

covers point, area, non-road mobile, on-road mobile, and biogenic sources.

(c) Taken together, the Connecticut portion of the New York-New Jersey-Connecticut severe nonattainment area and the Hartford serious nonattainment area encompass the entire geographic area of the State.

[FR Doc. 97-27855 Filed 10-23-97; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. NY22-1-163, FRL-5913-7]

Approval and Promulgation of Implementation Plans; New York; Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: EPA is granting interim approval of a State Implementation Plan (SIP) revision submitted by 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 give interim approval to the State's proposed enhanced I/M program for an interim period to last 18 months. This action is being taken under section 110 of the Clean Air Act and section 348 of the National Highway System Designation Act.

EFFECTIVE DATE: This rule will be effective November 24, 1997.

ADDRESSES: Copies of the State's submittal are available at the following addresses for inspection during normal business hours at the following locations: Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866 and New York State Department of Environmental Conservation, 50 Wolf Road, Albany, New York 12233.

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

SUPPLEMENTARY INFORMATION:

I. Background

On November 27, 1996, (61 FR 60242) EPA proposed conditional interim approval of New York's enhanced I/M program. New York submitted revisions to the existing program on March 27, 1996 to satisfy applicable requirements of the Clean Air Act (CAA) and the National Highway System Designation Act of 1995 (NHSDA).

The NHSDA directs EPA to grant interim approval for a period of 18 months to approvable I/M submittals. The NHSDA also directs EPA and the states to review the interim program results at the end of the 18-month period and to make a determination as to the effectiveness of the interim program. Following this demonstration, EPA will adjust any credit claims made by the state in its good faith estimate 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 that Congress intended for these programs to start-up as soon as possible, which EPA had believed should have been on or before November 15, 1997, so that at least six months of operational program data can be collected to evaluate the interim programs. EPA believes that in setting such a strict timetable for program evaluations under the NHSDA, Congress recognized and attempted to mitigate any further delay with the start-up of these programs.

Since publication of New York's proposed conditional approval, the State presented new information that led EPA to believe that "as soon as practicable" is not November 15, 1997 for New York. As a result, EPA recognizes New York's intent to start the program as soon as possible, but no later than November 15, 1998. In recognizing this later start date, EPA considered a number of issues related to the start of this program. Specifically:

• Emission Credits

Most I/M programs currently planned are requiring biennial inspections, however, New York will require annual inspections. As a result, New York will complete one full cycle of inspections, as will other states with biennial programs, by November 1999. This will allow New York to achieve all of the I/M program related emission reduction credits claimed in the 15 percent plan and the 9 percent rate-of-progress (ROP) plan. New York submitted these plans

on September 4, 1997. EPA will take action on the State's 15 percent and 9 percent ROP plans at a later date.

• Revisions to the Test Procedure and Equipment Specifications

On December 17, 1996, New York held a kickoff meeting with test equipment vendors and potential bidders to discuss the State's requirements regarding time of delivery and adherence to the State's standard of performance. As a result, the State asked that by April 1, 1997 vendors express their interest in providing such test equipment prior to the November 15, 1997 program start date required by EPA. None of the vendors expressed such interest, and in fact considered the schedule time-constrained and unfeasible. This forced the State to reevaluate its overall program development plans and ultimately led New York to abandon its requirement for vendors to adhere to a standard of performance for the test equipment.

• Potential Benefits to Other States

The State has developed a new transient test procedure that provides mass emission measurement results (similar to IM240) with less expensive analyzer equipment generally associated with Acceleration Simulation Mode (ASM) testing. Development of this new test procedure has taken considerable time and effort on the part of New York. A mass emissions transient test (METT), like the one developed by New York, captures overall vehicle emissions during a simulated trip while an ASM test uses one constant speed and load. As a result, the "NYTEST" procedure has the potential for significant cost savings and may provide other states with another viable transient test procedure.

• Network Size

New York anticipates that 2,500 to 3,000 test-and-repair stations will need to be retrofitted to accommodate testing of the downstate vehicle fleet, which is approximately five million vehicles. Given that other states have begun program implementation and are further along in this process, New York will need to compete for similar equipment from a very limited number of sources. As a result, the magnitude of this program will require a longer phase-in period to ensure that sufficient stations are properly equipped prior to program start up.

If New York fails to start its program according to the schedule described in this notice, the interim approval granted under the provisions of the NHSDA, which allows the State to take full credit

for the I/M program in its 15 percent plan for the interim period, will convert to a disapproval after a finding letter is sent to the State by EPA. As a result, New York would be required to include additional provisions in its SIP to provide the necessary emission credit reductions. Because the start date is not being imposed pursuant to a commitment to correct a deficient SIP under section 110(k)(4), the failure to start the program by this date will not convert the SIP approval to a disapproval automatically. EPA is imposing the start date under its general SIP approval authority of section 110(k)(3), which does not require automatic conversion; therefore, the approval will be converted to a disapproval only upon EPA's notification of the State by letter.

The program evaluation to be used by the State during the 18-month interim period must be acceptable to EPA. The Environmental Council of States (ECOS) group has developed a program evaluation process which includes both qualitative and quantitative measures and has been deemed acceptable by EPA. Due to the September 19, 1997 proposed I/M Rule revisions (62 FR 49184), the long-term program evaluation requirement has been proposed to be delayed for one year and will allow for equivalent test methodology.

As per the NHTSA requirements, this interim rulemaking will expire on May 24, 1999. A full approval of New York's final I/M SIP revision, which will include the State's program evaluation and final adopted State regulations, is still necessary under sections 110, 182, 184 and 187 of the CAA. After EPA reviews the State's submitted program evaluation and final regulations, final rulemaking on New York's SIP revision will occur.

Specific requirements of the New York enhanced I/M SIP and the rationale for EPA's proposed action are explained in the November 27, 1996 notice and will not be restated here.

II. Public Comments/Response to Comments

This section discusses the content of the comments submitted to the docket during the federal comment period for the notice of proposed rulemaking, published in the November 27, 1996 **Federal Register**, and provides EPA's responses to those comments.

Comments were received from the State of New York and Environmental Advocates. Copies of the original comment letters, along with EPA's summary and response to comments, are available at EPA's Region II office at

the address listed in the **ADDRESSES** section of this document.

Comment: Implementation Date

New York commented that EPA's action establishing November 15, 1997, as the implementation date is inconsistent with the provisions of the NHTSA. New York believes that states should be given 12 months from the publication of this document to begin implementing the new program.

Response to Comment

As stated earlier in this notice, the NHTSA 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. EPA believes that Congress intended for these programs to be implemented as soon as possible, and had determined that this should have been on or before November 15, 1997 so that six months or more of program data could be obtained for program evaluation. However, since publication of New York's proposed conditional approval, the State presented new information that led EPA to believe that "as soon as practicable" is not November 15, 1997 for New York. As a result, EPA recognizes New York's intent to start the program as soon as possible, but no later than November 15, 1998.

Comment: Definition of "Program Implementation"

New York's comment expresses concern that EPA has defined program implementation to mean that the program is completely implemented in all areas. New York believes EPA must adjust this definition to ensure that sufficient test data is collected for the program evaluation and allow analyzer manufacturers sufficient time to produce and supply the necessary equipment.

Response to Comment

EPA defines program "start-up" as a fully operational program that has begun regular, mandatory inspections and repairs, using the final test strategy and covering each of the State's required areas. This definition allows for the collection of sufficient test data for program implementation as well as any retooling requirements. Therefore, no change in this definition is warranted.

Comment: Orange County

Environmental Advocates commented that New York's program does not meet the applicability requirements of the federal I/M regulation because the State failed to include southern Orange

County as part of the area to be covered by the enhanced I/M program.

Response to Comment

It is true that New York has not yet submitted to EPA an I/M plan that addresses southern Orange County. However, after considering a number of factors unique to the implementation of an I/M program in southern Orange County, EPA sees no reason to disapprove the current submission for the rest of the New York metropolitan area. Such action would delay implementation of the plan submitted thus far which covers the vast majority of the vehicles in the New York metropolitan area. These factors are listed below:

• **County-Wide Implementation**

Implementation of an I/M program is more feasible on a county-wide basis. Southern Orange County is anomalous in the New York-Northern New Jersey-Long Island Area Air Quality Control Region (AQCR), since its severe nonattainment designation applies only to a portion of a county. Therefore, implementation of an I/M program in such an area must account for a number of impracticalities such as: identification of subject vehicles by home or business address, and enforcement against vehicle cross registration outside the program area.

• **Existing Network**

At present, Orange County is not covered by an I/M program. Southern Orange County was designated as severe nonattainment for ozone in 1992. Since an I/M program will eventually be required in all of Orange County, EPA will act on the plan to be submitted by the State for this county at a later date.

• **Population Size**

Southern Orange County covers only about one third of the County and represents less than one percent of the total population of New York's portion of the New York-Northern New Jersey-Long Island AQCR.

When considered as a whole, EPA believes that these factors and common sense support its decision to approve New York's submittal which covers the remainder of New York's portion of the AQCR. The Agency will take action on this issue and complete the necessary applicability analysis when New York submits its I/M plan for Orange County and the rest of the upstate region. EPA believes that the rejection of New York's entire plan now on the basis that a minute portion of the relevant area is excluded would not advance the goals of this program. In fact, EPA believes

that such inflexibility would be counterproductive at this juncture.

As previously stated, this unique circumstance results from the nature of I/M implementation itself and Orange County's dual nonattainment designation. Other SIP requirements applicable to southern Orange County as part of the New York City AQCR are not susceptible to the same analysis because the Act does not suggest a similar sensitivity to population density as is appropriate in administering the I/M program applicable to individual vehicle owners.

III. Supplemental State Submittals

Under the terms of EPA's November 27, 1996 proposed conditional interim approval notice, the State was required to make commitments within 30 days to correct three major deficiencies with the I/M program SIP by dates certain. On December 24, 1996, New York submitted such a letter to EPA from David Sterman, Deputy Commissioner of the New York Department of Environmental Conservation. The contents of this letter and subsequent correspondence are discussed below.

A. Consumer Price Index Adjustment of the \$450 Repair Cost Waiver

States are required annually to adjust the \$450 repair cost waiver by the Consumer Price Index (CPI). By January 1, 2000, the adjustment is to be made retroactive to 1989. Deputy Commissioner Sterman's December 24, 1996, letter indicated that the State will adjust the repair cost waiver by the CPI as required by federal law. Additionally, the letter indicates that the State will make the adjustment back to 1989. Therefore, the State has met this condition.

B. Enhanced I/M Performance Standard Modeling

States are required to submit modeling demonstrating that the proposed I/M program will achieve the required emission reductions by the relevant dates and meet the relevant I/M performance standard. On September 4 and 16, 1997, New York submitted modeling results and assumptions showing that its program meets EPA's high enhanced performance standard. New York assumed use of the NYTEST, a test method based on RG240 for which no final emission reduction credits have been developed. (See the following discussion about equipment specifications for further details.) Based on available data at the time of this notice, EPA has concluded that there is sufficient evidence to support New York's claim that this test deserves

emission reduction credit about half way between a 2-mode ASM test and an IM240 test. EPA is also planning to further evaluate this test procedure along with others to determine the adequate level of credit it deserves, but expects that the test will meet the level claimed by New York. The modeling results submitted by the State on September 4, 1997, and subsequent demonstration submitted on September 16, 1997, show that the proposed I/M program meets the high enhanced performance standard. As a result, the State has met this condition.

C. Test Procedures, Standards and Equipment

States are required to submit written test procedures, pass/fail standards, and equipment specifications. These are to be established and followed for each model year and vehicle type included in the I/M program. New York's I/M program will use a mass emissions transient test (METT), known as NYTEST, which is based on EPA's description of Repair Grade 240-second METT. The State submitted information to support its assertion that the proposed program would achieve reductions estimated to be half way between a 2-mode ASM test, and EPA's IM240 test. As required in the November 27, 1996 **Federal Register** notice, New York submitted I/M program test procedures, standards, and equipment specifications on January 31, 1997. Due to revisions made since then, New York submitted the revised test procedures, standards, and equipment specifications on September 16, 1997. Therefore, this condition has been met.

IV. De minimus Conditions

EPA is taking final interim approval action upon the New York I/M SIP, under section 110 of the CAA. As discussed in detail later in this document approval is being granted on an interim basis for an 18-month period under the authority of the NHSDA.

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

(1) New York 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.

V. Further Requirements for I/M SIP Approval

This approval is being granted on an interim basis for a period of 18 months, under the authority of section 348 of the NHSDA. At the end of this period, the approval of the emission reduction credits will lapse. At that time, EPA must take final rulemaking action upon the State's SIP under the authority of section 110 of the CAA. Final approval of New York's I/M program emission reduction credits will be granted based upon the following criteria:

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

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

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

(4) The State's I/M program meets all of the requirements of EPA's I/M rule, including those *de minimus* deficiencies identified in the November 27, 1996 proposal (61 FR 60242) as minor for purposes of interim approval.

VI. Final Rulemaking Action

EPA is granting interim approval of New York's revised enhanced I/M program based primarily upon its decentralized program effectiveness claims. The approval will cover a period of 18 months, allowing the State to demonstrate "actual" effectiveness of its program. It must be noted that actual effectiveness findings will not affect this approval, but may affect the emission reduction credits granted.

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**

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

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

Approvals of SIP submittals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the federal SIP approval does not impose any new requirements, 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 approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitments, 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 annual 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 promulgated does not include a federal mandate that may result in estimated annual costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 23, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: October 6, 1997.

Jeanne M. Fox,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

Subpart HH—New York

2. Section 52.1683 is amended by adding paragraphs (c), (d), and (e) to read as follows:

* * * * *

(c) The State of New York's March 27, 1996 submittal for an enhanced motor vehicle inspection and maintenance (I/M) program, as amended on September 16, 1997, and September 17, 1997, is approved with an interim period to last 18 months. If New York fails to start its program by November 15, 1998, the interim approval granted under the provisions of the NHSDA, which EPA believes allows the State to take full credit in its 15 percent plan for all of the emission reduction credits in its proposal, will convert to a disapproval after a finding letter is sent to the State by EPA.

(d) The State must correct six minor, or de minimus, deficiencies related to the CAA requirements for enhanced I/M. The minor deficiencies are listed in EPA's interim final rulemaking on New York's motor vehicle inspection and maintenance program published on October 24, 1997. Although satisfaction of these deficiencies does not affect the interim approval status of the State's rulemaking, these deficiencies must be corrected in the final I/M SIP revision to be submitted at the end of the 18-month interim period.

(e) EPA is also approving this SIP revision under Section 110(k) for its strengthening effect on the plan.

[FR Doc. 97-28273 Filed 10-23-97; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 261**

[SW-FRL-5913-8]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.