

The Regional Administrator, H. Curtis Spalding, signed this notice on November 14, 2012, and EPA has submitted it for publication in the Federal Register. While we have taken steps to ensure the accuracy of this internet version of the rule, it is not the official version of the rule for purposes of compliance. Please refer to the official version in a forthcoming Federal Register publication which will appear on [www.regulations.gov](http://www.regulations.gov) in the docket for this action.

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R01-OAR-2009-0433; EPA-R01-OAR-2012-0149; A-1-FRL- ]

#### **Approval and Promulgation of Air Quality Implementation Plans; Massachusetts and New Hampshire; Enhanced Motor Vehicle Inspection and Maintenance Program**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving State Implementation Plan (SIP) revisions submitted by the Commonwealth of Massachusetts and the State of New Hampshire. These revisions include regulations to update the enhanced motor vehicle inspection and maintenance (I/M) programs in Massachusetts and New Hampshire. The revised programs in Massachusetts and New Hampshire include a test and repair network for an on-board diagnostic (OBD2) testing program for model year 1996 and newer vehicles. The intended effect of this action is to approve the revised programs into the Massachusetts and New Hampshire SIPs. This action is being taken in accordance with the Clean Air Act.

**DATES:** This direct final rule will be effective **[Insert date 60 days from date of publication in the Federal Register]**, unless EPA receives adverse comments by **[Insert date 30 days from date of publication in the Federal Register]**. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the Federal Register informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R01-OAR-2009-0433 for comments pertaining to our approval action for Massachusetts or EPA-R01-OAR-2012-

0149 for comments pertaining to our approval action for New Hampshire by one of the following methods:

1. [www.regulations.gov](http://www.regulations.gov): Follow the on-line instructions for submitting comments.
2. E-mail: [arnold.anne@epa.gov](mailto:arnold.anne@epa.gov)
3. Fax: (617) 918-0047.
4. Mail: "Docket Identification Number EPA-R01-OAR-2009-0433 or EPA-R01-OAR-2012-0149," Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square - Suite 100, (Mail code OEP05-2), Boston, MA 02109 - 3912.
5. Hand Delivery or Courier. Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square - Suite 100, (Mail code OEP05-2), Boston, MA 02109 - 3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA-R01-OAR-2009-0433 for comments pertaining to our approval action for Massachusetts or EPA-R01-OAR-2012-0149 for comments pertaining to our approval action for New Hampshire. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through [www.regulations.gov](http://www.regulations.gov), or e-mail,

information that you consider to be CBI or otherwise protected. The [www.regulations.gov](http://www.regulations.gov) website is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov) your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the electronic docket are listed in the [www.regulations.gov](http://www.regulations.gov) index.

Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square - Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office’s official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

In addition, copies of the state submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the respective State Air Agency: Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108; and Air Resources Division, Department of Environmental Services, 6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095.

**FOR FURTHER INFORMATION CONTACT:** Ariel Garcia, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100 (mail code: OEP05-2), Boston, MA 02109-3912, telephone number (617) 918-1660, fax number (617) 918-0660, email [garcia.ariel@epa.gov](mailto:garcia.ariel@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

- I. Background and Purpose.
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## **I. Background and Purpose.**

On June 1, 2009, the Commonwealth of Massachusetts submitted a formal revision to its State Implementation Plan (SIP); Massachusetts later made a minor revision to that submittal on November 30, 2009.<sup>1</sup> On November 17, 2011, the State of New Hampshire submitted a formal revision to its SIP. These SIP revisions include regulations to update the enhanced motor vehicle inspection and maintenance (I/M) programs in Massachusetts and New Hampshire. EPA is approving Massachusetts' and New Hampshire's revised I/M programs because they are consistent with the Clean Air Act (CAA) I/M requirements and EPA's I/M regulations, and will strengthen the SIP. Specifically, the Massachusetts June 1, 2009 SIP revision includes amendments to the Massachusetts regulations 310 CMR 60.02 and 540 CMR 4.00, and other administrative and technical documentation required in a SIP submittal to address the requirements for the implementation of the motor vehicle inspection and maintenance program in Massachusetts. The New Hampshire November 17, 2011 SIP revision includes amendments to the New Hampshire regulations Saf-C 3200 and Saf-C 5800, and other administrative and technical documentation required in a SIP submittal to address the requirements for the implementation of the motor vehicle inspection and maintenance program in New Hampshire.

## **II. What Are the Clean Air Act Requirements for I/M Programs?**

The CAA, 42 U.S.C. 7401, et seq., requires certain states to implement an enhanced I/M program to detect gasoline-fueled motor vehicles which emit excessive amounts of certain air pollutants. The enhanced I/M program is intended to help states meet federal health-based national ambient air quality standards (NAAQS) for ozone and carbon monoxide by requiring

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<sup>1</sup> The November 30, 2009 revision replaced the copy of the Registry of Motor Vehicles regulation 540 CMR 4.00, included as Appendix 3 of the June 1, 2009 SIP submittal, with a copy stamped by the Secretary of State.

vehicles with excess emissions to have their emissions control systems repaired. Section 182 of the CAA requires I/M programs in those areas of the nation that are most impacted by carbon monoxide and ozone pollution. 42 U.S.C. 7511c. Section 184 of the CAA also created an “Ozone Transport Region” (OTR) and includes I/M requirements for that region. The OTR geographically includes the states from Virginia to Maine (including all of Massachusetts and New Hampshire) and the District of Columbia Consolidated Metropolitan Statistical Area. In addition, EPA promulgated I/M regulations at 40 CFR Part 51 Subpart S. Depending on the severity of an area’s nonattainment classification and/or geographic location within the OTR, EPA’s regulation under 40 CFR 51.350 outlines the appropriate motor vehicle I/M requirements.

As a result of having areas designated nonattainment for the 1997 8-hour ozone NAAQS (see 40 CFR 81.322 for Massachusetts and 40 CFR 81.330 for New Hampshire), and by virtue of their inclusion in the OTR, Massachusetts and New Hampshire have implemented statewide enhanced vehicle emissions testing programs. Both states have operated a vehicle testing program, in some fashion, since 1999.

In 1999, as part of its comprehensive plan to improve the state’s air quality, Massachusetts implemented an enhanced I/M program. The Massachusetts I/M program was first approved into the SIP on November 15, 2000 (65 FR 68898) as a limited approval and SIP strengthening measure. EPA’s November 15, 2000 rulemaking describes the limited approval and the supplemental information needed in order for Massachusetts’ program to be fully approved and meet the I/M requirements of the CAA. The previously SIP-approved Massachusetts I/M program consisted of a decentralized test and repair network, with minimal test-only facilities, which utilized dynamometers to test tailpipe emissions on model year 1984 and newer vehicles. Under this program, vehicles were due for emissions inspections biennially. Since that time, the program has been modified in a number of ways. In 2004, Massachusetts

implemented OBD2 testing of model year 1996 and newer vehicles. Most notable amongst all of Massachusetts' I/M program changes was the shift to an "OBD2-testing only" I/M program, which occurred on October 1, 2008. As of October 1, 2008, tailpipe testing conducted on a dynamometer ceased, the frequency for emissions inspections on vehicles changed from biennial to annual, and vehicles 15 model years old and older are exempt from emissions testing.

The New Hampshire I/M program was first approved into the SIP on January 10, 2001 (66 FR 1868) as a SIP strengthening measure. The January 10, 2001 SIP approval discusses the flexibility granted to New Hampshire for implementing an I/M program based on New Hampshire meeting the 1-hour ozone NAAQS. This SIP-approved New Hampshire I/M program consisted of an "anti-tampering" program, a visual check for proper connection of emissions control components, and the commitment for a statewide implementation of OBD2 testing on vehicles required to be equipped with OBD2 vehicle monitoring systems. Since that time, the New Hampshire I/M program has evolved into a robust decentralized I/M program consisting of a test and repair network which includes OBD2 testing of model year 1996 and newer vehicles. New Hampshire continues to operate an anti-tampering program on vehicles up to 20 years old that are not subject to an OBD2 inspection.

### **III. What are the OBD2 Requirements and How do Massachusetts' and New Hampshire's Programs Address These Requirements?**

On April 5, 2001, EPA published in the Federal Register "Amendments to Vehicle Inspection and Maintenance Program Requirements Incorporating the On-Board Diagnostics Check" (66 FR 18156). The revised I/M rule requires that electronic checks of the OBD2 system on model year 1996 and newer OBD2-equipped motor vehicles be conducted as part of states' motor vehicle I/M programs. OBD2 is part of the sophisticated vehicle powertrain management

system and is designed to detect engine and transmission problems that might cause vehicle emissions to exceed allowable limits. OBD2 requirements are a key part of this rulemaking action.

The OBD2 system monitors the status of up to 11 emission control related subsystems by performing either continuous or periodic functional tests of specific components and vehicle conditions. The first three testing categories – misfire, fuel trim, and comprehensive components – are continuous, while the remaining eight only run after a certain set of conditions has been met. The algorithms for running these eight periodic monitors are unique to each manufacturer and involve such things as ambient temperature as well as driving conditions. Most vehicles will have at least five of the eight remaining monitors (catalyst, evaporative system, oxygen sensor, heated oxygen sensor, and exhaust gas recirculation or EGR system) while the remaining three (air conditioning, secondary air, and heated catalyst) are not necessarily applicable to all vehicles. When a vehicle is scanned at an OBD2-I/M test site, these monitors can appear as either “Ready” (meaning the monitor in question has been evaluated, also interchangeably appears as “Complete” on some vehicles), “Not Ready” (meaning the monitor has not yet been evaluated, also interchangeably appears as “Not Complete” on some vehicles), or “Unsupported” (meaning the vehicle is not equipped with the component monitor in question and the monitor is not applicable). The monitors that are available in a certain vehicle’s emission control design are referred to as being “Supported,” and only supported monitors need to be evaluated by the vehicle’s computer to ultimately receive a “Ready” or “Not Ready” designation.

The OBD2 system is also designed to fully evaluate the vehicle’s emissions control system. If the OBD2 system detects a problem that may cause vehicle emissions to exceed 1.5 times the Federal Test Procedure (FTP) standards, then the Malfunction Indicator Light (MIL) is illuminated. By turning on the MIL, the OBD2 system notifies the vehicle operator that an

emissions-related fault has been detected and the vehicle should be repaired as soon as possible, thus reducing the harmful emissions contributed by that vehicle.

EPA's revised OBD2 I/M rule applies to those areas that are required to implement I/M programs under the CAA, which includes Massachusetts and New Hampshire. The revised I/M programs submitted by Massachusetts, on June 1, 2009, and New Hampshire, on November 17, 2011, both include OBD2 testing for model year 1996 and newer vehicles.

EPA's OBD2 program requires scan tool equipment to read the vehicle's built-in computer sensors in model year 1996 and newer vehicles. The OBD2-I/M check consists of two types of examinations: a visual check of the dashboard display function and status; and an electronic examination of the OBD2 computer itself. The failure criteria for OBD2 testing is any Diagnostic Trouble Code (DTC) or combination of DTCs that result in the MIL to be commanded on. A DTC is a code that indicates a malfunction in an emission control system or component which may cause emissions to increase to 1.5 times the limit due to the malfunction. Both Massachusetts and New Hampshire have incorporated this OBD2 component into their programs.

If the OBD2 scan reveals DTCs that have not commanded the MIL on, the motorist should be advised of the issue, but the vehicle should not be failed unless other non-DTC based failure criteria have been met. Vehicles may fail an inspection if the vehicle connector is missing, tampered with or otherwise inoperable, if the MIL is commanded on and is not visually illuminated, and if the MIL is commanded on for one or more DTCs as defined in the Society of Automotive Engineering (SAE) J2012 guidance document, and EPA regulations.

Vehicles are rejected from testing if the scan of the OBD2 system reveals a "Not Ready" code for any OBD2 component. EPA's final implementation guidance ("Performing Onboard Diagnostic System Checks as Part of a Vehicle Inspection and Maintenance Program,"

EPA 420-R-01-015, June 2001) allows states the flexibility to permit model year 1996 to 2000 vehicles with two or fewer unset readiness codes, and model year 2001 and newer with one unset readiness code to complete an OBD2-I/M inspection without being rejected. Vehicles would still fail if the MIL was commanded on or if other failure criteria were met, or be rejected from inspection if three or more unset readiness codes were encountered. If the MIL is not commanded to be illuminated the vehicle would pass the OBD2 inspection even if DTCs are present. Massachusetts' and New Hampshire's testing programs are consistent with the EPA recommended readiness failure criteria. Massachusetts' program regulations, at 310 CMR 60.02(12)(b), and New Hampshire's program regulations, at Saf-C 3222.03, require that the programs meet the OBD2 testing requirements and procedures set forth in 40 CFR 85.2222.<sup>2</sup>

EPA believes that for an OBD2-I/M test program to be most effective, it should be designed to allow for: (1) Real-time data link connections to a centralized testing database; (2) quality-controlled input of vehicle and owner identification information; and (3) automated generation of test reports. Massachusetts and New Hampshire have incorporated these OBD2 program elements into their I/M programs.

#### **IV. What are all the other I/M Regulatory Requirements and How do Massachusetts' and New Hampshire's I/M Programs Satisfy These Requirements?**

##### *A. Applicability*

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<sup>2</sup> Both the Massachusetts regulation at 310 CMR 60.02(12)(b) and the New Hampshire regulation at Saf-C 3222.03 directly cite, and therefore incorporate by reference, the federal regulation at 40 CFR 85.2222. For purposes of the federal SIPs, EPA interprets both regulations as incorporating by reference the version of 40 CFR 85.2222 as most recently amended on April 5, 2001 (66 FR 18156), rather than prospectively incorporating any future changes to 40 CFR 85.2222.

The SIP describes in detail the areas subject to the enhanced I/M SIP revision and, consistent with 40 CFR 51.372, includes the legal authority necessary to establish program boundaries. The Massachusetts I/M regulations (“Massachusetts Motor Vehicle Emissions Inspection and Maintenance Program” at 310 CMR 60.02 and “Annual Safety and Combined Safety and Emissions Inspection of All Motor Vehicles, Trailers, Semi-trailers and Converter Dollies” at 540 CMR 4.00) and authorizing legislation (Massachusetts Statutes at M.G.L. c.111, sec. 142M; M.G.L. c.21A, subsec. 2(28) and 16; M.G.L. c.90, sec. 2, 7A, 7V, 7W, and 31), as well as the New Hampshire I/M regulations (“Official Motor Vehicle Inspection Requirements” at Saf-C 3200) and authorizing legislation (New Hampshire Statutes codified at RSA 125-C:6, 260:6-b, 263:56-a, 266:1, 266:1-a, 266:5, 266:59-b, and 266:59-c), ensure that the enhanced I/M program be implemented statewide.

#### *B. Enhanced I/M Performance Standard*

Today’s rulemaking discusses the I/M programs designed, in part, to meet the enhanced I/M performance standard for ozone precursors causing air quality problems in Massachusetts and New Hampshire. EPA’s performance standard establishes an emission reduction target that must be met by a program in order for the SIP to be approvable. The I/M programs, as documented in the Massachusetts and New Hampshire SIP, must meet the performance standard in actual operation, with provisions for appropriate adjustments if the standard is not met.

The emissions modeling conducted as part of the performance standard evaluation in the I/M SIP submittals illustrates that the new Massachusetts and New Hampshire I/M programs are more stringent than the federally required performance standard, and more stringent than the

previous I/M programs approved into the SIP. Thus, both SIP submittals satisfy the anti-backsliding requirements of CAA section 110(l).

Both Massachusetts' and New Hampshire's I/M SIP submittals include the appropriate MOBILE6 vehicle emissions modeling demonstration<sup>3</sup> considering the required performance standard and the actual program being implemented statewide in each state. Massachusetts' submittal also includes a comparison to the previously SIP-approved program that Massachusetts is no longer implementing. The modeling runs for Massachusetts included evaluations of 2009 through 2012, and an out year of 2018 compliance dates and the modeling runs for New Hampshire considered evaluations with 2007, 2009, and an out year of 2015 compliance dates. Both Massachusetts and New Hampshire have demonstrated that reductions from the updated program are greater than those achieved by the pre-existing I/M program and the EPA performance standard. The MOBILE6 modeling performed by Massachusetts and New Hampshire reflects the fact that both states conduct OBD2 testing of all gasoline powered model year 1996 and newer vehicles. For Massachusetts, the MOBILE6 modeling appropriately reflects the fact that Massachusetts conducts annual emissions testing on vehicles up to 15 years old. The MOBILE6 modeling performed by New Hampshire also shows that the State operates an anti-tampering program on vehicles up to 20 years old that are not subject to OBD2 testing. However, in the first year of analysis (2009 for Massachusetts and 2007 for New Hampshire), both Massachusetts' and New Hampshire's MOBILE6 analyses of the updated I/M programs,

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<sup>3</sup> Since March 2, 2010, EPA's required model for on-road vehicle emissions modeling in SIPs is the MOTO Vehicles Emissions Simulator (MOVES) model. (See 75 FR 9411; March 2, 2010.) The Massachusetts SIP revision was submitted prior to the MOVES release date. Regarding the New Hampshire SIP revision, EPA's March 2, 2010 Notice (75 FR 9411), as well as EPA's guidance document, "Policy Guidance on the Use of MOVES2010 and Subsequent Minor Revisions for State Implementation Plan Development, Transportation Conformity, and Other Purposes" (EPA-420-B-12-010), allow for SIPs relying on MOBILE6.2 vehicle emissions modeling to continue to be approvable where significant work has already occurred using the MOBILE6.2 model. New Hampshire conducted the vehicle emissions modeling using MOBILE6.2 prior to the release of the MOVES model, and significant work had been conducted on the New Hampshire I/M SIP revision.

show a minimal increase in emissions. The minimal emissions increase can be attributed to the limitations of the MOBILE6 model. Vehicle testing requirements are included in 310 CMR 60.02 for Massachusetts and Saf-C 3200 for New Hampshire, and details of meeting the performance standard are included in section 2 of the narrative of each state's SIP submittal.

### *C. Network Type and Program Evaluation*

Under the CAA and EPA's I/M rule, the SIP must include a description of the network to be employed and the required legal authority. Also, for enhanced I/M areas, the SIP needs to include a description of the evaluation schedule and protocol, the sampling methodology, the data collection and analysis system, the resources and personnel for evaluation and related details of the evaluation program, as well as the legal authority establishing the evaluation program.

Massachusetts' and New Hampshire's revised programs consist of a test and repair I/M network program design utilizing contractors to manage and oversee the inspection portion of the program. Both states have implemented a continuous ongoing evaluation program consistent with the federal I/M rule. Both states commit to developing and submitting the annual and biennial reports described by 40 CFR 51.366 and the results of the evaluation programs are included in the annual and biennial reports. Both Massachusetts and New Hampshire have sufficient legal authority to implement this contractor managed program in concert with local inspection stations and conduct the program evaluation, as necessary to implement I/M consistent with federal requirements. Details of the network type and program evaluation are included in section 3 of each state's SIP narrative.

### *D. Adequate Tools and Resources*

Under the CAA and EPA's I/M rule, the SIP must include a description of the resources that will be used for program operation and must discuss how the performance standard will be met, including: (1) A detailed budget plan describing the source of funds for personnel, program administration, program enforcement, purchase of necessary equipment (such as vehicles for undercover audits), and for other requirements discussed throughout the I/M rule; and (2) a description of personnel resources, the number of personnel dedicated to overt and covert auditing, data analysis, program administration, enforcement, and other necessary functions, and the training attendant to each function.

Massachusetts and New Hampshire operate self-funded I/M programs. Revenue from the inspection fees charged to motorists is used for all expenses associated with the administration, implementation, and enforcement of the I/M programs. Both Massachusetts and New Hampshire have adequate staff dedicated to overt and covert auditing, data analysis, program administration, enforcement, and other necessary program functions. Section 4 of each state's SIP narrative, and the attachments to the SIP narratives, describe the budget, staffing support, and equipment needed to implement the programs.

#### *E. Test Frequency and Convenience*

Under EPA's I/M rule, the SIP must include a detailed test schedule, including the test year selection scheme if testing is other than annual. The SIP must also include the legal authority necessary to implement and enforce the test frequency requirement and explain how the test frequency will be integrated with the enforcement process. In addition, in enhanced I/M programs, the SIP needs to demonstrate that the network of stations providing testing services is sufficient to ensure customer convenience by providing short waiting times for a test, and short driving distances to the test center.

The Massachusetts and New Hampshire SIP revisions require annual inspections for all subject motor vehicles. Massachusetts obtains a “blue-print” of the emissions-related component monitors that are available, or “supported,” on a particular vehicle by conducting an initial inspection after a new vehicle is registered. This “blue-print” snapshot is extremely helpful if the vehicle ever has any emissions-related issues in the future and concerns arise about which monitors of emissions-related components should be operating on a particular vehicle. New Hampshire’s SIP revision requires the annual testing of vehicles based on the vehicle owner’s month of birth. Section 5 of the SIP narratives and the contracts with the I/M program vendors include additional information for ensuring convenient testing wait times and convenient testing locations.

#### *F. Vehicle Coverage*

Under EPA’s I/M rule, the SIP must include a detailed description of the number and types of vehicles to be covered by the program, and a plan for identifying subject vehicles, including vehicles that are routinely operated in the area but may not be registered in the area. Also, the SIP must include a description of any special exemptions which will be granted by the program, and an estimate of the percentage and number of vehicles granted such exemptions. Such exemptions need to be accounted for in the emission reduction analysis. In addition, the SIP needs to include legal authority necessary to implement and enforce the vehicle coverage requirement.

The Massachusetts and New Hampshire I/M programs cover all light-duty vehicles and light-duty trucks up to 8,500 pounds Gross Vehicle Weight Rating (GVWR), operating on all fuel types, as required by the federal I/M rule for enhanced programs. Massachusetts’ I/M program also covers heavy-duty vehicles (heavy-duty being those vehicles with a GVWR greater

than 8,500 pounds). New Hampshire's I/M program does not set requirements on any heavy-duty gas vehicles, although heavy-duty diesel vehicles with a GVWR greater than 10,000 pounds are subject to roadside testing requirements under Saf-C 5800. Additional information on the heavy-duty vehicle testing requirements in Massachusetts and New Hampshire can be found in Section V of this rulemaking notice.

In Massachusetts and in New Hampshire, light-duty vehicles and trucks that are model year 1996 and newer, operating on a fuel other than diesel fuel, are subject to an OBD2 inspection. Both states require light-duty diesel-fueled vehicles that are model year 1997 and newer, to undergo an OBD2 inspection. New Hampshire also requires vehicles up to 20 years old to be subject to New Hampshire's anti-tampering program if such vehicles are not subject to an OBD2 inspection.

Both Massachusetts and New Hampshire exempt special classes of vehicles from the emission testing programs, including: vehicles older than 15 model years old in Massachusetts and vehicles older than 20 model years old in New Hampshire; motorcycles; assembled vehicles, reconstructed vehicles, grey market vehicles,<sup>4</sup> and specialty import vehicles, as appropriate; and vehicles that have been issued exemptions by EPA. Based on information provided in the SIP submittals, Massachusetts and New Hampshire have shown that such exemptions will not prevent the programs from achieving the EPA-required performance standard. Additional detail supporting this conclusion was included in section 6 of each state's SIP narrative. Legal authority for the vehicle coverage requirements in Massachusetts are contained in the Massachusetts I/M regulations ("Massachusetts Motor Vehicle Emissions Inspection and Maintenance Program" at 310 CMR 60.02 and "Annual Safety and Combined Safety and

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<sup>4</sup> Grey Market Vehicles being vehicles manufactured for use in a foreign country.

Emissions Inspection of All Motor Vehicles, Trailers, Semi-trailers and Converter Dollies” at 540 CMR 4.00) and the authorizing legislation (Massachusetts Statutes at M.G.L. c.111, sec. 142M; M.G.L. c.21A, subsec. 2(28) and 16; M.G.L. c.90, sec. 2, 7A, 7V, 7W, and 31). Legal authority for the vehicle coverage requirements in New Hampshire are contained in the New Hampshire I/M regulations (“Official Motor Vehicle Inspection Requirements” at Saf-C 3200) and the authorizing legislation (New Hampshire Statutes codified at RSA 125-C:6, 260:6-b, 263:56-a, 266:1, 266:1-a, 266:5, 266:59-b, and 266:59-c).

#### *G. Test Procedures and Standards*

Under EPA’s I/M rule, the SIP must include a description of each test procedure used. The SIP also must include the rule, ordinance, or law describing and establishing the test procedures. The Massachusetts and New Hampshire I/M SIP revisions and associated regulations obligate each state to perform OBD2 testing on all 1996 and newer vehicles, in accordance with EPA procedures. A vehicle which cannot be tested using OBD2, due to known issues with readiness monitors or lack of electronic communication, will be subject to alternative test procedures, consisting primarily of a visual bulb check to ensure the MIL is not illuminated. Both Massachusetts’ and New Hampshire’s OBD2 testing procedures are based on the testing procedures established by EPA for light duty vehicles in 40 CFR 85.2222. Details of the test procedures and standards are included each state’s I/M regulations and in Section 7 of each state’s SIP narrative.

#### *H. Test Equipment*

Under EPA's I/M rule, the SIP must include written technical specifications for all test equipment used in the program and address each of the requirements set forth at 40 CFR 51.358. The specifications must describe the emission analysis process, the necessary test equipment, the required features, and written acceptance testing criteria and procedures.

In Massachusetts' June 1, 2009 submittal and New Hampshire's November 17, 2011 submittal, both states provide written equipment specifications as contained in EPA's final implementation guidance and the appendices of EPA's I/M rule. Both SIP submittals and their appendices address the requirements in 40 CFR 51.358 and include descriptions of performance features and functional characteristics of the computerized test systems. The submittals reference 40 CFR Part 51 and 85, and are consistent with the procedures outlined in 40 CFR 85.2222 and EPA's final implementation guidance. The necessary test equipment, required features, and acceptance testing criteria are discussed in section 8 of each state's SIP narrative.

### *I. Quality Control*

Under EPA's I/M rule, the SIP must include a description of quality control and recordkeeping procedures. The SIP also must include the procedures manual, rule, and ordinance or law describing and establishing quality control procedures and requirements.

Both the Massachusetts and New Hampshire I/M SIP narratives, as well as each state's program contract, contain descriptions and requirements establishing the quality control procedures in accordance with the federal I/M rule and EPA's final implementation guidance. These requirements will help ensure that equipment calibrations are properly performed and recorded and that the necessary compliance document security is maintained. As described in section 9 of each state's SIP narrative, the Massachusetts and New Hampshire SIPs comply with

all specifications for quality control set forth in Section 51.359 and Appendix A of the federal I/M rule, and EPA's final implementation guidance.

*J. Waivers and Compliance via Diagnostic Inspection*

Under EPA's I/M rule, the SIP must include a maximum waiver rate expressed as a percentage of initially failed vehicles. This waiver rate is used for estimating emission reduction benefits in the modeling analysis. Corrective action must be taken if the waiver rate exceeds that estimated in the SIP, or a state must revise its SIP and claim emission reductions accordingly. The SIP also must describe the waiver criteria and procedures, including cost limits, quality assurance methods and measures, and administration. Lastly, the SIP must include the necessary legal authority, ordinance(s), or rules to issue waivers, set and adjust cost limits as required, and carry out any other functions necessary to administer the waiver system, including enforcement of the waiver provisions.

Cost limits for the minimum expenditure waivers must be in accordance with the CAA and the federal I/M rule. According to federal requirements, expenditures of at least \$450 for actual, non-tampering related repairs, must be spent in order to qualify for a waiver in an enhanced I/M program; this amount shall be adjusted annually according to changes in the Consumer Price Index as specified in 40 CFR 51.360(a)(7). Massachusetts regulations at 310 CMR 60.02(17)(c)(8) allows for waivers to be issued which meet minimum repair expenditures ranging from \$550 to \$750 depending on the vehicle model year. Massachusetts intends to annually update the cost to receive a waiver from the emissions testing program in accordance with federal requirements. New Hampshire does not issue conventional repair waivers. However, an economic hardship time extension as allowed under EPA's rule, is also allowed in the Massachusetts and New Hampshire programs. Massachusetts and New Hampshire have

demonstrated that they can meet the enhanced I/M performance standard testing with the current program design in each state.

The Massachusetts and New Hampshire programs include waiver rates of 1.0% and 0.5%, respectively, of initially failed vehicles. These waiver rates are used in the modeling demonstration. Massachusetts' and New Hampshire's SIP submittals essentially commit that, if the waiver rates determined by each state's I/M program reports are higher than the aforementioned waiver rates (1.0% for Massachusetts and 0.5% for New Hampshire), the state will take corrective action to address the deficiency. Both states' SIPs describe the types of waivers that will be allowed, minimum expenditure waivers and/or economic hardship time extensions. These issues are dealt with in a manner consistent with the federal I/M rule. The proper criteria, procedures, quality assurance and administration regarding the issuance of waivers, consistent with EPA's I/M rule, will be ensured by each state and their I/M program contractor and are detailed in section 10 of each state's SIP narrative and the state's regulations: Massachusetts at 310 CMR 60.02(16) through 60.02(19) and New Hampshire at Saf-C 3222.08.

#### *K. Motorist Compliance Enforcement*

Under EPA's I/M rule, the SIP must provide information concerning motorist enforcement, including: (1) A description of the existing compliance mechanism if it will continue to be used for the program, and the demonstration that it is as effective, or more effective, than registration denial enforcement; (2) an identification of the agencies responsible for performing each of the applicable activities in this section; (3) a description of, and accounting for, all classes of exempt vehicles; and (4) a description of the plan for testing fleet vehicles, and any other special classes of subject vehicles, such as those operated (but not necessarily registered) in the program area. Also, a SIP must include a determination of the

current compliance rate based on a study of the system including an estimate of compliance losses due to loopholes, counterfeiting, and unregistered vehicles. Estimates of the effect of closing such loopholes and otherwise improving the enforcement mechanism must be supported with detailed analyses. In addition, the SIP needs to include the legal authority to implement and enforce the program. Lastly, the SIP must include a commitment to an enforcement level and minimum compliance level used for modeling purposes and to be maintained, at a minimum, in practice.

Massachusetts and New Hampshire both have chosen to use a registration suspension program which suspends the vehicle registration of a vehicle that fails to meet emission testing requirements. The motorist compliance enforcement program will be implemented primarily by the state agencies charged with implementing the I/M program in their respective states. However, state police and local law enforcement can provide citations for vehicles not complying with the I/M program. The enforcement strategy is described in each state's submittal. The enforcement strategy is designed to ensure a high rate of compliance. Those not receiving the emissions test as scheduled will be subject to fines and late penalties, and also will have their vehicle registrations suspended. Both Massachusetts and New Hampshire have over a 96 percent program compliance rate with the emissions inspection program. The legal authority to implement and enforce the program is included in each state's law and in the state agency regulations as submitted in the respective SIP submittals. (Massachusetts regulations at 540 CMR 4.07(4), authority at MGL c.90, sec. 2 and sec. 22; New Hampshire authority at RSA 266:1, RSA 266:5, and RSA 263:56-a). Additional detail of the motorist compliance enforcement program is included in section 11 of each state's SIP narrative.

#### *L. Motorist Compliance Enforcement Program Oversight*

Under EPA's I/M rule, the SIP must include a description of enforcement program oversight and information management activities.

The Massachusetts and New Hampshire I/M SIP revisions provide for regular auditing of each state's enforcement program and adherence to effective management practices, including adjustments to improve the programs when necessary. These program oversight and information management activities are described in each state's SIP narrative, and include a description of the emissions testing databases of each state's programs (the Automated Licensing and Registration System, ALARS, in Massachusetts and the New Hampshire OBD and Safety Testing, NHOST, program testing and reporting system in New Hampshire). If a vehicle is out of compliance with the emissions testing requirement, registration is suspended. Each state's SIP describes the procedures to be followed in identifying noncomplying vehicles, along with appropriate follow-up and program documentation audits in sections 11 and 12 of their SIP narratives.

#### *M. Quality Assurance*

Under EPA's I/M rule, the SIP must include a description of the quality assurance program, and written procedure manuals covering both overt and covert performance audits, record audits, and equipment audits.

The June 1, 2009 Massachusetts submittal and the November 17, 2011 New Hampshire submittal include a description of each respective state's quality assurance program. The quality assurance programs will include overt and covert performance audits, digital audits on station and inspector performance, and equipment audits. New Hampshire does not currently have an official covert audit program that utilizes vehicles pre-set to pass or fail an emissions test. However, New Hampshire places emphasis on sophisticated electronic analyses to evaluate station and inspector performance by identifying anomalies and irregularities; law enforcement

officers auditing a station and/or inspector that has been identified by the digital audit, begin by essentially conducting covert visual audits and then proceed to audit that stations and certified inspectors are following the inspection requirements. Both Massachusetts and New Hampshire cover all of their respective program's inspection stations with the implemented quality assurance plans and conduct overt and/or covert audits, both in response to customer complaints and as targeted follow-up. Detailed quality assurance/quality control (QA/QC) procedures are included in each state's SIP submittal at section 13 of the SIP narratives and in the inspection program contract agreements.

#### *N. Enforcement Against Contractors, Stations, and Inspectors*

Under EPA's I/M rule, the SIP must include a penalty schedule and legal authority for establishing and imposing penalties, civil fines, station and inspector license suspension, and revocations. In the case of state constitutional impediments precluding immediate authority to suspend licenses, each state's Attorney General shall furnish an official opinion within the state's SIP explaining the constitutional impediment as well as relevant case law. Each state's SIP also must describe the administrative and judicial procedures and responsibilities relevant to the enforcement process, including the agencies, courts, and jurisdictions involved; personnel to prosecute and adjudicate cases; and other aspects of the enforcement of the programs requirements, the resources to be allocated to the enforcement function, and the source of those funds. In states that are without immediate suspension authority, the SIP must demonstrate that sufficient resources, personnel, and systems are in place to meet the three-day case management requirement for violations that directly affect emission reductions.

The Massachusetts and New Hampshire I/M SIP revisions include specific penalties in its enforcement against contractors, stations, and inspectors in accordance with the federal I/M

rule. Based on their SIP submittals dated June 1, 2009 for Massachusetts and dated November 17, 2011 for New Hampshire, each state's enforcement procedures can be pursued through contractual or regulatory action. Each state, through the contract that it has been authorized to enter into directly, under MGL c.111, sec. 142M and c.21A, sec. 16 for Massachusetts and under RSA 260:6-b for New Hampshire, has the authority to immediately suspend a station inspector for violations that directly affect emission reduction benefits and a variety of other violations of procedures. Details on enforcement against contractors, stations, and inspectors are found in section 14 of each state's SIP submittal narrative.

#### *O. Data Collection, Analysis, and Reporting*

Under EPA's I/M rule, the SIP must describe the types of data to be collected. EPA's I/M rule also requires that the SIP describe the procedures for data analysis and reporting to allow for monitoring and evaluation of the program.

The Massachusetts and New Hampshire I/M SIP revisions provide for collecting test data to link specific test results to specific vehicles, I/M program registrants, test sites, and inspectors. The test data and quality control data which will be collected are described in section 15 of each state's SIP narrative and I/M program vendor contract. The data will be used to generate reports concerning test data, quality assurance, quality control, enforcement, as well as necessary changes and identified weaknesses in the programs. Both Massachusetts and New Hampshire have also committed to collecting all data necessary for quality assurance and enforcement reports, as required by section 51.366 of the federal I/M rule. Details on data analysis and reporting are found in section 16 of each state's SIP narrative.

#### *P. Inspector Training and Licensing or Certification*

Under EPA's I/M rule, the SIP must include a description of the training program, the written and hands-on tests, and the licensing or certification process.

The I/M SIP submittals from Massachusetts and New Hampshire provide details on each state's respective inspector training program. Both Massachusetts' and New Hampshire's I/M SIP provides for implementation of training, licensing, and refresher programs for emission inspectors. The states' SIP and their respective inspection program contract describe the inspector training program and curriculum including written and hands-on testing. All inspectors will be required to be certified to inspect vehicles in their state's I/M program. Further details of the Inspector Training Program are included in section 17 of each state's SIP narrative.

*Q. Public Information and Consumer Protection*

Under EPA's I/M rule, the SIP must include a plan for consumer protection and informing the public, on an ongoing basis, of the air quality problems, the need for and benefits of a motor vehicle inspection program, and how to find a qualified repair technician, amongst other information related to the requirements of the I/M program.

Both Massachusetts and New Hampshire have implemented a web site for their respective I/M program. Each state's website is designed to provide information to motorists, the general public, inspectors, and repair technicians regarding the respective state's I/M program. Both Massachusetts and New Hampshire have the ability to take in general questions and concerns, both via a telephone hotline and electronically via the website, and have established a mechanism by which a vehicle owner can contest the results of an inspection. Further details of the public information and consumer protection plans are included in section 18 of each state's SIP narrative and the program contract.

### *R. Improving Repair Effectiveness*

Under EPA's I/M rule, the SIP must include a description of the technical assistance program to be implemented, a description of the procedures and criteria to be used in meeting the performance monitoring requirements of this section for enhanced I/M programs, and a description of the repair technician training resources available in the community.

In Massachusetts' June 1, 2009 and New Hampshire's November 17, 2011 submittals, each state provided additional detail and description of the technical assistance, performance monitoring, and repair technician training programs to be implemented. The SIP revisions, as detailed in section 19 of each state's SIP narrative, provide for regularly informing repair facilities about changes to the inspection program, training course schedules, common problems, and potential solutions for particular engine families, diagnostic tips, repairs, and other assistance issues. As described in the states' submittals, Massachusetts and New Hampshire have also ensured that repair technicians may utilize the telephone hotline, or the electronic inquiry system on the program website, with any repair questions or concerns. Performance monitoring statistics of repair facilities will be provided to motorists whose vehicles fail the I/M test, as required in enhanced I/M areas. The states have committed to ensure that adequate repair technician training exists by establishing training courses at technical schools in the area.

### *S. Compliance With Recall Notices*

Under EPA's I/M rule, the SIP must describe, for enhanced I/M programs, the procedures used to incorporate the vehicle recall lists provided into the inspection or registration database, the quality control methods used to insure that recall repairs are properly documented and tracked, and the method (inspection failure or registration denial) used to enforce the recall requirements. EPA has not yet established a computerized database listing all recalled vehicles.

The revised Massachusetts and New Hampshire I/M SIPs will ensure that vehicles subject to enhanced I/M programs, that are included in either a voluntary emission recall or a remedial plan determination pursuant to the CAA, have had the appropriate repairs made prior to the inspection. As described in section 20 of each state's SIP narrative, the states and their contractors will implement this approach when EPA databases exist which identify vehicles that have not completed recall repairs. At that time, motorists with unresolved recall notices will be required to show proof of compliance or will be denied the opportunity for inspection.

#### *T. On-Road Testing*

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

The I/M SIPs submitted on June 1, 2009 by Massachusetts and on November 17, 2011 by New Hampshire, include a description of the status of an on-road testing program in section 21 of each state's SIP narrative. Massachusetts' and New Hampshire's SIPs highlight the ability for each state to implement pilot testing of remote emissions testing technologies, and will

implement a full on-road testing program when the testing technology is demonstrated to be reliable. Neither Massachusetts nor New Hampshire included additional modeling credit for the on-road portion of their state inspection programs when demonstrating that EPA's performance standard was met.

#### *U. Concluding Statement*

A more detailed analysis of the Massachusetts and New Hampshire submittals and how they meet the federal requirements is contained in EPA's technical support document (TSD) prepared for this action. The TSD is available from the EPA Regional Office listed above and in the docket for this action. The criteria used to review the submitted SIP revisions are based on the requirements set forth in section 182 of the CAA and in the federal I/M regulations, 40 CFR Part 51 Subpart S. Based on these requirements, EPA developed a detailed I/M approvability checklist to be used nationally to determine if I/M programs meet the requirements of the CAA and the federal I/M rule. The checklist states the federal requirements, referenced by section of the rule, and whether the Massachusetts and New Hampshire programs meet such requirements. This checklist, the CAA, and the federal I/M regulation formed the basis for EPA's technical review. EPA has reviewed the Massachusetts and New Hampshire I/M SIP revisions submitted to EPA using the criteria stated above. The Massachusetts and New Hampshire regulations and accompanying materials contained in the SIP submittals from each state represent an acceptable plan to comply with the I/M requirements and meet all the criteria required for EPA to approve the SIP submittals. EPA's review of the materials submitted indicates that Massachusetts and New Hampshire have revised their I/M programs in accordance with the requirements of the CAA, 40 CFR Part 51, and all of EPA's technical requirements for an approvable vehicle inspection and maintenance program, including OBD2.

## **V. What Additional I/M Program Components are being Submitted into the SIPs?**

The I/M SIPs submitted on June 1, 2009 by Massachusetts and on November 17, 2011 by New Hampshire, include a description of certain vehicle testing components that have been incorporated into each state's emissions testing program, which are not currently covered by the federal I/M rule. In this rulemaking, EPA is approving these components into each state's respective SIP. The emissions testing requirements, vehicle coverage, testing frequency, and test procedures and standards discussed in Section V. of this rulemaking can be found at 310 CMR 60.02 and 540 CMR 4.00 for Massachusetts and Saf-C 3200 and Saf-C 5800 for New Hampshire.

Massachusetts requires non-diesel vehicles that are model year 2008 and newer, with a GVWR greater than 8,500 pounds and less than or equal to 14,000 pounds, to be subject to an OBD2 inspection. Diesel vehicles that are model year 2007 and newer, with a GVWR greater than 8,500 pounds and less than or equal to 14,000 pounds, are subject to an OBD2 inspection. All (diesel and non-diesel) heavy-duty vehicles with a GVWR greater than 14,000 pounds, are subject to an OBD2 inspection starting with model year 2010 vehicles as OBD systems are phased-in and required to be installed on the vehicles.

Diesel vehicles over 10,000 pounds GVWR that are model year 1984 and newer, are subject to Massachusetts' annual snap acceleration smoke test, the "opacity" test, based on the test specified by SAE J1667. In addition, Massachusetts also conducts roadside pullovers of diesel vehicles, over 10,000 pounds GVWR, registered in any state or country, and conducts opacity testing on all vehicles irrespective of age.

Massachusetts is also submitting revised testing standards, for the opacity testing conducted on those heavy-duty diesel vehicles subject to the Massachusetts opacity test, which

are more stringent than those previously approved into the Massachusetts SIP. The revised opacity testing standards for Massachusetts are included at 310 CMR 60.02(12). Diesel trucks greater than 10,000 pounds GVWR: that are model year 1984 to 1990 must meet an opacity standard of 40% opacity (previous standard was 55% opacity); that are model year 1991 to 1996 must meet an opacity standard of 30% opacity (previous standard was 40%); and that are model year 1997 and newer must meet an opacity standard of 20% (previous standard was 40%). Diesel buses greater than 10,000 pounds GVWR: that are model year 1984 to 1987 must meet an opacity standard of 40% opacity (the same as previous standard); that are model year 1988 to 1993 must meet an opacity standard of 30% opacity (previous standard was 40%); and that are model year 1994 and newer must meet an opacity standard of 20% (previous standard was 30%). As stated earlier, all diesel vehicles under 14,000 pounds GVWR, are now subject to OBD2 testing; thus the opacity standards previously approved into the Massachusetts SIP for diesel vehicles under 10,000 pounds GVWR are no longer applicable. Diesel vehicles over 10,000 pounds GVWR receive an opacity test if OBD2 has not been phased-in on a particular vehicle.

New Hampshire operates a roadside pullover opacity inspection program. New Hampshire conducts opacity testing on all vehicles over 10,000 pounds GVWR, and all diesel-powered buses manufactured to carry 25 or more passengers, irrespective of age. New Hampshire's opacity testing standards are included at Saf-C 5804.08. New Hampshire exempts federal and military vehicles from opacity testing, as well as vehicles that can pass a "quick screen" process upon being pulled over and selected for testing. Upon being pulled over, any vehicle that can present proof of having passed an opacity test in New Hampshire, or any other state, within the previous 12 months or can present proof of having repairs to address emission violations, are exempted from testing. These non-federal exemptions do not apply if any subject vehicle appears to be emitting visible black smoke.

## VI. FINAL ACTION

EPA is approving the SIP revisions submitted by the Commonwealth of Massachusetts on June 1, 2009 and November 30, 2009, as well as the SIP revision submitted by the State of New Hampshire on November 17, 2011. Each state's SIP revision contains the respective state's revised motor vehicle inspection and maintenance program regulations and associated SIP narrative. Specifically, EPA is approving the Massachusetts Department of Environmental Protection Regulation at 310 CMR 60.02 and the Massachusetts Registry of Motor Vehicles Regulation at 540 CMR 4.00. EPA is also approving the New Hampshire Department of Safety Regulations at Saf-C 3201, Saf-C 3202, Saf-C 3203, Saf-C 3204, Saf-C 3205, Saf-C 3206.04, Saf-C 3207, Saf-C 3209, Saf-C 3210, Saf-C 3218, Saf-C 3220, Saf-C 3222, Saf-C 3248, and Saf-C 5800. EPA is approving Massachusetts' and New Hampshire's revised I/M programs because they are consistent with the CAA I/M requirements and EPA's I/M regulations and they will strengthen the Massachusetts and New Hampshire SIPs.

EPA is incorporating the aforementioned rules by reference into the Massachusetts and New Hampshire SIPs, respectively, except as set forth below. Specifically, both the Massachusetts and New Hampshire programs contain enforcement provisions that detail state enforcement procedures, including administrative, civil, and criminal penalties, and administrative and judicial procedures. See 310 CMR 60.02(24)(f); NH Saf-C 3222.04(d), NH Saf-C Part 3248, NH Saf-C Part 5805. Such enforcement-related provisions are required elements of an I/M SIP under 40 CFR 51.364, and EPA is approving the provisions as meeting those requirements. However, EPA is not incorporating those provisions by reference into the EPA-approved federal regulations at 40 CFR part 52. In any federal action to enforce violations of the substantive requirements of the Massachusetts or New Hampshire I/M programs, the

relevant provisions of Section 113 or 304 of the CAA, rather than state enforcement provisions, would govern. Similarly, the applicable procedures in any federal action would be the applicable federal court rules or EPA's rules for administrative proceedings at 40 CFR part 22, rather than state administrative procedures. Since the state enforcement provisions would not be applicable in a federal action, incorporating these state-only enforcement provisions into the federal regulations would have no effect. To avoid confusion to the public and regulated parties, EPA is not incorporating these provisions by reference into the EPA-approved federal regulations in the states' respective plan identifications in 40 CFR part 52. Specifically, EPA is not incorporating Massachusetts' regulation 310 CMR 60.02(24)(f) into the federal regulations at 40 CFR 52.1120(c) or 52.1167, and EPA is not incorporating New Hampshire's regulations Saf-C 3222.04(d), Saf-C Part 3248, or Saf-C Part 5805 into the federal regulations at 40 CFR 52.1520(c) or 52.1525.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this Federal Register publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective **[Insert date 60 days from date of publication in the Federal Register]** without further notice unless the Agency receives relevant adverse comments by **[Insert date 30 days from date of publication in the Federal Register]**.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. All parties interested in commenting on the proposed rule should do so at this time. If no such comments are received,

the public is advised that this rule will be effective on **[Insert date 60 days from date of publication in the Federal Register]** and no further action will be taken on the proposed rule.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

## **VII. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after

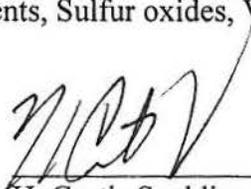
it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

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 [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. 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, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

11/14/12  
Dated:

  
\_\_\_\_\_  
H. Curtis Spalding,  
Regional Administrator,  
EPA New England.

Part 52 of 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 7as follows:

**Authority:** 42 U.S.C. 7401 et seq.

**Subpart W - Massachusetts**

2. Section 52.1120 is amended by adding paragraph (c)(138) to read as follows:

**§ 52.1120 Identification of plan**

\* \* \* \* \*

(c) \* \* \*

(138) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on June 1, 2009 and November 30, 2009.

(i) Incorporation by reference.

(A) Regulation 310 CMR 60.02 entitled “Massachusetts Motor Vehicle Emissions Inspection and Maintenance Program,” effective in the Commonwealth of Massachusetts on September 5, 2008, with the exception of subsection 310 CMR 60.02(24)(f) because federal enforcement provisions rather than state enforcement provisions would govern in any federal action to enforce violations of the substantive requirements of the Massachusetts motor vehicle inspection and maintenance program.

(B) Regulation 540 CMR 4.00 entitled “Annual Safety and Combined Safety and Emissions Inspection of All Motor Vehicles, Trailers, Semi-

trailers and Converter Dollies,” effective in the Commonwealth of Massachusetts on September 5, 2008.

(C) Massachusetts Regulation Filing, dated July 11, 2008, substantiating September 5, 2008, State effective date for amended 310 CMR 60.02 entitled “Massachusetts Motor Vehicle Emissions Inspection and Maintenance Program.”

(D) Massachusetts Regulation Filing, dated August 22, 2008, substantiating September 5, 2008, State effective date for amended 540 CMR 4.00 entitled “Annual Safety and Combined Safety and Emissions Inspection of All Motor Vehicles, Trailers, Semi-trailers and Converter Dollies.”

(ii) Additional materials

(A) Letter from the Massachusetts Department of Environmental Protection, dated June 1, 2009, submitting a revision to the Massachusetts State Implementation Plan.

(B) Letter from the Massachusetts Department of Environmental Protection, dated November 30, 2009, amending the June 1, 2009 State Implementation Plan submittal.

(C) Massachusetts June 1, 2009 SIP Revision Table of Contents Item 7, “Documentation of IM SIP Revision consistent with 42 USC Section 7511a and Section 182(c)(3)(A) of the Clean Air Act.”

3. In §52.1167, Table 52.1167 is amended by revising the entries for the existing state citations for Regulations 310 CMR 60.02 and 540 CMR 4.00 to read as follows:

## § 52.1167 - EPA - approved Massachusetts State regulations

\* \* \* \* \*

Table 52.1167 - EPA - Approved Massachusetts Regulations

[See Notes at end of Table]

| State citation      | Title/Subject  | Date submitted by State | Date approved by EPA                       | Federal Register citation  | 52.1120(c) | Comments/unapproved sections  |
|---------------------|--|-------------------------|--|--|------------|---|
| *                   | *  | *                       | *  | *  | *          | *   |
| 310<br>CMR<br>60.02 | Massachusetts<br>Motor Vehicle<br>Emissions<br>Inspection and<br>Maintenance<br>Program  | 6/1/09                  | [Insert<br>date of FR<br>publica-<br>tion] | [Insert Federal<br>Register page<br>number where the<br>document begins] | 138        | Revises enhanced I/M test requirements to consist of "OBD2-only" testing program. Approving submitted regulation with the exception of subsection 310 CMR 60.02(24)(f). |
| 540<br>CMR<br>4.00  | Annual Safety<br>and Combined<br>Safety and<br>Emissions<br>Inspection of<br>All Motor<br>Vehicles,<br>Trailers, Semi-<br>trailers and<br>Converter<br>Dollies | 6/1/09                  | [Insert<br>date of FR<br>publica-<br>tion] | [Insert Federal<br>Register page<br>number where the<br>document begins] | 138        | Revises requirements for inspections and enforcement of I/M program.  |

## Notes:

1. This table lists regulations adopted as of 1972. It does not depict regulatory requirements which may have been part of the Federal SIP before this date.
2. The regulations are effective statewide unless otherwise stated in comments or title section.

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

**Authority:** 42 U.S.C. 7401 et seq.

**Subpart EE – New Hampshire**

5. Section 52.1520 is amended to read as follows:

**Sec. 52.1520 Identification of plan.**

\* \* \* \* \*

In §52.1520: Table (c) EPA approved regulations is amended by deleting the entry to existing state citation for regulation Saf-C 3221A, adding a new entry for the state citation for regulation Saf-C 3200, and revising the entry for the existing state citation for regulation Saf-C 5800 (being re-titled as “Roadside Diesel Opacity Inspection”); and Table (e) is amended by adding a new entry at the end of the table to read as follows:

(c) EPA approved regulations.

EPA Approved New Hampshire Regulations

| State citation | Title/subject                                  | State effective date      | EPA approval date <sup>1</sup>   | Explanations  |
|----------------|--|---------------------------|--|---|
| **             | *  | *                         | *  | **  |
| Saf-C 3200     | Official Motor Vehicle Inspection Requirements | 6/22/07<br>and<br>6/20/08 | [Insert date of <u>FR</u> publication]<br><br>[Insert <u>Federal Register</u> page number where the document begins] | EPA is approving submitted subsections Saf-C 3201, 3202, 3203, 3204, 3205, 3206.04, 3207, 3209, 3210, 3218, 3220, and 3222 (except for subsection 3222.04). |
| Saf-C 5800     | Roadside Diesel Opacity Inspection             | 1/1/99                    | [Insert date of <u>FR</u> publication]<br><br>[Insert <u>Federal Register</u> page number where the document begins] | Approving submitted regulation with the exception of subsection Saf-C 5805.   |

<sup>1</sup> In order to determine the EPA effective date for a specific provision listed in this table, consult the Federal Register notice cited in this column for the particular provision.

(e) Nonregulatory.

New Hampshire NonRegulatory

| Name of nonregulatory SIP provision   | Applicable geographic or nonattainment area | State submittal date/effective date | EPA approved date <sup>3</sup>   | Explanations |
|---|---|-------------------------------------|--|--------------|
| **  | *   | *                                   | *  | **           |
| SIP Narrative associated with New Hampshire Vehicle Inspection and Maintenance Program SIP Revision | Statewide                                   | 11/17/2011                          | [Insert date of <u>FR</u> publication]<br><br>[Insert <u>Federal Register</u> page number where the document begins] |              |

<sup>3</sup> In order to determine the EPA effective date for a specific provision listed in this table, consult the Federal Register notice cited in this column for the particular provision.