher level of credit than EPA's current policy. As always, EPA would evaluate any data submitted by a state as the basis for credit claims made and convey the results of such evaluation to the state. If such data indicates a higher level of credit is justified, EPA will evaluate the appropriateness of its current policy based on such new data at that time. The State submittal meets the enhanced and basic performance standard requirements of the Federal I/M regulations for interim approval.

Section 51.353 Network Type and Program Evaluation

The SIP must include a description of the network to be employed, and the required legal authority. Also, for enhanced areas, the SIP must include a description of the evaluation schedule and protocol, the sampling methodology, the data collection and analysis system, the resources and personnel for evaluation, related details of the evaluation program, and the legal authority enabling the evaluation program.

The State is implementing a decentralized testing network which will allow for both test-only and test-and-repair stations. While the State is planning to allow for some types of maintenance functions at test-only facilities, EPA believes that such network design issues as they relate to credit estimates are essentially moot due to the passage of the NHSDA. The TNRCC commits in the SIP to develop an acceptable one time evaluation of the I/M program to meet the NHSDA requirements. In addition, the SIP commits to meet the ongoing program evaluation of mass emission testing of at least 0.1 percent of subject vehicles and reporting the results of such evaluation on a biennial basis beginning on January 1, 1999. Resources and personnel adequate for the program evaluation are described in the SIP. Legal authority which is contained in the Texas Health and Safety Code Sections 382.017 and 382.037 (changed to 382.027) (Vernon 1992) authorizes TNRCC to implement the program and conduct the program evaluation. The State submittal meets the network type and program evaluation requirements of the Federal I/M regulations for interim approval.

Section 51.354 Adequate Tools and Resources

The SIP is required to include a description of the resources that will be used for program operation and discuss how the performance standard will be met which includes: (1) A detailed budget plan which describes the source of funds for personnel, program administration, program enforcement, purchase of necessary equipment (such as vehicles for undercover audits), and any other requirements discussed throughout, for the period prior to the next biennial self-evaluation required in the Federal I/M rule, and (2) a description of personnel resources. The plan is required to include the number of personnel dedicated to overt and covert auditing, data analysis, program administration, enforcement, and other necessary functions and the training attendant to each function.

Section 159 of the State's General Appropriations Act allows for the transfer of funds and for fees collected from the I/M program for the purpose of implementation of the program. The TNRCC anticipates that at least $1.75 per paid vehicle inspection will be available to the TNRCC and DPS for the continuance of the I/M program. The SIP narrative also describes the budget, staffing support, and equipment needed to implement the program. The State has committed to dedicate a staffing level of 40 full-time-equivalent employees to support the program. The State submittal meets the adequate tools and resources requirements of the Federal I/M regulations for interim approval.

Section 51.355 Test Frequency and Convenience

The SIP must describe the test schedule in detail, including the test year selection scheme if testing is other than annual. Also, the SIP must include the legal authority necessary to implement and enforce the test frequency requirement and explain how the test frequency will be integrated with the enforcement process. In addition, in enhanced I/M programs, test systems shall be designed in such a way as to provide convenient service to motorists required to get their vehicles tested. The SIP must include a demonstration that the network of stations providing test services is sufficient to ensure short waiting times to get a test and short driving distances.

The revised Texas I/M SIP commits to testing all gasoline powered vehicles that are between two and twenty-four years old. Inspections will be required annually unless the vehicle is tested at a loaded mode facility in which case the test is biennial. The vehicle emission testing will be integrated as part of the annual safety inspection. Vehicles receiving a biennial emission test must still receive an annual safety inspection. Also, within 60 days of resale, or prior to registration, vehicles registered in Dallas, Tarrant or Harris counties will be required to undergo an emission test.

Currently, the State does not have the legislative authority to require test on resale, but the Governor's Executive Order states the Governor intends to support such legislation in the next

State legislative session. In addition, at least 10 percent of the vehicle population will be subject to remote sensing. The program is decentralized and stations will be open at least eight hours per day, five days per week, for a minimum of 40 hours per week for motorist convenience. The TNRCC anticipates that over 2,000 facilities will participate in the program. The State submittal meets the test frequency and convenience requirements of the Federal I/M regulations for conditional interim approval.

Section 51.356 Vehicle Coverage

The SIP must include 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. Also, the SIP is required to include a description of any special exemptions which will be granted by the program, and an estimate of the percentage and number of subject vehicles which will be impacted. Such exemptions need to be accounted for in the emission reduction analysis. In addition, the SIP is required to include the legal authority or rule necessary to implement and enforce the vehicle coverage requirement.

The revised Texas I/M SIP includes coverage of gasoline powered light-duty vehicles and light and heavy-duty trucks registered or required to be registered in the I/M program area including fleets. Subject vehicles will be identified through the Texas Department of Transportation database. While the State statute does allow for the exemption of ''circus'' or ''slow moving'' vehicles from the program, TNRCC does not anticipate modeling results to be affected. Legal authority for vehicle coverage is contained in the Texas I/M rule. The State submittal meets the vehicle coverage requirements of the Federal I/M regulations for interim approval.

Section 51.357 Test Procedures and Standards

The SIP must include a description of each test procedure used. The SIP also is required to include the rule, ordinance or law describing and establishing the test procedures.

Vehicles tested in the Texas program shall be subject to a two speed idle test or vehicle owners may elect an ASM loaded mode test. Idle test procedures shall meet requirements in Appendix B of the Federal I/M rule. Idle test emission standards are contained in the SIP modeling analysis and are consistent with the Federal I/M rule. The Acceleration Simulation Mode (ASM) loaded mode test procedures and standards were developed between EPA and the States. They were recently issued in July 1996 in a document entitled, ''Acceleration Simulation Mode Test Procedures, Emission Standards, Quality Control Requirements and Equipment Specifications.'' The SIP states that loaded mode test equipment procedures shall meet EPA requirements for two-mode ASM equipment or an acceptable alternative. As was stated previously, the State is removing loaded mode testing commitments from its SIP, however, EPA anticipates that loaded mode testing will still be an option in the Dallas/Fort Worth and Houston I/M program areas. In addition, the SIP states that vehicles shall receive a gas cap integrity test in accordance with EPA procedures. The Texas I/M rule requires that vehicles comply with the inspection requirements of the revised Texas I/M SIP. The State submittal meets the test procedure and standards requirements of the Federal I/M regulations for interim approval.

Section 51.358 Test Equipment

The SIP is required to include written technical specifications for all test equipment used in the program and must address each of the requirements contained in 40 CFR 51.358 of the Federal I/M rule. The specifications need to describe the emission analysis process, the necessary test equipment, the required features, and written acceptance testing criteria and procedures.

The revised Texas I/M SIP contains written technical specifications for the two speed idle test equipment consistent with the Federal I/M rule and EPA guidance. The ASM loaded mode test specifications were developed between EPA and the States. They were recently issued in July 1996 in a document entitled, ''Acceleration Simulation Mode Test Procedures, Emission Standards, Quality Control Requirements and Equipment Specifications.'' The SIP states that loaded mode test equipment specifications shall meet EPA requirements for two-mode ASM equipment or an acceptable alternative. In addition, the SIP states that vehicles shall receive a gas cap integrity test in accordance with EPA test procedures and equipment specifications. The Texas I/M rule requires that vehicles comply with the inspection requirements of the revised Texas I/M SIP. The State submittal meets the test equipment requirements of the Federal I/M regulations for interim approval.

Section 51.359 Quality Control

The SIP must include a description of quality control and record keeping procedures. The SIP must include the procedure manual, rule, ordinance or law describing and establishing the quality control procedures and requirements.

The revised Texas I/M SIP contains descriptions and requirements establishing the quality control procedures in accordance with the Federal I/M rule. These requirements will help ensure that equipment calibrations are properly performed and recorded as well as maintaining document security. Analyzer manufacturers will prepare a manual of quality control procedures, periodic maintenance schedules, and calibration procedures to ensure proper operation of the test equipment. The revised I/M SIP commits to meet calibration practices contained in Appendix A of the Federal I/M rule. The State submittal meets the quality control requirements of the Federal I/M regulations for interim approval.

Section 51.360 Waivers and Compliance via Diagnostic Inspection.

The SIP must include a maximum waiver rate expressed as a percentage of initially failed vehicles. This waiver rate must be used for estimating emission reduction benefits in the modeling analysis. Also, the State must take corrective action if the waiver rate exceeds that committed to in the SIP, or revise the SIP and the emission reductions claimed accordingly. In addition, the SIP should describe the waiver criteria and procedures, including cost limits, quality assurance methods and measures, and administration. Lastly, the SIP should include the necessary legal authority, ordinance, or rules to issue waivers, set and adjust cost limits as required, and carry out any other functions necessary to administer the waiver system, including enforcement of the waiver provisions.

Cost limits for the minimum expenditure waiver in the Texas SIP are in accordance with the Act and Federal I/M rules. These limits are $450 adjusted annually in the enhanced areas of Houston and El Paso, and $200 for 1981 and later model year vehicles and $75 for 1980 and earlier model year vehicles in the Dallas/Fort Worth area. The revised Texas I/M program includes waiver rates as percentages of initially failed vehicles of 3 percent in all three I/M areas. These waiver rates are used in the modeling demonstration. The TNRCC commits in the SIP that if the

waiver rates are higher than estimated the State will take corrective action to address the deficiency. The SIP describes the three types of waivers the State will allow, which include a minimum expenditure waiver, individual vehicle waiver, parts availability time extension and low income time extension. The DPS will have the responsibility of ensuring that waivers are issued properly. In addition, the waiver criteria including the minimum expenditure requirements are contained in the Texas I/M rule. The State submittal meets the waiver and compliance via diagnostic inspection requirements of the Federal I/M regulations for interim approval.

Section 51.361 Motorist Compliance Enforcement

The SIP is required to provide information concerning the enforcement process, including: (1) A description of the existing compliance mechanism if it is to be used in the future and the demonstration that it is as effective or more effective than registration-denial enforcement; (2) an identification of the agencies responsible for performing each of the applicable activities in this section; (3) a description of and accounting for all classes of exempt vehicles; and (4) a description of the plan for testing fleet vehicles, rental car fleets, leased vehicles, and any other subject vehicles, e.g. those operated in (but not necessarily registered in) the program area. Also, the SIP must include a determination of the current compliance rate based on a study of the system that includes an estimate of compliance losses due to loopholes, counterfeiting, and unregistered vehicles. Estimates of the effect of closing such loopholes and otherwise improving the enforcement mechanism shall be supported with detailed analyses. In addition, the SIP must include the legal authority to implement and enforce the program. Lastly, the SIP must include a commitment to an enforcement level to be used for modeling purposes and to be maintained, at a minimum, in practice.

The State has chosen to enforce the I/M program with a combination of sticker-based enforcement and comparing registration data with inspection data to address vehicles not complying with the program. Contingent upon legislation being passed, continual noncompliance would result in denial of re-registration. The motorist compliance enforcement program will be implemented by the DPS, the Texas Department of Transportation, and the TNRCC. Vehicle coverage requirements are described in the previous section. Gasoline powered vehicles greater than 24 years old, motorcycles, dedicated alternative fueled vehicles and diesel vehicles are not included in the program. Fleet vehicles will be allowed to conduct self-testing provided that they meet the required equipment standards, are licensed by DPS, and tests are performed in accordance with established inspection procedures. Motorists operating vehicles in the I/M areas with an expired or invalid state inspection certificate will be subject to citations by local and state law enforcement officials. The SIP includes a recent safety inspection compliance survey from the Dallas/Fort Worth area that indicates a compliance rate of 95 percent, but this information is only preliminary. The proposed program with enhancements estimates compliance at 95 percent and TNRCC commits to maintain this rate in practice. The legal authority to implement and enforce the program is included in the Texas statutes and regulations cited in the SIP. Currently, the State does not have the legislative authority to enforce the denial of reregistration, but the Governor's Executive Order states the Governor intends to support such legislation in the next State legislative session.

In the State's response to comments given at the public hearing, it stated that the State's I/M program is complying with the requirements of this section through a sticker based enforcement program. The Federal I/M rule does contain a provision for alternative enforcement mechanisms other than registration denial, however a demonstration must be made per § 51.361(b) that an alternative such as sticker enforcement is more effective than registration denial for enhanced I/M areas and as effective for basic areas. The State submittal does not include such a complete demonstration. Thus, EPA cannot provide approval on the basis of sticker enforcement unless a complete demonstration is made. However, the State does not have to comply with the alternative enforcement mechanisms in § 51.361 if registration denial requirements are met. The EPA is proposing to conditionally approve this provision conditioned upon the State obtaining authority for a reregistration denial system as is stated in the Governor's Executive Order and Texas I/M SIP. The State submittal meets the motorist compliance enforcement requirements of the Federal I/M regulations for conditional interim approval.

Section 51.362 Motorist Compliance Enforcement Program Oversight

The SIP must include a description of enforcement program oversight and information management activities.

The Texas I/M SIP provides for regular auditing of its enforcement efforts and for following effective management practices, including adjustments to improve the program when necessary. These program oversight and information management activities are described in the SIP narrative and include: the establishment of written audit procedures and/or checklists for I/M document handling and processing, audit procedures, notification of motorists and inspection facilities suspected of violating program rules, an on-line telecommunication network to support the State's oversight and management requirements, and an I/M database which will be compared to the registration database to determine program effectiveness. The State submittal meets the motorist compliance enforcement program oversight requirements of the Federal I/M regulations for interim approval.

Section 51.363 Quality Assurance

The SIP must include a description of the quality assurance program, and written procedures manuals covering both overt and covert performance audits, record audits, and equipment audits. This requirement does not include materials or discussion of details of enforcement strategies that would ultimately hamper the enforcement process.

The revised Texas I/M SIP includes a description of its quality assurance program. The program includes both covert and overt audits. The SIP commits to a minimum of three performance audits, two overt for each lane or test bay and one covert for each full time equivalent inspector to be conducted each year. Audits will include the inspection of records and equipment. Procedures for overt and covert audits will be based upon written instructions and will be updated as necessary. The State submittal meets the quality assurance requirements of the Federal I/M regulations for interim approval.

Section 51.364 Enforcement Against Contractors, Stations and Inspectors

The SIP must include the penalty schedule and the legal authority for establishing and imposing penalties, civil fines, license suspension, and revocations. In the case of state constitutional impediments to immediate suspension authority, the

state Attorney General must furnish an official opinion for the SIP explaining the constitutional impediment as well as relevant case law. Also, the SIP is required to 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 other aspects of the enforcement of the program requirements, the resources to be allocated to this function, and the source of those funds. In states without immediate suspension authority, the SIP must demonstrate that sufficient resources, personnel, and systems are in place to meet the three day case management requirement for violations that directly affect emission reductions.

The revised Texas I/M SIP states that TNRCC may assess penalties of up to $10,000 in its enforcement against stations and inspectors and will develop a more specific penalty schedule at a later date. The SIP describes the enforcement process. The DPS is planning to assign six full time equivalent employees to covert and overt auditing as well as seven additional full time equivalent employees for other enforcement activities. The TNRCC is currently seeking an Attorney General opinion seeking whether there are any constitutional impediments to immediate suspension authority and is in the process of developing a penalty schedule. Once the opinion is obtained by the State, EPA will be working with the State to consider the necessary action that will be needed to comply with the requirements of this section. The legal authority for TNRCC to asses penalties is contained in the Texas Clean Air Act, subchapter D. The authority for DPS to deny application for license or revoke or suspend an outstanding certificate of any inspection station or the certificate of any person to inspect vehicles is found in the Texas Transportation Code, Section 548.407. The minor deficiencies regarding the State Attorney General's opinion regarding State constitutional impediments to immediate suspension authority of inspectors (and seek additional immediate suspension authority if needed) and a penalty schedule must be corrected by the end of the 18-month interim period.

Section 51.365–6 Data Collection, Analysis and Reporting

The SIP must describe the types of data to be collected and reported.

The revised Texas I/M SIP provides for the collecting of test data to link specific test results to specific vehicles, I/M program registrants, test sites, and inspectors. The SIP lists the specific types of test data and quality control data which will be collected. The data will be used to generate reports in the areas of test data, quality assurance, quality control, and enforcement. It will also be used to assess changes and weaknesses in the program. The State submittal meets the data collection, analysis and reporting requirements of the Federal I/M regulations for interim approval.

Section 51.367 Inspector Training and Licensing or Certification

The SIP must include a description of the training program, the written and hands-on tests, and the licensing or certification process.

The revised Texas I/M SIP provides for the implementation of training, certification, and refresher programs for emission inspectors. The SIP describes this program and curriculum which includes hands-on testing. Certified inspector appointments will expire on August 31 of the even numbered year following the first date of appointment and afterwards will be made for two year periods. All inspectors will be required to be certified to inspect vehicles in the Texas I/M program. The State submittal meets the inspector training and licensing or certification requirements of the Federal I/M regulations for interim approval.

Section 51.368 Public Information and Consumer Protection

The SIP must include a plan for informing the public on an ongoing basis throughout the life of the I/M program of the air quality problem, the requirements of Federal and state law, the role of motor vehicles in the air quality problem, the need for and benefits of an inspection program, how to maintain a vehicle in a low-emission condition, how to find a qualified repair technician, and the requirements of the I/M program. Also, the SIP shall include a detailed consumer protection plan.

The revised Texas I/M SIP commits to the establishment of an ongoing public awareness plan addressing the significance of the air quality problem, the requirements of Federal and State law, the role of motor vehicles in the air quality problem, the benefits of an inspection program, steps to maintain a vehicle in a low-emission condition, how to find a qualified repair technician, and the requirements of the I/M program. The SIP commits that motorists will be offered general repair information including a list or repair facilities, information on the results of the repairs by repair facilities in the area, diagnostic information and warranty information. The SIP also includes consumer protection provisions which include DPS challenge/referee facilities, DPS oversight of the program though the use of audits, whistle blower protection, and complaint handling procedures. The State submittal meets the public information and consumer protection requirements of the Federal I/M regulations for interim approval.

Section 51.369 Improving Repair Effectiveness

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 of the Federal I/M rule, and a description of the repair technician training resources available in the community.

The revised Texas I/M SIP includes a description of the technical assistance plan, repair industry performance monitoring plan, repair technician training assessment, and recognized repair technician requirements. The State will regularly inform repair facilities through the use of a newsletter regarding changes to the inspection program, training course schedules, common problems and potential solutions for particular engine families, diagnostic tips, repair, and other technical assistance issues. The newsletter will also contain information on technical assistance hotlines that meet the State's criteria. Repair facility performance monitoring statistics will be available to motorists whose vehicles fail the I/M test. The State will monitor the need for additional training resources for repair technicians. If motorist demand for repair technicians is not being satisfied, the State will also ensure that adequate repair technician training resources are available to the repair community. The State submittal meets the improving repair effectiveness requirements of the Federal I/M regulations for interim approval.

Section 51.370 Compliance With Recall Notices

The SIP must describe the procedures used to incorporate the vehicle lists provided into the inspection or registration database, the quality control methods used to ensure that recall repairs are properly documented and tracked, and the method (inspection failure or registration denial) used to enforce the recall requirements.

The revised Texas I/M SIP contains a plan describing the procedures for

ensuring that vehicles that are included in either a voluntary emission recall, or a remedial plan determination pursuant to the Act, have had the appropriate repair made prior to the inspection. The TNRCC commits in the SIP to complying with the policies of the National Recall Committee and additional rulemaking when it becomes available. Additional rulemaking by EPA is needed before the State will be able to implement this provision. The State submittal meets the compliance with recall notices requirements of the Federal I/M regulations for interim approval.

Section 51.371 On-Road Testing

The SIP must include a detailed description of the on-road testing program, including the types of testing, test limits and criteria, the number of vehicles (the percentage of the fleet) to be tested, the number of employees to be dedicated to the on-road testing effort, the methods for collecting, analyzing, utilizing, and reporting the results of on-road testing and, the portion of the program budget to be dedicated to on-road testing. Also, the SIP must include the legal authority necessary to implement the on-road testing program, including the authority to enforce off-cycle inspection and repair requirements. In addition, emission reduction credit for on-road testing programs shall be granted for a program designed to obtain significant emission reductions over and above those already predicted to be achieved by other aspects of the I/M program. The SIP must include technical support for the claimed additional emission reductions.

The revised Texas I/M SIP includes a detailed description of its on-road testing program. The State is planning to use remote sensing to help meet the requirement of covering the entire urbanized areas of Dallas/Fort Worth and Houston. As was stated previously in the applicability section of this notice, the State has committed to cover at least the amount of commuting vehicles in the remote sensing program to ensure adequate area coverage. In addition, the State will test at least 20,000 of the vehicles subject to I/M tests in all of the I/M areas. As has been stated previously, the State needs additional legal authority to enforce this program. The State submittal meets the on-road requirements of the Federal I/M regulations for conditional interim approval.

Section 51.372 State Implementation Plan Submissions.

The NHSDA called for submissions of I/M SIPs that were going to be eligible for its provisions to be submitted by March 27, 1996. The NHSDA allowed EPA to grant interim approval of the plan based on State proposed regulations if the State had its statutory authority and was in otherwise compliance with the Act. In a letter dated March 12, 1996, the revised Texas I/M SIP was submitted on March 14, 1996. In addition, in a letter dated June 27, 1996, the I/M SIP with finalized regulations and responses to comments received during the State's public comment period was submitted to EPA Region 6. While some enforcement authority is lacking, Texas does have authority to implement major portions of the program. The Governor has signed an Executive Order stating his intention to support the additional needed legal authority. The State submittal meets the NHSDA requirements for interim approval.

Section 51.373 Implementation Deadlines

EPA is expecting that I/M programs submitted under the NHSDA be implemented by November 15, 1997. The revised Texas I/M SIP includes a schedule for program implementation. The emission testing start date contained in the schedule is January 1, 1997, or earlier for all program areas.

III. Discussion for Rulemaking Action

A. Concluding Statement of Conditional Interim Approval

EPA's review of this material indicates that it meets the minimum requirements of the Act, NHSDA, and Federal I/M rules with the exceptions of the deficiencies explained in this notice. Based upon the discussion contained in the previous analysis sections and technical support document, EPA concludes the State's submittal represents an acceptable approach to the I/M requirements and meets the requirements for conditional interim approval. Therefore, EPA is proposing a conditional interim approval of the Texas I/M SIP revision which was submitted on March 14, 1996, and June 27, 1996. The Regional office, in conjunction with EPA's Office of Mobile Sources and other Regional offices, has taken efforts to help ensure that overall this action is consistent with other EPA actions on I/M programs. The 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 notice.

B. Withdrawal of Previous I/M Program

As was stated in the Summary section of this notice, the EPA is also proposing removal of the previously approved I/M program from the SIP which was finally approved on August 22, 1994 (59 FR 43046–43048). Also, the EPA will not be processing an I/M SIP revision submittal relating to the previously approved I/M program which was submitted on November 10, 1994 relating to the hardship waiver eligibility criteria and repair effectiveness program. In addition, the EPA will not be acting on portions of two previously submitted revisions which relate to the pre-1990 Act Dallas/Fort Worth I/M program submitted on February 21, 1989, and September 20, 1990. The portions of these submittals which are superseded by this proposed action are contained in 31 TAC sections 114.3–4.

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 State 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 by November 15, 1997, the State will have at least 6 months of program data that can be used for the demonstration. If the State 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 State's permanent I/M SIP revision if the State does not demonstrate the interim program's effectiveness. If the State's program evaluation demonstrates a lesser amount of emission reductions actually realized than were claimed in the State's previous submittal, EPA will adjust the State's credits accordingly, and use this information to act on the State's permanent I/M program.

V. Further Requirements for Permanent I/M SIP Approval

Final approval of the State's plan will be granted based upon the following criteria:

1. The State has complied with all the major conditions listed in this proposed notice.

2. The EPA's review of the State's program evaluation confirms that the appropriate amount of program credit was claimed by the State and achieved with the interim program.

3. Final DPS program regulations are submitted to EPA.

4. The State I/M program meets all of the requirements of EPA's I/M rule, including those deficiencies found *de minimis* for the purposes of interim approval.

5. The remote sensing program proves to be effective in identifying and obtaining repairs on vehicles with high levels of emissions, or the Texas I/M core program area is expanded to include the entire urbanized area for both Dallas/Fort Worth and Houston.

VI. Proposed Action

The EPA is proposing to grant conditional interim approval of the State's submission contingent upon the State obtaining all of the additional authority needed to implement the program outlined in the Governor's Executive Order. In addition, the EPA is issuing conditional interim approval contingent upon the program starting by November 15, 1997. The EPA proposes that if the State fails to obtain the needed additional legal authority as outlined in the Governor's Executive Order, or fails to start the program by November 15, 1997, the approval will convert to a disapproval after a letter is sent notifying the State of the conversion to disapproval. The minor or *de minimis* deficiencies regarding immediate suspension authority of inspectors and a penalty schedule will need to be corrected before final full approval will be granted.

As stated previously, interim approvals granted under the NHSDA are valid for 18 months subject to an adequate program demonstration justifying the program is achieving the claimed emission reductions.

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.

VII. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

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

Conditional approvals of SIP submittals under section 110 and subchapter I, part D of the 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, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids EPA to base its actions concerning SIPs on such grounds. See *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

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

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to 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.

The EPA has determined that the conditional 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 preexisting 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.

List of Subjects in 40 CFR Part 52

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

Dated: September 9, 1996.

Jane N. Saginaw,

Regional Administrator.

[FR Doc. 96–25397 Filed 10–2–96; 8:45 am]

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40 CFR Part 52

[CO–001–0007; FRL–5630–8]

Clean Air Act Approval and Promulgation of Air Quality Implementation Plan Revision for Colorado; Long-Term Strategy of State Implementation Plan for Class I Visibility Protection, Part I: Hayden Station Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the long-term strategy portion of Colorado's State Implementation Plan (SIP) for Class I Visibility Protection, contained in Section VI of the document entitled ''Long-Term Strategy Review and Revision of Colorado's State