This face amount is computed as follows: 165% × $600,000 (the $40,000 sum certain plus the $560,000 contingent amount (10,000 PTCs × 400 units = 4,000,000 units × $0.14 per unit)) = $990,000÷10,000 (the total number of PTCs sold). Finally, under paragraph (c)(3)(ii)(A)(*3*) of this section (assuming the PTCs are of a type that ordinarily is used entirely for domestic communications services), a face amount of $120 ($0.30 per unit x 400 units) may be used.

(iv) The cards are PTCs; thus, under section 4251(d), the face amount is treated as an amount paid for communications services and that amount is treated as paid when the PTCs are transferred from C to R. Accordingly, at the time of transfer, R is liable for the 3 percent tax imposed by section 4251(a). The amount of the tax is computed as follows (assuming that C chooses to determine the face amount as provided in paragraph (c)(3)(ii)(A)(*2*) of this section): 3% × $99 (the face amount of the PTC) = $2.97 per PTC × 10,000 PTCs = $29,700 tax. Thus, the total paid by R at the time of transfer is $69,700, the $40,000 sum certain plus $29,700 tax. C is responsible for collecting the tax from R.

(v) In 2000 and 2001, R sells PTCs to its customers for varying amounts. Because any amount paid for a PTC purchased from a transferee reseller is not an amount paid for communications services, no tax is imposed on R's sale of a PTC.

(vi) On February 15, 2001, C informs R that 3,000,000 minutes were used during the 12-month period. R pays C $420,000 ($0.14 × 3,000,000), the contingent amount agreed to when R purchased the PTCs. No tax is imposed on this payment. Tax was imposed when the PTCs were transferred to R. The contingent amount paid in 2001, based on the number of minutes used, does not change R's tax liability.

Example 6. Tariffed unit card; sold to transferee reseller. (i) On February 1, 2000, D, a carrier, sells 1,000 *prepaid telephone cards* to S, a convenience store owner, for $25,000. The value of the cards is not denominated in dollars, but the face of the card is marked ''100 minutes'' and a tariff of $0.33 per minute has been filed for the units on the card. S agrees that it will sell the cards to individuals for their own use and at a price that does not exceed $0.33 per minute. S actually sells the cards for $30 each (i.e., at a price of $0.30 per minute). D provides S with a PIN for each card. The toll telephone service acquired by purchasing the card will be obtained by entering the PIN and the telephone number to be called.

(ii) Because S purchased from a carrier for resale, S is a transferee reseller. Because S's customers will purchase other than for resale they will be holders. Each card sold by S provides its holder, S's customer, with a fixed amount of communications services (100 minutes of toll telephone service) to be obtained by means of a PIN, for which S's customer pays in advance of obtaining service; therefore each card is a PTC. Because the value of each PTC is not designated in dollars and D sells the PTCs to S subject to an arrangement under which the price at which the PTCs are sold to holders will not exceed the designated number of units on the PTC multiplied by D's tariffed price per unit, each PTC is an tariffed unit card. Because the PTCs are tariffed unit cards, the face amount of each PTC is $33, the designated number of units on the PTC multiplied by the tariffed price per unit (100 × $0.33 = $33), even though the actual retail sale price of the cards is $30.

(iii) The cards are PTCs; thus, under section 4251(d), the face amount is treated as an amount paid for communications services and that amount is treated as paid when the PTC is transferred from D to S. Accordingly, at the time of transfer, S is liable for the 3 percent tax imposed by section 4251(a). The tax is $990 (3% × $33,000 (1,000 PTCs multiplied by the $33 face amount of each PTC)). Thus, the total paid by S is $25,990, the $25,000 sales price plus $990 tax. D is responsible for collecting the tax from S.

Example 7. Transfer of card that is not a PTC. (i) On February 1, 2000, E, a carrier, provides a *telephone card* to T, an individual, for T's use in making telephone calls. E provides T with a PIN. The card provides access to an unlimited amount of communications services. E charges T $0.25 per minute of service, and bills T monthly for services used. The communications services acquired by using the card will be obtained by entering the PIN and the telephone number to be called.

(ii) Although the communications services will be obtained by means of a PIN, T does not receive a fixed amount of communications services. Also, T cannot pay in advance since the amount of T's payment obligation depends upon the number of minutes used. Therefore, the card is not a PTC.

(iii) Because the card is not a PTC, section 4251(d) does not apply. However, the tax imposed by section 4251(a) applies to the amounts paid by T to E for communications services. Accordingly, at the time an amount is paid for communications services, T is liable for tax. E is responsible for collecting the tax from T.

(f) *Effective date.* This section is applicable with respect to PTCs transferred by a carrier on or after the first day of the first calendar quarter beginning after the date of publication of the final regulations in the **Federal Register**.

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

[FR Doc. 98–33346 Filed 12–16–98; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NH036–7163; A–1–FRL–6203–2]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; Vehicle Inspection and Maintenance Program; Restructuring OTR Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the New Hampshire State Implementation Plan (SIP), which was submitted to EPA for approval on September 4, 1998 by the Department of Environmental Protection (DES). This submittal was supplemented by a letter dated November 20, 1998 describing additional information about the New Hampshire I/M program, and requesting further flexibility from requirements applicable to the Ozone Transport Region (OTR) in light of the current air quality status of the area. The SIP revision includes New Hampshire Code of Administrative Rules, Part Saf-C 3220 ''Official Motor Vehicle Inspection Requirements'' and Part Saf-C 5800 ''Roadside Diesel Opacity Inspection'' and additional supporting material including authorizing legislation, administrative items, and a description of the program being implemented. This action is being taken under section 110 of the Clean Air Act.

DATES: Written comments must be received on or before January 19, 1999. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection (mail code CAA), U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment, at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA and the Air Resources Division, Department of Environmental Services, 64 North Main Street, Caller Box 2033, Concord, NH 03302–2033.

FOR FURTHER INFORMATION CONTACT: Robert C. Judge, (617) 918–1045.

SUPPLEMENTARY INFORMATION: On September 4, 1998, New Hampshire submitted a revision to its State

Implementation Plan (SIP) for vehicle inspection and maintenance (I/M). This submittal was supplemented by a letter dated November 20, 1998 providing additional information about the New Hampshire I/M program, and requesting further flexibility from requirements applicable to the OTR in light of the current air quality status of the area. The SIP revision includes New Hampshire Code of Administrative Rules, Part Saf-C 3220 ''Official Motor Vehicle Inspection Requirements'' and Part Saf-C 5800 ''Roadside Diesel Opacity Inspection'' and additional supporting material including authorizing legislation, administrative items, and a description of the program being implemented. This action is being taken under Section 110 of the Clean Air Act.

I. Clean Air Act Requirements

Section 184(b)(1)(A) of the Act requires certain areas in the Ozone Transport Region (OTR) to adopt and implement an inspection and maintenance program meeting EPA's enhanced I/M performance standard. EPA's I/M rule was established on November 5, 1992 (57 FR 52950). EPA made significant revisions to the I/M rule on September 18, 1995 (60 FR 48035) and on July 25, 1996 (61 FR 39036). New Hampshire is affected by requirements of the Act related to I/M in certain areas of the State. Specifically, under EPA's I/M rule, enhanced I/M programs would be required in the Portsmouth-Dover-Rochester, New Hampshire ozone nonattainment area, and the New Hampshire portion of the Boston-Worcester-Lawrence ozone nonattainment area. This program was initially submitted to fulfill New Hampshire's obligations to implement I/M pursuant to these requirements. Because of EPA's parallel notice in this **Federal Register** proposing that the 1-hour standard no longer applies in New Hampshire, the State would only be required to submit an I/M program because of its location in the OTR, as explained more fully below.

By this action, EPA proposes to approve New Hampshire's submittal. EPA has reviewed the State submittal against the requirements of the Act and EPA's final I/M rule. The present version of the SIP submission does not meet all of the requirements of EPA's final rule for enhanced I/M. The program does, however, contribute to air quality improvement. Therefore, EPA proposes to approve the program for several reasons. First, New Hampshire has achieved all of its Clean Air Act control plan requirements for overall emission reductions without I/M. That is, the State has submitted an acceptable 15 percent VOC reduction plan, a 9 percent rate of progress plan, an attainment demonstration, and based on 1996–1998 data in AIRS, has achieved attainment of the 1-hour ozone standard without the implementation of a vehicle I/M program. In addition, New Hampshire and all areas nearby, including Maine, Eastern Massachusetts, and Rhode Island appear to have attained the 1 hour ozone standard based on 1996–1998 data, as discussed elsewhere in the **Federal Register**. Additionally, New Hampshire does not contribute to nonattainment of the 1-hour ozone standard in any areas in the OTR (or elsewhere) where that standard continues to be violated based on evidence submitted by the State separately as part of their ozone attainment demonstration. Therefore, EPA has concluded that the State should not need to meet all the requirements for enhanced I/M in the OTR. Section 176A of the Clean Air Act states that the ''Administrator * * * may remove any State * * * from the [OTR] whenever the Administrator has reason to believe that control of emissions in that State * * * pursuant to [the Act requirements for the OTR] will not significantly contribute to attainment of the standard in the region.'' Implicit in EPA's authority to remove a State from the OTR entirely is the authority to eliminate or ''restructure'' specific control requirements for States that remain in the OTR, provided the State demonstrates that the control of emissions from such requirement will not significantly contribute to attainment of the 1-hour ozone standard anywhere in the OTR.

We propose the State has met the test of section 176A and it has requested further flexibility in meeting the Clean Air Act requirements for I/M in the OTR. EPA believes that New Hampshire's continued participation in the OTR is beneficial, and that EPA's approval of this I/M program will improve air quality. Therefore, in light of the above, EPA is proposing to approve this I/M program as strengthening the SIP despite the fact that it does not meet all requirements for enhanced I/M in the OTR. Further, EPA did finalize the NO_X SIP call for 22 States and the District of Columbia by notice dated October 27, 1998 (63 FR 57356). New Hampshire was not included among those States, but EPA intends to conduct modeling to determine whether a SIP revision under section 110(a)(2)(D)(i)(I) should be required from New Hampshire in the future. Currently, EPA does not have evidence that emissions from sources in New Hampshire significantly contribute to 1-hour nonattainment downwind, but if EPA determines that sources in New Hampshire significantly contribute to downwind nonattainment, today's action will be revisited. EPA concludes that an enhanced I/M program is not required in New Hampshire because control of emissions from an I/M program would not contribute significantly to attainment of the 1-hour ozone standard in any area of the OTR. A summary of EPA's analysis of the State's I/M program is provided below.

II. I/M Regulation General SIP Submittal Requirements

On November 5, 1992 (57 FR 52950), EPA published a final regulation establishing the I/M requirements, pursuant to sections 182, 184, and 187 of the Act. EPA made significant revisions to the I/M rule on September 18, 1995 (60 FR 48035) and on July 25, 1996 (61 FR 39036). The I/M regulation was codified at 40 CFR Part 51, Subpart S, and requires States subject to the I/M requirement to submit an I/M SIP revision that includes all necessary legal authority and the items specified in 40 CFR 51.350 through 51.373.

III. State Submittal

On September 4, 1998, and on November 20, 1998, the State of New Hampshire submitted an I/M SIP revision for the entire State. A public hearing for the September 4, 1998 submittal was held on August 24, 1998.

The I/M SIP submittal provides for the implementation of I/M in the entire State of New Hampshire beginning on January 1, 1999. New Hampshire will be implementing an annual, test and repair I/M program which the State has designed to meet the requirements of EPA's performance standard and most other requirements contained in the federal I/M rule. Testing will be overseen by the Department of Safety (DOS) and implemented by individual garages in the existing safety inspection network. Aspects of the New Hampshire I/M program include: anti-tampering testing of 1980 and later light duty vehicles and trucks, enforcement by the existing windshield safety inspection stickers, requirements for testing convenience, quality assurance, data collection, no cost waivers, reporting, test equipment and test procedure specifications, public information and consumer protection, inspector training and certification, penalties against inspectors which perform faulty inspections, and emission recall enforcement. An analysis of the New

Hampshire program, and New Hampshire's demonstration of how the I/M program meets many of the federal I/M SIP requirements, is provided below.

A. Applicability.

The New Hampshire I/M regulations and authorizing legislation specify that the I/M program be implemented statewide.

B. Enhanced I/M Performance Standard

The I/M program was designed, in part, to meet the enhanced I/M performance standard for ozone precursors causing air quality problems in New Hampshire. New Hampshire's program was designed to meet the performance standard for volatile organic compounds (VOC) and nitrogen oxides (NO_X), under 40 CFR 51.351(h) of the I/M rule.

The State submitted a modeling demonstration using the EPA computer model, MOBILE5b, showing that the enhanced performance standard will be met. The State's demonstration shows that it expects to achieve the reductions required by that section of the rule, and will utilize additional benefits from reformulated gasoline to ensure that the total reduction attributed to I/M meets federal I/M requirements.[1]

C. Network Type and Program Evaluation

New Hampshire has chosen to implement a test and repair I/M network program design. The State has assumed conservative assumptions for credit claims relative to its network design in its demonstration that it meets the performance standard. EPA believes that a further demonstration is not necessary. Furthermore, EPA's OTR low enhanced rule does not require that the State perform additional program evaluations beyond the data reporting requirements of the I/M rule in the future.

D. Adequate Tools and Resources

The State's SIP outlines the level of resources dedicated to the I/M program, and includes descriptions of the funding expended and the personnel utilized within DOS to implement the program. The SIP also describes the role of DOS State Police enforcement personnel to be utilized in enforcing the program, and outlines plans for 6 more officers to be hired as part of the State Police Traffic Enforcement Unit, further bolstering the program's enforcement and oversight. DES will also play a role in implementing and analyzing the program. Finally, DOS intends to raise the ''per test fee'' collected for each inspection sticker sold to inspection stations, with the additional funds going to the State Highway fund, which the DOS Commissioner is authorized to spend on the I/M program implementation as needed.

The State has described both current and future plans to ensure that adequate funding is provided to implement the program. While the State has described in significant detail the plans it has to ensure an effective program, the State has not dedicated funding to this effort. While EPA is approving this I/M program as strengthening the SIP, it does not meet EPA enhanced I/M rule requirements.

E. Test Frequency and Convenience

The New Hampshire SIP revision requires annual inspections for all subject motor vehicles that are not older than 1980. The inspections will be conducted in concert with the existing schedule for the annual safety inspection program. Short waiting times and short driving distances are not an issue since this will be part of the State's existing safety inspection network, with longstanding stations scattered throughout the state prepared to test all subject vehicles.

F. Vehicle Coverage

New Hampshire's I/M program covers all 1980 and newer model year gasoline powered light-duty vehicles and light-duty trucks, registered, or required to be registered, within the State. Based on discussions with the State, EPA evaluated the effect of the fact that antique vehicles are exempt and determined that such exemptions would not prevent the program from achieving the performance standard. Legal authority for the vehicle coverage requirement is contained in the New Hampshire I/M rule and the July 1998 authorizing legislation. EPA proposes to approve the submission as a strengthening of the SIP based on the DES's submittal, although it has not met all EPA rule requirements.

G. Test Procedures and Standards

The New Hampshire I/M SIP revision obligates the State to perform anti-tampering checks of the nature described in the plan submission. The State will be requiring these checks for 1980 and later model year vehicles in the area. The following anti-tampering checks will be performed: (1) check for the presence of the catalytic converter; (2) check for air pump disablements; (3) check for PCV system disablements; (4) check for evaporative system disablements; and (5) check for the presence, and proper fit of the gas cap. In addition, the State of New Hampshire will be requiring OBD2 system checks in accordance with EPA rules, beginning in 2001. EPA proposes approval of the anti-tampering testing program, but the State has not developed or submitted OBD2 rules at this time.

H. Test Equipment

In its September 4, 1998 submittal, New Hampshire's I/M SIP revision describes procedures to follow to test vehicles. These procedures are articulated in more detail in the Safety Inspection Manual, and Saf-c 3200. The OBD2 testing program has not been fully described or submitted.

The SIP does not include a ''real time'' data link, but instead ensures that every vehicle which leaves a station leaves with either a passing sticker or failing sticker. All those that are issued failing stickers are later followed up by State Police actually physically inspecting the failed vehicle to ensure that proper repairs were performed. This will prevent vehicle owners from presenting themselves for multiple initial tests, one of the primary reasons for a real time data link. While a real time data link would still be helpful in collecting data, the State intends to collect the necessary data.

I. Quality Control

The New Hampshire I/M SIP narrative and Saf-c 3200 outline the quality control procedures. However, since no test equipment is utilized, it is minimal. Efforts to ensure that documents related to the inspection remain secure are already in place and enforced by the State Police and by DOS as part of the existing safety inspection program.

J. Waivers and Compliance via Diagnostic Inspection

Since New Hampshire is implementing largely an anti-tampering program, it will not be issuing any waivers whatsoever, and this is approvable.

[1] Certain areas in New Hampshire are currently classified as serious ozone nonattainment areas for the 1-hour standard. As such, they are not clearly eligible for the OTR low enhanced I/M standard in § 51.351(h). As discussed above, in a separate **Federal Register**, EPA is proposing that the 1-hour ozone standard no longer applies in New Hampshire based on clean air quality measured from 1996–1998. After this occurs, New Hampshire will only be subject to CAA enhanced I/M requirements by virtue of its inclusion in the OTR. Therefore, EPA proposes to approve this program because the emission reductions that would be achieved by a fully enhanced I/M program are not required in this OTR area.

K. Motorist Compliance Enforcement

The State of New Hampshire has chosen to use a program of windshield sticker based enforcement, based on its current safety inspection program. Any vehicle driven without a valid sticker will ultimately be caught by law enforcement officials, and failure to comply at this point would result in registration being suspended, and could result in a warrant for arrest being issued. The motorist compliance enforcement program will be implemented primarily by the New Hampshire Department of Safety (DOS). The enforcement strategy is described in New Hampshire's September 4, 1998 submittal. The enforcement strategy is designed to ensure a high rate of compliance rate for all vehicles within a short time of the compliance deadline. As described in the September 4, 1998 submittal, this will be accomplished by a increased surveillance by law enforcement officials to identify uninspected and unregistered vehicles. New Hampshire estimates that over 99.5% of the vehicles in the State are registered. Those vehicles operated without a valid safety inspection sticker are fined, and put on notice that their registration will be suspended if they do not comply. Those that still fail to comply may be issued a bench warrant for arrest. In addition to the current enforcement effort, DOS intends to secure additional funding for 6 new enforcement officials dedicated to enforcement of the inspection requirement. Funding of these officers will help ensure an even more effective mechanism for enforcement of the inspection requirement. New Hampshire does have a penalty system whose purpose is to deter noncompliance, but the penalties imposed may not be a sufficient incentive to deter noncompliance if a vehicle owner expects that significant repairs will be required upon inspection.

This program is not viewed as intrusive to the general public, and it is not likely that New Hampshire citizens will take additional steps to avoid this I/M program. EPA is comfortable that, in light of the type of vehicle ''testing'' being proposed, New Hampshire's program will be enforced in a manner commensurate with the type of program implemented, and emission reductions expected. However, this section of the State's program does not meet Clean Air Act requirements to have the program based on vehicle registration. Further, the State did not make a demonstration that this ''pre-existing'' enforcement mechanism would be more effective than registration denial would be, nor has it committed to ensuring the continued effectiveness of sticker based enforcement mechanism. EPA believes that a registration based program would be more effective than sticker based enforcement since by the State's own estimation, there is over a 99.5% compliance rate with the vehicle registration requirement. Nevertheless, for reasons outlined elsewhere in this notice, EPA believes that this program should be approved because it will strengthen the SIP, despite the fact that it does not meet the requirements for enhanced I/M under the Clean Air Act. The legal authority to implement and enforce the program is included in the New Hampshire State law and in DOS rules.

L. Motorist Compliance Enforcement Program Oversight

The New Hampshire I/M SIP revision provides for regular auditing of its enforcement program and adherence to effective management practices, including adjustments to improve the program when necessary. According to the September 4, 1998 submittal from the DES, these program oversight and information management activities include direct enforcement of the inspection requirement by State Police. State Police routinely conduct overt audits of the 2,500 inspection stations in the State, and will reinstate their practice of initiating covert audits. Any vehicle which leaves a inspection station with a reject sticker is followed-up by the State Police physically inspecting each failed vehicle to ensure proper repairs were performed. As stated earlier, the State will be dedicating additional resources to this inspection effort, and will provide additional training to officers stressing the increased importance of these emission checks. The State's efforts for the motorist compliance enforcement program are acceptable for the purposes of strengthening the SIP.

M. Quality Assurance

The September 4, 1998 submittal from New Hampshire includes a description of the quality assurance program. The program will include operation and progress reports and overt and covert audits of emission inspection facilities which are conducted by State Police and Department of Safety officers. These officers are auditing to ensure both the certified inspectors and the stations are following established inspection requirements as codified under the administrative rule Saf-c 3200. Included in these audits will be documentation checks, and a check to determine if stickers and reporting documents are secure. The State intends to further develop audit procedures to implement the OBD2 testing program, and the State envisions that further training will be required.

N. Enforcement Against Contractors, Stations and Inspectors

The New Hampshire I/M SIP revision describes specific sanctions available in its enforcement against stations and inspectors which fail to give proper inspections. An inspector can be given a criminal violation and is disciplined administratively. Upon being given a hearing, the inspector may be given ''6 points'' on their driving record, which is the same penalty as for driving while intoxicated. Further, inspection stations can have their privilege to inspect cars suspended or revoked. While this section of the State's program may be appropriate for the type of program the State is implementing for the purpose of strengthening the SIP, it does not meet all I/M rule requirements.

O. Data Collection, Analysis, and Reporting

The New Hampshire I/M SIP provides for collecting test data to link specific test results to specific vehicles, I/M program registrants, test sites, and inspectors. The SIP lists the specific types of test data and quality control data which will be collected, which include: date of inspection, station identification number, technician name, customer name, vehicle ID and license plate number, vehicle make, model, model year and mileage, pass/fail determination, reason for failure, inspection sticker number, and repairs performed. As outlined above and described in the September 4, 1998 submittal, the data will be used to generate reports concerning test data, quality assurance, quality control, enforcement, as well as determine the emission benefits of the program.

P. Inspector Training and Licensing or Certification

The September 4, 1998 submittal describes the training and the testing that is required of each inspector, prior to being certified to perform these tests. The DOS has committed to perform additional training for inspectors in advance of OBD2 testing being implemented.

Q. Improving Repair Effectiveness

In the September 4, 1998 submittal, the State committed to perform additional training regarding the new anti-tampering checks that have been added to the safety inspection program.

However, the State maintains that mechanics will not need training helping them repair these tampered vehicles because the type of repairs that this anti-tampering will identify are relatively routine. The DES does intend to provide additional OBD2 training in the future.

R. Compliance with Recall Notices

The revised New Hampshire I/M SIP will ensure that vehicles subject to its I/M program, 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. Vehicles that have received recall notices will be followed up by New Hampshire law enforcement in ''the same way (that) vehicles that fail the inspection * * * are followed up * * *'' This means that all vehicles which receive a recall notice will be followed-up by a law enforcement official to ensure that appropriate repairs are performed.

S. On-Road Testing

New Hampshire has stated that it is performing a study to determine the effectiveness of remote sensing for NOx to determine whether or not to add it as part of its vehicle testing program. That study was called for as part of the State's enabling legislation for I/M. While the State hopes to move forward with an on-road testing program in the future, it does not have the authority to do so now.

T. Concluding Statement

A more detailed analysis of the State's submittal is contained in the EPA's technical support document prepared for this action. The TSD is available from the EPA New England Regional office listed above. The criteria used to review the submitted SIP revision are based on the requirements set forth in Section 182 of the CAA and in the federal I/M regulations. The New Hampshire regulations and accompanying materials contained in the SIP represent an acceptable I/M plan for the purpose of strengthening the New Hampshire SIP.

IV. Proposed Action

EPA is proposing to approve the SIP revision submitted by New Hampshire on September 4, 1998 and on November 20, 1998 as a revision to the SIP. The SIP revision proposes approval of the State's I/M program. While the I/M program does not meet all of the requirements of the enhanced I/M rule, EPA has determined, based on the State's showing that additional reductions from a fully enhanced I/M program will not significantly contribute to attainment of the 1-hour ozone standard anywhere in the OTR, that the requirements for an enhanced I/M program are not required in New Hampshire. Therefore, EPA is approving the New Hampshire I/M program as strengthening the SIP.

EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. These comments will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this action.

V. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget, a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on state, local or tribal governments that does not already exist as a matter of State law. EPA is simply approving a state regulation under the Clean Air Act. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

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

This rule is not subject to E.O. 13045 because it is not ''economically significant'' as defined under E.O. 12866, and does not involve an action that addresses environmental or safety risks.

D. Executive Order 13084

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

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

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment

rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of 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. Section 7410(a)(2).

F. Unfunded Mandates

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

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

List of Subjects in 40 CFR Part 52

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

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

Dated: December 9, 1998.

Robert Perciasepe,

Assistant Administrator, OAR.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ME059–7008; A–1–FRL–6203–1]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Vehicle Inspection and Maintenance Program; Restructuring OTR Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Maine State Implementation Plan (SIP), which was submitted to EPA for approval on November 19, 1998 by the Department of Environmental Protection (DEP). This submittal requested further flexibility from requirements applicable to the Ozone Transport Region (OTR) in light of the current air quality status of the area. The SIP revision includes sections of the ''Maine Safety Inspection Manual,'' and additional supporting material including detailed authorizing legislation (L.D. 2223, ''An Act to Reduce Air Pollution from Motor Vehicles and to Meet Requirements of the Federal Clean Air Act''), administrative items, and a description of the program being implemented. This action is being taken under Section 110 of the Clean Air Act.

DATES: Written comments must be received on or before January 19, 1999. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection (mail code CAA), U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment, at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA and the Bureau of Air Quality Control, Department of Environmental Protection, State House—Station No. 17, Augusta, ME 04333.

FOR FURTHER INFORMATION CONTACT: Robert C. Judge, (617) 918–1045.

SUPPLEMENTARY INFORMATION: On November 19, 1998, Maine submitted a revision to its State Implementation Plan (SIP) for vehicle inspection and maintenance (I/M). This submittal requested further flexibility from requirements applicable to the OTR in light of the current air quality status of the area. The SIP revision includes Sections of the ''Maine Safety Inspection Manual,'' and additional supporting material including detailed authorizing legislation (L.D. 2223, ''An Act to Reduce Air Pollution from Motor Vehicles and to Meet Requirements of the Federal Clean Air Act''), administrative items, and a description of the program being implemented. This action is being taken under section 110 of the Clean Air Act.

I. Clean Air Act Requirements

Section 184(b)(1)(A) of the Act requires certain areas in the Ozone Transport Region (OTR) to adopt and implement an inspection and maintenance program meeting EPA's enhanced I/M performance standard. EPA's I/M rule was established on November 5, 1992 (57 FR 52950). EPA made significant revisions to the I/M rule on September 18, 1995 (60 FR 48035) and on July 25, 1996 (61 FR 39036). Maine is affected by requirements of the Act related to I/M in certain areas of the State. Specifically, under EPA's I/M rule, enhanced I/M programs would be required in the Portland, Maine ozone nonattainment area. This program was initially submitted to fulfill Maine's obligations to implement I/M pursuant to these requirements. The State is only required to submit an I/M program because of its location in the OTR.

By this action, EPA proposes to approve Maine's submittal. EPA has reviewed the State submittal against the requirements of the Act and EPA's final I/M rule. The present version of the SIP submission does not meet all of the requirements of EPA's final rule for enhanced I/M in the OTR. The program does, however, contribute to air quality improvement. Therefore, EPA proposes to approve the program for several reasons. First, Maine has achieved all of its Clean Air Act control plan requirements for overall emission reductions without I/M. That is, the State has submitted an acceptable 15