21092; page 42786, column 1; and the description in FAA Order 7400.9D, dated September 16, 1996, which is incorporated by reference in 14 CFR 71.1; are corrected as follows:

§ 71.71 [Corrected]

Subpart E—Class Airspace

* * * * *

ANE ME E5—Oxford, ME [Corrected]

Oxford County Regional Airport

By removing ''(lat. 44°09′27″N, long. 70°28′53″W)'' and substituting ''(lat. 44°09′23″, long. 70°28′48″W).''

* * * * *

Issued in Burlington, MA on November 19, 1996.

John J. Boyce,

Assistant Manager, Air Traffic Division, New England Region.

[FR Doc. 96–30215 Filed 11–26–96; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket 154, NY22–1; FRL–5652–5]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed conditional interim rule.

SUMMARY: EPA is proposing a conditional interim approval of a State Implementation Plan (SIP) revision submitted by the State of New York. This revision establishes and requires the implementation of an enhanced inspection and maintenance (I/M) program in the counties of the Bronx, Kings, Nassau, New York, Queens, Richmond, Rockland, Suffolk (except Fisher's Island), and Westchester Counties. The intended effect of this action is to propose conditional interim approval of the I/M program proposed by the State, based upon the State's good faith estimate, which asserts that the State's network design emission reduction credits are appropriate and the revision is otherwise in compliance with the Clean Air Act (CAA). This action is being taken under section 348 of the National Highway System Designation Act of 1995 (NHSDA) and section 110 of the CAA. EPA is proposing a conditional interim approval because the State's SIP revision is deficient with respect to the following requirements: test procedures; standards and equipment; waiver expenditure requirements; and performance standard modeling.

If the State commits within 30 days of the publication of this proposed conditional interim approval to correct the major deficiencies by dates certain as described below, then this proposed conditional interim approval shall expire pursuant to the NHSDA and section 110 of the CAA on the earlier of 18 months from final interim approval, or on the date EPA takes final action on the state's full I/M SIP. In the event that the State fails to submit a commitment to correct all of the major deficiencies within 30 days after the publication of this proposed conditional interim approval, then EPA is proposing in the alternative to disapprove the SIP revision. If the state does not make a timely commitment but the conditions are not met by the specified date within one year, EPA proposed that this proposed conditional interim approval will convert to a final disapproval. If the conditional interm approval is converted to a disapproval, EPA will notify the State by letter that the conditions have not been met and that the conditional interim approval has been converted to a disapproval.

DATES: Comments must be received on or before December 27, 1996.

ADDRESSES: Written comments on this proposed action may be addressed to: Regional Administrator, Attention: Air Programs Branch, Division of Environmental Planning and Protection, Environmental Protection Agency, Region 2, 290 Broadway, 25th Floor, New York, New York 10007–1866. Copies of the documents relevant to this action are available for public inspection during normal business hours at the address shown above.

Electronic Availability: This document and EPA's technical support document are available at Region 2's site on the Internet's World Wide Web at: http://www.epa.gov/region02/ air/sip/.

FOR FURTHER INFORMATION CONTACT: Rudolph K. Kapichak, Mobile Source Team Leader, Air Programs Branch, Environmental Protection Agency, Region 2, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION:

I. Background

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

The National Highway System Designation Act of 1995 (NHSDA) establishes two key changes to the enhanced I/M Rule requirements previously developed by EPA. Under the NHSDA, EPA cannot require states to adopt or implement centralized, test-only IM240 enhanced vehicle inspection and maintenance programs as a means of compliance with section 182, 184 or 187 of the CAA. Also under the NHSDA, EPA cannot disapprove a state SIP revision, nor apply an automatic discount to a state SIP revision under section 182, 184 or 187 of the CAA, because the I/M program in such plan revision is decentralized, or a test-and-repair program. Accordingly, the so-called ''50 percent credit discount'' that was established by the EPA's I/M Program Requirements Final Rule, (published November 5, 1992, and herein referred to as the I/M Rule or the federal I/M regulation) has been effectively replaced with a presumptive equivalency criterion, 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 CAA continue to be required of those states submitting I/M SIP revisions under the NHSDA. Therefore, the NHSDA specifically requires that these submittals must otherwise comply in all respects with the I/M Rule and the CAA.

The NHSDA also requires states to swiftly develop, submit, and begin implementation of these enhanced I/M programs, since the anticipated start-up dates developed under the CAA and EPA's I/M Rule have already been delayed. In requiring states to submit their I/M plans within 120 days of the NHSDA passage, and in allowing these states to submit proposed regulations within this time frame for their I/M programs (which can be finalized and submitted to EPA during the interim period) it is clear that Congress intended

for states to begin testing vehicles as soon as practicable now that the decentralized credit issue has been clarified and directly addressed by the NHSDA.

Submission criteria described under the NHSDA allow for a state to submit proposed regulations for this interim program, provided that the state has all of the statutory authority necessary to carry out the program. Also, in proposing the interim emission reduction credits for this program, the state is required to make a good faith estimate regarding the performance of its enhanced I/M program. Since this estimate is expected to be difficult to quantify, the state need only provide that the proposed emission reduction credits claimed for the submission have a basis in fact. A good faith estimate may be based on any of the following: the performance of any previous I/M program, the results of remote sensing or other roadside testing techniques, fleet and vehicle miles traveled (VMT) profiles, demographic studies, or other evidence which has relevance to the effectiveness or emissions reducing capabilities of an I/M program.

This action is being taken under the authority of both the NHSDA and section 110 of the CAA. Section 348 of the NHSDA expressly directs EPA to issue this interim approval for a period of 18 months, at which time the interim program will be evaluated in concert with the appropriate state agencies and EPA. The Conference Report on section 348 of the NHSDA states that it is expected that the estimated emission reduction credits claimed by the state in its I/M SIP, and the actual emissions reductions demonstrated through the program data may not match exactly. Therefore, the Conference Report suggests that EPA use the program data to appropriately adjust the proposed emission reduction credits to reflect the emissions reductions actually measured by the state during the program evaluation period.

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

B. Interim Approvals Under the NHSDA

The NHSDA directs EPA to grant interim approval for a period of 18 months to approvable I/M submittals under this Act. The NHSDA also directs EPA and the states to review the interim program results at the end of 18 months, and to make a determination as to the effectiveness of the interim program. Following this demonstration, EPA will adjust any credit claims made by the state in its good faith effort to reflect the emissions reductions actually measured by the state during the program evaluation period. The NHSDA is clear that the interim approval shall last for only 18 months, and that the program evaluation is due to EPA at the end of that period. Therefore, EPA believes Congress intended for these programs to start-up as soon as possible, which EPA believes should be at the latest, by November 15, 1997. This would allow the state about six months to generate data to support its emission reduction claim. EPA further believes that in setting such a strict timetable for program evaluations under the NHSDA, Congress recognized and attempted to mitigate any further delay with the start-up of this program. For the purposes of this program, ''start-up'' is defined as a fully operational program which has begun regular, mandatory inspections and repairs, using the final test strategy and covering each of a state's required areas. EPA proposes that if the state fails to start its program on 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. EPA anticipates that such a program evaluation process will be developed by the Environmental Council of States (ECOS) group that has convened and that was organized for this purpose. EPA further anticipates that in addition to the interim, short term evaluation, the state will conduct a long term, ongoing evaluation of the I/M program as required by the I/M Rule in 40 CFR 51.353 and 51.366.

C. Process for Final Approval of This Program Under the CAA

As per the NHSDA requirements, this interim rulemaking will expire within 18 months of the conditional interim approval, or sooner if EPA takes action to approve the final SIP submittal prior to that date. A final approval of the state's final I/M SIP revision (which will include the state's program evaluation and final adopted state regulations) is still necessary under section 110 and under section 182, 184 or 187 of the CAA. After EPA reviews the state's submitted program evaluation, final rulemaking on the state's final SIP revision will occur.

II. EPA's Analysis of New York State's Submittal

On March 27, 1996, the New York State Department of Environmental Conservation (DEC) submitted a revision to its State Implementation Plan (SIP) for an enhanced I/M program to qualify under the NHSDA. The revision consists of enabling legislation that will allow the State to implement the I/M program, proposed regulations, a description of the I/M program (including a modeling analysis and detailed description of program features), and a good faith estimate that includes the State's basis in fact for emission reduction 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 estimate of the effectiveness of its decentralized test-and-repair program.

A. Analysis of the NHSDA Submittal Criteria

Transmittal Letter

On March 27, 1996, New York submitted an enhanced I/M SIP revision to EPA, requesting action under the NHSDA and the CAA. The official submittal was made by David Sterman, Deputy Commissioner, the appropriate State official, and was addressed to Regional Administrator Jeanne M. Fox, the appropriate EPA official in the Region.

Enabling Legislation

The State of New York has legislation under Articles 3 and 19 of the State's Environmental Conservation Law and titles II and III of the State's Vehicle and Traffic Law, enabling the implementation of an enhanced I/M program.

Proposed Regulations

On March 6, 1996, the State of New York, proposed regulations in accordance with 40 CFR Part 51, establishing an enhanced I/M program. DEC proposed to amend existing regulation 6NYCRR Part 217, ''Motor Vehicle Emissions,'' and the Department of Motor Vehicles (DMV) proposed to amend existing regulation 15NYCRR Part 79, ''Motor Vehicle Inspection Regulations.'' The primary program changes are as follows:

- A transient test (using a dynamometer) will replace the idle test,
- Waivers will now be granted only after motorists meet the repair expenditure requirement, and

• A gas cap test will be added to curtail evaporative emissions.

The State anticipates fully adopting regulations by mid-November 1996.

Program Description

New York has proposed an annual enhanced decentralized test-and-repair I/M program utilizing ''IG240'', which is a transient dynamometer-based emissions test. Existing test-and-repair stations will be utilized for the program. New York anticipates that approximately 50 percent of the existing stations will upgrade their equipment. Vehicles 25 years old and newer will be subject to the new program. The State proposes to implement the enhanced program in January 1998. Pass/fail cutpoints will be phased-in through to the year 2000.

Emission Reduction Claim and Basis for the Claim

The ''Utah Protocol'' was used to support the State's estimate of the anticipated emission reductions. It is also assumed that utilizing ''IG240'' emissions testing will yield emission reductions midway between what would be gained from IM240 and a two-mode Acceleration Simulation Mode (ASM) test. The State claims 81 percent effectiveness for its test-and-repair program. The State proposes to use gas cap testing in place of pressure/purge testing and claims 100 percent effectiveness. The State claims only 50 percent effectiveness for its technician training program because the repair technicians will not be required to be licensed.

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

• AAs previously stated, the NHSDA left those elements of the I/M Rule that do not pertain to network design or test type intact. Based upon EPA's review of New York's submittal, EPA believes the State has not complied with all aspects of the NHSDA, the CAA and the I/M Rule. Therefore, EPA proposes to conditionally approve the I/M SIP revision. Before EPA can continue with the interim rulemaking process, the State must make a commitment within 30 days of November 27, 1996 to correct the major deficiencies by dates certain as described in this document. New York's major deficiencies are described below.

Waiver Expenditure Requirements

Many of the I/M programs currently operating include waivers for vehicles that cannot pass the applicable pass/fail standards, usually with a minimum expenditure requirement. Section 182(c)(2)(C)(iii) of the CAA included such a requirement, calling for owners of vehicles that fail an initial emissions inspection to spend at least $450 (1989 cost), allowing for yearly Consumer Price Index (CPI) adjustments as specified in section 502(b)(3)(B)(v)(II) of the CAA. Although New York's proposed enhanced I/M program does include the $450 initial amount, it is not clear from the submitted I/M SIP revision whether the CPI adjustments account for increases since 1989, as required.

Enhanced I/M Performance Standard Modeling

Section 51.350 of the federal I/M regulation requires that states submit, along with their proposed programs, modeling assumptions and results using EPA's most recent version of the mobile emissions model; currently MOBILE5a. New York's submittal includes such modeling. However, it includes assumptions for a test method that has yet to be developed, and for which no emission reduction credits have been established.

Test Procedures, Standards and Equipment

Sections 51.357 and 51.358 of the federal I/M regulation require states to provide a clear step-by-step description of the test equipment, test process, and the pass/fail standards to be used. Since New York's test has not been fully developed, the State has yet to finalize its test procedure, standards and test equipment specifications. This must be done well in advance of program start.

In order for EPA to proceed with conditional interim approval the State must commit within 30 days of the publication date of this proposal to correct these major deficiencies by dates certain or this approval will convert to a disapproval under CAA section 110(k)(4). EPA proposes that the deficiencies with regard to the enhanced performance standard modeling and the waiver expenditure requirements must be corrected within 12 months of EPA's conditional interim approval. Because the finalization of the test procedures, standards and equipment specifications is critical to ensuring that the program begins testing by the required date EPA proposes that this deficiency must be corrected no later than January 31, 1997. It is essential that the State submit final test procedures, standards and equipment specifications no later than this date because a significant lead time is necessary in order for the program to begin testing as planned.

EPA has also identified certain minor (de minimis) deficiencies in the I/M SIP revision, which include:

(1) Repair station report card,
(2) Quality control,
(3) Quality assurance,
(4) Data Collection,
(5) Inspector training, and
(6) On-road testing.

EPA has determined that allowing the State a longer time to correct these minor deficiencies will have a de minimis impact on the State's ability to meet clean air goals. Therefore, the State need not commit to correct these deficiencies in the short term, and 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, as part of the fully adopted rules that the State will submit to support final approval of its I/M SIP. So long as the State corrects these minor deficiencies prior to final action on the State's 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.

Considering the implementation schedule provided by New York in its March 27, 1996 submittal, EPA sought assurances that the State would make every effort to meet the program start-up date. As a result, on October 24, 1996, DEC Deputy Commissioner David Sterman wrote to Region 2 indicating that the date would be met. This letter will be made part of the official docket.

Applicability—40 CFR 51.350

Section 182(c)(3) of the CAA and the federal I/M regulation require all states with areas classified as being serious or worse ozone nonattainment areas to implement an enhanced I/M program. The New York-New Jersey-Long Island nonattainment area is classified as a severe ozone nonattainment area and is required to implement an enhanced I/M program as per section 182(c)(3) of the CAA and 40 CFR 51.350(2). In addition, Bronx, Kings, Nassau, New York, Queens, Richmond, and Westchester Counties are designated as a moderate nonattainment area for carbon monoxide (CO) with a design value carbon monoxide concentration greater than 12.7 ppm. As per 40 CFR 51.350(3), any area classified as moderate CO nonattainment with a design value concentration greater than 12.7 ppm shall also implement an enhanced I/M program.

New York's proposed I/M regulation requires that the enhanced I/M program be implemented in Bronx, Kings,

Nassau, New York, Queens, Richmond, Rockland, Suffolk (except Fisher's Island) and Westchester Counties.

New York State plans to require that all other counties be covered by an inspection program in accordance with the Ozone Transport Region (OTR) low enhanced I/M Rule, which was published in the Federal Register on July 25, 1996. Since this rule was only recently published, the State could not be expected to submit an I/M SIP revision for these counties pursuant to that rule by this time. As a result, New York will submit a final I/M SIP revision for these counties at a later date, and EPA will evaluate the adequacy of that program and take action at that time.

The New York I/M legislative authority provides the legal authority to establish the geographic boundaries. The program boundaries are listed in Section 2.0 of the I/M SIP revision. EPA is proposing at this time to find that the geographic applicability requirements are satisfied for the counties subject to the original I/M Rule.

The federal I/M regulation requires that the State program shall not sunset until it is no longer necessary. EPA interprets the federal regulation as stating that a SIP which does not sunset prior to the attainment deadline for each applicable area satisfies this requirement. The New York I/M regulation provides for the program to continue past the attainment dates for all applicable nonattainment areas in the State. New York's submittal meets the applicability requirements of the federal I/M regulation for interim approval.

Enhanced I/M Performance Standard—40 CFR 51.351

The federal I/M regulation requires that enhanced I/M programs 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 mix and local fuel controls, and the following model I/M program parameters: Network type, start date, test frequency, model year coverage, vehicle type coverage, exhaust emission test type, emission standards, emission control device, evaporative system function checks, stringency, waiver rate, compliance rate and evaluation date. The emission levels achieved by the state's program design shall be calculated using the most current version, at the time of submittal, of the EPA mobile source emission factor model. At the time of the New York submittal the most current version was MOBILE5a. Areas shall meet the performance standard for the pollutants which cause them to be subject to enhanced I/M requirements. In the case of ozone nonattainment areas, the performance standard must be met for both nitrogen oxides (NO_x) and hydrocarbons (HC) as evaluated for the year 2002. In the case of carbon monoxide nonattainment areas, the performance standard must also be met for CO as evaluated for the year 2002. The New York submittal must meet the enhanced I/M performance standard for HC, NO_x and CO in all applicable I/M areas in New York.

The New York submittal includes the following program design parameters:

Mobile5a parameter	New York's program
Network type	Combination test-only, and test-and-repair.
Start date	1998.
Test frequency	Annual.
Model years	25 years old and newer.
Vehicle type coverage	LDGV, LDGT1, LDGT2, and HDGV.
Exhaust emission test type	NY-Test (short transient) on 1981 and newer vehicles less than or equal to 8500 lbs gross vehicle weight rating (GVWR) and single speed idle test on 1980 and older vehicles and vehicles greater than 8500 lbs GVWR.
Emission standards	0.8/15/2.0 grams per mile (NY-Test) 1.2 percent CO, 220 ppm HC (Idle Test).
Emission control devices	Air pump, fuel inlet restrictor, EGR, PCV, TAC, catalyst.
Evaporative system function checks	Missing gas cap and evaporative disablement.
Waiver rate	3 percent.
Compliance rate	98 percent.
Stringency (pre-1981 failure rate)	20 percent.
Evaluation dates	HC and NO_X, July 2000; CO, July 2001.

New York attempted to estimate the credit discount for this program by modeling the State's program as both test-only and test-and-repair and interpolating the results linearly to match the 81 percent claimed effectiveness. EPA finds this method to be acceptable. However, the analysis assumes that final pass/fail cutpoints will be used. In reality, the State intends to use looser phase-in cutpoints at least until the year 2000.

New York intends to phase in the pass/fail standards so that those used during the initial cycles will not be as stringent as those the program will eventually use. Preliminary modeling performed by EPA indicates that the use of the looser standards will still allow the State to meet its emission reduction obligations required by the 15 percent plan. However, EPA's modeling using corrected input parameters shows that New York's program fails to meet the emission reduction expectations of the ''high enhanced I/M performance standard'' for hydrocarbons. It does, however, meet the ''low enhanced I/M performance standard.'' Therefore, the State will be able to show that the program at least meets the ''low enhanced I/M performance standard.'' If the State's final program analysis indicates that use of these standards will not generate the emission reductions needed to allow the State to meet the goals of its 15 percent plan, New York may be required to use tighter standards, or implement other control strategies.

EPA is proposing conditional interim approval of the State program at this time consistent with the intent of the NHSDA that state I/M programs be promptly approved and implemented for an 18-month period. EPA proposes that this approval be conditioned upon the requirement that the State conduct and submit the necessary modeling and demonstration that the program will meet the performance standard. EPA proposes that the modeling and demonstration be submitted by a date certain within 12 months from conditional interim approval. If the State fails to submit this new modeling within 12 months, EPA proposes that

the conditional interim approval will convert to a disapproval upon a letter from EPA indicating that the State has failed to submit the modeling and demonstration of compliance with the performance standard by the required date.

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

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

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

The State plans to submit a revised 15 percent plan. It is possible that New York's proposed I/M program may fall short of the enhanced I/M performance standard but exceed the low enhanced performance standard. If this is the case and the emission reductions provided by the I/M program allow the State to fulfill the requirements of its 15 percent plan, then EPA will review the 15 percent plan and propose action on it shortly thereafter. Should EPA propose approval of the 15 percent plan, EPA will proceed to take conditional interim approval action on the I/M plan. EPA proposes in the alternative that if the Agency proposes instead to disapprove the 15 percent plan, EPA would then disapprove the I/M plan as well because the State would no longer be eligible to select the low enhanced performance standard under the terms of 40 CFR 51.351(g).

Network Type and Program Evaluation—40 CFR 51.353

The federal I/M regulation requires that enhanced programs 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 CAA and the federal I/M regulation. The SIP shall include details on the program evaluation and a schedule for submittal of biennial evaluation reports, data from a state monitored or administered mass emission test of at least 0.1 percent of the vehicles subject to inspection each year, a description of the sampling methodology, the data collection and analysis system, and the legal authority enabling the evaluation program.

In order to determine whether the State I/M program meets the enhanced I/M performance standard, and is therefore approvable, it must submit modeling demonstrating that the programs achieve the required emission reductions by the relevant dates. Because of delayed program start up and program reconfiguration, the existing modeling used by the State to demonstrate compliance with the performance standard is no longer accurate, as it is based on start up and phase-in of testing and cut-points that do not reflect the current program configuration or start dates that the State will actually implement. EPA believes, based on the available modeling and its own extrapolation of expected emission reductions from the program, that the State program will at least meet the low enhanced performance standard. However, the State must conduct new modeling using the actual program configuration and start dates to verify that the performance standard will in fact be met. For example, phase-in cutpoints corresponding to the test-type and correct program start-up dates should be included in the new modeling.

EPA is proposing conditional interim approval of the State's program at this time consistent with the intent of the NHSDA that state I/M programs be promptly approved and implemented. EPA proposes that this approval be conditioned upon the requirement that the State conduct and submit the necessary new modeling and demonstration that the program will meet the performance standard, within 12 months from conditional interim approval. If the State fails to submit this new modeling within 12 months, EPA proposes that the conditional interim approval will convert to a disapproval upon a letter from EPA indicating that the State has failed to submit the modeling and demonstration of compliance with the performance standard by the required date.

In addition, the existing I/M Rule requires that the modeling demonstrate that the state program has met the performance standard by fixed evaluation dates. The first such date is January 1, 2000. However, few state programs will be able to demonstrate compliance with the performance standard by that date as a result of delays in program start up and phase in of testing requirements. EPA believes that based on the provisions of the NHSDA, the evaluation dates in the current I/M Rule have been superseded. Congress provided in the NHSDA for state development of I/M programs that would start significantly later than the start dates in the current I/M Rule. Consistent with Congressional intent, such programs by definition will not achieve full compliance with the performance standard by the beginning of 2000.

As explained above, EPA has concluded that the NHSDA superseded the start date requirements of the I/M Rule, but that states should still be required to start their programs as soon as possible, which EPA has determined would be November 15, 1997. Therefore, EPA believes that pursuant to the NHSDA, the initial evaluation date should be January 1, 2002. This evaluation date will allow states to fully implement their I/M programs and complete at least one cycle of testing at full stringency cutpoints in order to demonstrate compliance with the performance standard.

The State has proposed a decentralized test-and-repair enhanced I/M program in the applicable geographic area. This program includes a program evaluation in which 0.1 percent of the subject vehicle population, at a minimum, will randomly receive a ''NY–TEST,'' IG240 emissions test. The final design of the evaluation program will be based upon discussions with EPA and equipment vendors.

With the conditions described above, the New York submittal meets the network type and program evaluation requirements of the federal I/M regulation for interim approval.

Adequate Tools and Resources—40 CFR 51.354

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

New York's Clean Air Compliance Act establishes an administrative fee of $2.00 per test which is deposited into the Mobile Source Account of New York's Clean Air Fund. The fund is intended to support I/M program activities including planning, implementation, and administration. The projected budget and personnel requirements for the DMV are $9,644,200 and 159 staff positions respectively. The projected budget and personnel requirements for the DEC are $8,355,000 and 80 staff positions respectively.

The New York submittal meets the adequate tools and resources requirements of the federal I/M regulation for interim approval.

Test Frequency and Convenience—40 CFR 51.355

The federal I/M regulation established an enhanced I/M performance standard which is based on 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.

New York's proposed I/M program requires annual inspections. The current emission inspection population will be required to get an enhanced inspection based upon the expiration of their emission/safety inspection sticker. Information will be provided to the public six months prior to the implementation of the enhanced program. The inspection dates of all vehicles will be tracked by the DMV to assure that the inspections take place. The DMV has determined that a minimum of 2,500 testing lanes is required for motorist convenience. There are approximately 5,000 test-and-repair inspection stations under the current inspection program. The DMV also assumes that some test-only and high volume lanes may provide additional throughput capability.

The New York submittal meets the test frequency and convenience requirements of the federal I/M regulation for interim approval.

Vehicle Coverage—40 CFR 51.356

The federal I/M regulation establishes a performance standard for enhanced I/M programs which is based on 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.

According to the requirements of 40 CFR 51.356(B)(2), fleets may be officially inspected outside of the normal I/M program test facilities, if such alternatives are approved by the program administration. However, fleet vehicles 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. Vehicles which are operated on federal installations located within an I/M program area shall be tested, regardless of whether the vehicles are registered in the state or local I/M area.

The federal I/M regulation requires that the SIP shall include: (a) The legal authority or rule necessary to implement and enforce the vehicle coverage requirement, (b) 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 (c) 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.

New York State's submittal indicates that the DMV will review registration files to identify vehicles for the enhanced emissions testing program. The vehicle's registration is valid for two years and the emission/safety inspection stickers are valid for one year. Registration renewals will be denied to any vehicle that has not passed an emission inspection. The following vehicles are exempt from emissions testing requirements: Diesel and electric powered vehicles, model year vehicles 26 years old and older, new vehicle exemption for first two years, special class vehicles (i.e., historical, special purpose commercial, all terrain vehicles, motorcycles, Classes A, B, and C limited use motorcycles, farm dealer, motorcycle dealer, transporter, all terrain dealers, light trailer, semi trailer, trailer, house trailer, boat, snowmobile and certain vehicles classified by DMV as custom or homemade prior to January 1997).

DMV will inventory federal fleet vehicles and other currently unregistered vehicles. Inspection expiration dates will be assigned to these vehicles. Enforcement will be accomplished through file checks and

site visits. Fleets may inspect their own vehicles if they become licensed inspection facilities and purchase the specified equipment. State fleets will be assigned inspection expiration dates as will federal vehicles. Registrations will be suspended for a vehicle found uninspected. Some large fleets will be given permanent fleet registrations. These will expire in October of every year and will be electronically renewed if the vehicle passed an emission inspection within the year. Fleet vehicles must pass the emissions inspection to be eligible for reregistration. New York has an agreement with the New York City Department of Environmental Protection and the New York City Taxi and Limousine Commission to require I/M inspections three times per year for medallion taxicabs.

The New York submittal meets the vehicle coverage requirements of the federal I/M regulation for interim approval.

Test Procedures and Standards—40 CFR 51.357

The federal I/M regulation requires that 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 document entitled ''High-Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications,'' EPA–AA–EPSD–IM–93–1, dated April 1994. The federal I/M regulation also requires vehicles that have been altered from their original certified configuration (i.e., engine or fuel switching) to be subject to the requirements of § 51.357(d).

New York's test procedures are listed in the State's draft technical specifications and the emissions inspection procedure manual, appendices to its I/M SIP submittal. These procedures do not correspond to EPA's procedures due to the differences in the testing equipment.

Under the State's test procedures, vehicles will be tested without prior repair or adjustment at the test facility. Vehicle operators will have access to the test area to observe the inspection in most stations. Vehicles will be rejected from testing if the exhaust system is missing or leaking or other unsafe conditions are evident. The test procedure provides for a retest after repair for any vehicle that failed the original test. All test procedures and standards including visual equipment inspections for the chassis model year and type will be applied for vehicles with switched engines. Altered vehicles from one fuel type to another will be tested according to procedures and standards of the current fuel type.

New York performed an evaluation of EPA's pressure and purge tests and has determined that there are unresolved built-in problems with these tests. Therefore, as an alternative to the pressure and purge tests, New York proposes to initially include only gas cap testing and expanded model year anti-tampering inspections. EPA is working with states to resolve the problems which have been encountered with implementation of the purge and pressure tests. When the problems are resolved, New York will need to implement the purge and pressure tests in order to receive the full amount of credit claimed for these tests in its I/M SIP submittal.

New York's test procedures are based on the use of a transient emissions test known as ''Inspection Grade 240 or IG240,'' for which the State is now developing basic requirements. The State has submitted draft equipment specifications and other supporting data that EPA is now evaluating. This sets New York apart from other states considering similar test procedures. Furthermore, New York has proven competence in establishing new procedures in the past. Therefore, EPA intends to allow the State, under a conditional interim approval, to proceed. It should be noted, however, that if at any time the State and EPA determine that the level of emission reduction credits granted to this test differs from the reductions actually achieved, New York will be required to re-evaluate its program assumptions and submit results to EPA.

Within 30 days of the publication of this notice, New York must submit a commitment to submit final test procedures and standards by a date certain which is no later than January 31, 1997. It is essential that the State submit final test procedures and standards no later than this date because a significant lead time is necessary in order for the program to begin testing as planned. If the State fails to commit within 30 days to submit approvable final test procedures and standards for the IG240 test as specified above, then EPA proposes in the alternative to disapprove the New York I/M SIP. If the State makes the commitment but this condition is not met, EPA will issue a letter to the State indicating that the conditional interim approval has been converted to a disapproval.

Test Equipment—40 CFR 51.358

The federal I/M regulation requires that computerized test systems be used for performing any measurement on subject vehicles. The federal I/M regulation also 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.

The New York submittal contains the written draft technical specifications for the test equipment to be used in the program including an outline of the software specifications. The specifications require the use of computerized test systems. Equipment tampering, computerization, system lockouts, and the required data link specifications are being developed by the DMV. Since these documents have not been finalized, New York's submittal of the test equipment specifications cannot be considered complete.

Within 30 days of the publication of this notice, New York must submit a commitment to submit final test equipment specifications by a date certain which is no later than January 31, 1997. It is essential that the State submit final test equipment specifications no later than this date because a significant lead time is necessary in order for the program to begin testing as planned. If the State fails to commit within 30 days to submit approvable final test equipment specifications for the IG240 test as specified above, then EPA proposes in the alternative to disapprove the New York I/M SIP. If the State makes the commitment but this condition is not met, EPA will issue a letter to the State indicating that the conditional interim approval has been converted to a disapproval.

Quality Control—40 CFR 51.359

The federal I/M regulation requires that states implement quality control measures to 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 New York submittal contains quality control measures for the emission measurement equipment, record keeping requirements and measures to maintain the security of all documents used to establish compliance with the inspection requirements.

However, this portion of the New York submittal does not include a description of the quality control requirements as set forth in § 51.359 of the federal I/M regulation.

This is a minor deficiency and must be corrected in the State's final I/M SIP revision submitted at the end of the 18-month interim period.

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 allow 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 I/M 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.

New York's proposed I/M program will allow the issuance of a $450 waiver adjusted annually according to the Consumer Price Index beginning in 1998. To be eligible for a waiver, the inspection facility must verify that: Appropriate emissions repairs were performed, the vehicle emission system has not been tampered with, the safety inspection has been passed, repairs or adjustments have not resulted in the retest being invalid or the acceptance of pollutants in excess of their limits, and documented repair costs were at least as much as the cost amount. The State has estimated a waiver rate of 3 percent of the initially failed vehicles. In the event the actual waiver rate exceeds the estimated waiver rate of 3 percent used for estimating the I/M program's emission reduction credits, the State will take corrective action. No hardship time extensions nor compliance via diagnostic inspection will be allowed.

Although New York's program does include the $450 initial amount, it is not clear from the submitted I/M SIP revision whether the CPI adjustments account for increases since 1989, as required by section 502(b)(1)(B)(v)(II) of the CAA and the federal I/M regulation. EPA understands the State's reluctance to implement the full CPI adjusted amount at program start-up and offered to postpone it consistent with the intent of the NHSDA that I/M programs be allowed to start in 1997. EPA believes, that consistent with its interpretation that the start dates and evaluation dates in EPA's I/M Rule have been extended by approximately two years by the NHSDA, the deadline for the full implementation of the waiver can also be extended by two years. As a result, the repair expenditure waiver must be fully adjusted by the increase in the CPI since 1989 no later than January 1, 2000.

This is a major program element required under the CAA and the I/M Rule. Therefore, New York must, within 30 days of the publication of this notice, submit a commitment to correct this major deficiency by a date certain within 12 months of the publication of the conditional interim approval. If the State fails to submit the revised repair expenditure waiver within 12 months, EPA proposes that the conditional interim approval will convert to a disapproval upon a letter from EPA indicating that the State has failed to submit the revised repair expenditure waiver by the required date.

Motorist Compliance Enforcement—40 CFR 51.361

The federal I/M 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 that was operating prior to passage of the CAA, and if 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.

Part 301 of New York State's Vehicle and Traffic Law provides the legal authority to implement registration denial motorist enforcement. New York's I/M SIP revision commits to a compliance rate of 98 percent which was used in the performance standard modeling demonstration. The State's submittal meets the motorist compliance enforcement requirements of the federal I/M regulation for interim approval.

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 I/M SIP revision 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.

New York's registration system is computer-based and controlled by a DMV computer in Albany. The accuracy of the inspection data input into the system will be assured by bar coded vehicle information on the registration which is attached to the vehicle's windshield. If incorrect information is entered into the computer, a match would not be found and the inspection would not be allowed. New York has trained personnel and written procedures for the compliance enforcement program. Staff will be disciplined, dismissed or prosecuted if discovered engaged in any improprieties. The DMV will annually conduct two program audits and one covert investigation at each inspection station. New York will determine the equipment audit frequency with the development of the equipment specifications.

New York's submittal meets the motorist compliance enforcement program oversight requirements of the federal I/M regulation for interim approval.

Quality Assurance—40 CFR 51.363

The federal I/M regulation requires that 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 I/M SIP revision.

Details of New York's quality assurance program have not been developed and, therefore, were not provided in the I/M SIP revision submittal.

This is a minor deficiency and must be corrected in the State's final I/M SIP revision submitted at the end of the 18-month interim period.

Enforcement Against Contractors, Stations and Inspectors—40 CFR 51.364

The federal I/M regulation requires that 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 that 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 I/M SIP revision. 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 I/M SIP revision submittal. The I/M SIP revision 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.

Part 79 of 15NYCRR, Motor Vehicle Inspection Regulations, gives the DMV authority for enforcement against contractors, stations and inspectors. The DMV will utilize triggers to identify violating stations and inspectors. If an inspector is found to be incompetent, that inspector will not be allowed to perform inspections until successful completion of a written examination. Failure of this examination would result in the revocation of the inspector's license. Stations or inspectors found committing serious violations will have their licenses suspended pending a hearing and will be expeditiously moved through the hearing process. A penalty of $350 per violation will be assessed upon the inspection station and/or the inspector for violations of the inspection requirements. Records of all enforcement activities will be kept for five years and reported on an annual basis.

EPA's I/M Rule requires monetary penalties for gross violations to be at least $100 or five times the inspection fee, whichever is higher. New York has proposed a $20 inspection fee, making the minimum per violation penalty $100. Since New York's penalty schedule exceeds this amount, it is acceptable. The State's submittal meets the enforcement against contractors, stations and inspectors requirements of the federal I/M regulation for interim approval.

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.

New York's proposed I/M program includes the elements of the data collection elements in the federal I/M regulation. New York will hire a contractor for data management. A central database will be established to support real-time and batch electronic transmissions from the testing facilities. The data manager will supply batch data to DEC.

New York's submittal meets the data collection requirements of the federal I/M regulation for interim approval.

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.

New York's submittal provides analysis and reporting descriptions as well as an acceptable schedule for submittal of such reports. Therefore, the State's submittal meets the data analysis and reporting requirements of the federal I/M regulation for interim approval.

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.

Prior to the implementation of the enhanced I/M program, New York will require that all currently certified emission inspectors be relicensed for the performance of the enhanced test. Inspectors will be recertified every three years.

New York's revised inspector certification program is currently under development.

This is a minor deficiency and must be corrected in the State's final I/M SIP revision submitted at the end of the 18-month interim period.

Public Information and Consumer Protection—40 CFR 51.368

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

New York's public information program is under development. The program will provide information on the benefits of an enhanced I/M program through public service address messages, registration inserts, pamphlets, vehicle inspection demonstrations, auto show participation, and vehicle repair effectiveness demonstrations. Motorists that fail the test will be provided a diagnostic report by the inspection station. The DMV will protect the public from fraud and abuse by inspectors, mechanics and others involved in the I/M program. A repair form will be required to be completed for each vehicle that fails the test and submitted to the DMV for the development of a database.

During the comment period for the November 5, 1992 federal I/M regulation, EPA received a number of comments expressing concerns about consumer protection with regard to motor vehicle repairs. As a result, § 51.368 of the federal I/M regulation includes a requirement for inspection programs to collect, and make available to motorists, data on the effectiveness of repairs performed by repair stations on vehicles that fail the initial test. New York's submittal includes a requirement for motorists with failing vehicles to return a repair form indicating the types of repairs made and whether or not they were successful. However, it makes no provision for motorists to have access to the compiled data either through

periodic reports or through some form of specially generated printout indicating which stations in the motorist's vicinity are qualified to make the needed repairs.

Since the details of New York's public information program are still under development and it does not include provision for motorists to have access to the compiled data, New York must make corrections to this section of the I/M SIP revision.

This is a minor deficiency and must be corrected in the State's final I/M SIP revision submitted at the end of the 18-month interim period.

Improving Repair Effectiveness—40 CFR 51.369

Effective repairs are the key to achieving program goals. The federal I/M regulation requires States to take steps to ensure that the capability exists in the repair industry to repair vehicles. The I/M SIP revision 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 in the federal I/M regulation, and a description of the repair technician training resources available in the community.

New York is claiming only 50 percent credit for its technician training program because although improvements will be made to the program, licensing or certification will not be required for the mechanics to perform repairs on the vehicles. In addition, New York proposes to phase-in the emissions test cutpoints to allow the repair industry time to adapt to the new tests and obtain the enhanced training. The DMV will provide information to repair technicians related to the diagnosis and repair of vehicles that fail the I/M test and monitor the performance of the test-and-repair facilities. The State will be developing improvements to the current training curriculum related to the diagnosis and repair of vehicles failing the I/M test.

New York's submittal meets the improving repair effectiveness requirements of the federal I/M regulation for interim approval.

Compliance With Recall Notices—40 CFR 51.370

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

Under its proposed I/M program the State will notify the motorist that his/her vehicle appears on a recall list and that the vehicle must be repaired prior to its inspection and renewal. Upon arrival at the testing facility, the on-line system will alert the inspector that the vehicle has been recalled. The motorist will be required to show documentation of the vehicle's repairs.

New York's submittal meets the compliance with recall notices requirements of the federal I/M regulation for interim approval.

On-Road Testing—40 CFR 51.371

The federal I/M regulation requires on-road testing 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 requirements of the federal I/M regulation. The program must include on-road testing of 0.5 percent of the subject fleet or 20,000 vehicles, whichever is less, in the nonattainment area or the enhanced 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.

New York will utilize RSD to perform on-road testing of 20,000 vehicles annually in the enhanced I/M area. This will be used to evaluate the performance of the I/M program. The State is not ready to commit to identifying the pass/fail cutpoints that will be utilized in the RSD program until a vehicle database is developed and evaluated with New York's potential RSD contractor. Passing an out-of-cycle test is not required. Therefore, New York must make changes to the element of its I/M SIP revision.

This is a minor deficiency and must be corrected in the State's final I/M SIP revision submitted at the end of the 18-month interim period.

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

These sections of the federal I/M regulation require that the state outline program milestones and provide an implementation schedule.

New York's I/M SIP revision submittal contains the proposed enhanced I/M program regulations. Draft specifications, procedures and requests for proposal (RFPs) for equipment and contractor services have not been developed. Licensing and certification of inspectors will be performed prior to the start of the program. Mandatory testing is scheduled to begin in January of 1998. Full stringency cutpoints may be implemented in January 2000.

With the conditions described above, New York's submittal meets the requirements under these sections of the federal I/M regulation for interim approval.

III. Discussion for Rulemaking Action

Today's notice of proposed conditional interim approval begins a 30-day time period for the State to make a commitment to EPA to correct the major deficiencies of the I/M SIP revision that EPA has identified, by dates certain as described in this notice. These major deficiencies are:

Waiver Expenditure Requirements

Many of the I/M programs currently operating include waivers for vehicles that cannot pass the applicable pass/fail standards, usually with a minimum expenditure requirement. Congress included such a requirement in the CAA, calling for owners of vehicles that fail an initial emissions inspection to spend at least $450, adjusted annually by the Consumer Price Index (CPI) as specified in Title V of the CAA, before a waiver can be granted. Title V clearly states that CPI adjustments must begin as of 1989. Although New York's program does include the $450 initial amount, it is not clear from the submitted I/M SIP revision whether the CPI adjustments account for increases since 1989, as required. The cost waiver, including the application of the annual CPI adjustment retroactive to 1989, must be fully in place by January 1, 2000.

Performance Standard Modeling

To determine whether the proposed I/M program will reduce vehicle emissions sufficiently as defined by the 15 percent plan for the area it is necessary to calculate the expected vehicle emissions taking into account all the aspects of the program. Parameters such as when the program begins, which vehicles are tested, and what type of test will be used have a significant impact on the level of emission reductions obtained. Section 51.351 of the federal I/M regulation requires that states submit, along with their proposed programs, modeling assumptions and results using EPA's most recent version of the mobile emissions model; currently MOBILE5a.

New York's submittal includes such modeling. However, it includes assumptions for a test method that is still under development and for which no emission reduction credits have been established. New York assumed that the proposed test procedure has an effectiveness equal to the median

between a two-mode Acceleration Simulation Mode (ASM) test and the IM240. The State acknowledges that at this time there is a limited basis for assuming this level of effectiveness and has committed to gathering the data required to support this assumption.

Test Procedures, Standards and Equipment

As previously stated, the test used to analyze vehicle emissions has a significant impact on the program's effectiveness. Over the two decades since I/M programs have been in operation, EPA has collected a great deal of information that indicate which test procedures are more effective. Since I/M programs comprise a large portion of the reductions expected from overall ozone and carbon monoxide reduction plans, it is important for EPA to review program parameters before testing begins. As a result, states may be able to avoid program development problems.

Sections 51.357 and 51.358 of the federal I/M regulation require states to provide a clear step-by-step description of the test equipment, test process, and the pass/fail standards to be used. Since New York's test has not been fully developed, the State has yet to outline its test procedure. This must be done well in advance of program start.

Within 30 days of publication of this notice, the State must make a commitment to EPA to correct these major deficiencies, by dates certain. In the case of the test procedures, standards and equipment specifications EPA is requiring that the State submit final versions of these materials by January 31, 1997. EPA believes that the State must finalize these elements far in advance of the planned start date for the program so that equipment may be purchased and installed and the program's start date is not jeopardized. In the case of the performance standard modeling and the waiver expenditure requirements, EPA is requiring that the State submit the required modeling and the revised waiver expenditure requirements no later than 12 months from the date of the publication of the notice of conditional interim approval. If the State does not make such a commitment within 30 days, EPA today is proposing in the alternative that this SIP revision be disapproved.

If EPA disapproves this submission or if the State does not correct the major deficiencies identified above and implement the interim program so that the conditional interim approval converts to a disapproval pursuant to section 110(k), EPA, under section 179(a)(2), must apply one of the sanctions set forth in section 179(b) within 18 months of such disapproval or finding. Section 179(b) provides two sanctions available to the Administrator: highway funding and the imposition of emission offset requirements. In EPA's August 4, 1994 final sanctions rule, (See 59 FR 39832) the sequence of mandatory sanctions for findings and disapprovals made pursuant to section 179 of the CAA was finalized. This rulemaking states that the section 179(b)(2) offset sanction applies in an area 18 months from the date when the EPA makes a finding or a disapproval under section 179(a) with regard to that area. Furthermore, the section 179(b)(1) highway funding restrictions apply in an area six months following application of the offset sanction. This nondiscretionary process for imposing and lifting sanctions is set forth at 40 CFR 52.31.

If New York makes the commitment within 30 days, EPA's conditional interim approval of the plan will last until the date by which New York has committed to cure all of the deficiencies. EPA expects that within this period the State will not only correct the deficiencies as committed to by the State, but that the State will also begin program start-up by November 15, 1997. If New York does not correct the major deficiencies and implement the interim program by the required dates, EPA is proposing in this notice that the conditional interim approval will be converted to a disapproval after a finding letter is sent to the State.

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 New York will at that time be able to make a demonstration of the program's effectiveness using the appropriate evaluation criteria. Since EPA expects that these programs will have started by November 15, 1997, New York will have at least six months of program data that can be used for the demonstration. If New York fails to provide a demonstration of the program's effectiveness to EPA within 18 months of the conditional interim approval, the interim approval will lapse, and EPA will be forced to disapprove the State's I/M SIP revision. If New York'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 emission reduction credits accordingly, and use this information to act on the State's final I/M program.

V. Further Requirements for Permanent I/M SIP Approval

At the end of the 18-month interim period, which is started by the conditional interim approval of the I/M SIP revision, final approval of the State's plan will be granted based upon the following criteria:

(1) New York has complied with all the conditions of its commitment to EPA,

(2) EPA's review of New York's program evaluation confirms that the appropriate amount of program credit was claimed by the State and was achieved with the interim program,

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

(4) New York's I/M program meets all of the requirements of EPA's I/M Rule, including those deficiencies found de minimis for purposes of interim approval.

VI. EPA's Evaluation of the Interim Submittal

EPA is proposing a conditional interim approval of the New York I/M SIP revision which was submitted on March 27, 1996. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking subsequent 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.

Proposed Action

EPA is proposing conditional interim approval of this revision to the New York SIP for an enhanced I/M program based on certain conditions.

Major Deficiencies

(1) New York must commit within 30 days of the publication of this notice to implement the $450 waiver plus CPI adjustment retroactive to 1989 no later than January 1, 2000. This commitment must be fulfilled by a date certain, but no later than 12 months after conditional interim approval.

(2) New York must commit within 30 days of the publication of this notice to submit modeling results once acceptable test procedures and credits have been developed for IG240. This commitment must be fulfilled by a date certain, but no later than 12 months after conditional interim approval.

(3) New York must commit within 30 days of the publication of this notice to submit IG240 equipment, test

procedures, standards and equipment specifications. Because early finalization of these elements is critical to the program being able to start by the planned date, these elements must be submitted by January 31, 1997.

Minor Deficiencies

New York must correct these minor deficiencies in its final regulations to be submitted after the 18-month interim period.

(1) New York's must submit quality control measures in accordance with the requirements set forth in 40 CFR Part 51.359.

(2) New York must complete the development of the inspector training and certification program.

(3) New York must finalize plans for its data collection system.

(4) New York must complete the public information program, including the repair station report card.

(5) New York must commit to perform on-road testing in accordance with the requirements set forth in section 51.371 of the federal I/M regulation.

(6) New York must complete the development of the quality assurance 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.

Administrative Requirements

Executive Order 12866

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

Regulatory Flexibility Act

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

Conditional approvals of SIP submittals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

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

Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under State or local law, and imposes no new federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

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

List of Subjects in 40 CFR Part 51

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and record keeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: November 6, 1996.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 96–29660 Filed 11–26–96; 8:45 am]

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40 CFR Part 52

[FRL–5644–1]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; SO_2: New Manchester-Grant Magisterial District, Hancock County Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of West Virginia. This revision provides for, and demonstrates, the attainment of the national ambient air quality standards (NAAQS) for sulfur oxides, measured as sulfur dioxide (SO_2) in the New Manchester-Grant Magisterial District, Hancock County nonattainment area. In the Final Rules section of this Federal Register, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives