

Washington, DC 20240; by telephone at (202) 208-5831; or by telefax at (202) 219-1065.

**SUPPLEMENTARY INFORMATION:** On Monday, April 12, 1999, the Bureau of Indian Affairs published a proposed rule, 64 FR 17574-17588, concerning the Acquisition of title to land in trust. The deadline for receipt of comments was July 12, 1999, which was extended to October 12, 1999 and extended again to November 12, 1999. The comment period is extended for an additional thirty days to allow additional time for receipt of e-mail comments on the proposed rule. Intranet comments must be received on or before December 29, 1999.

Dated: November 23, 1999.

**Kevin Gover,**

*Assistant Secretary—Indian Affairs.*

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**BILLING CODE 4310-02-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[MA72-7206C; A-1-FRL-6481-1]

#### Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Enhanced Motor Vehicle Inspection and Maintenance Program and Rate of Progress Emission Reduction Plans

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

**ACTION:** Supplementary proposed rule.

**SUMMARY:** The EPA is providing additional information and reopening the comment period for two notices of proposed rulemaking to approve State Implementation Plan (SIP) revisions submitted by the Commonwealth of Massachusetts. These documents were published in the **Federal Register** on September 27, 1999. The first is a rulemaking action proposing approval of the Massachusetts motor vehicle inspection and maintenance (I/M) program (64 FR 51937), and the second is a rulemaking action proposing approval of the Massachusetts rate-of-progress plans for reducing the emissions of ozone precursors in the Springfield ozone nonattainment area (64 FR 51943). This document reopens the comment period on both of these rules and provides additional information on the I/M test to be used in Massachusetts and the timing of 15% and 9% rate-of-progress plan reductions. This action is being taken under the Clean Air Act.

**DATES:** Written comments must be received on or before December 30, 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 Massachusetts' 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 Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

**FOR FURTHER INFORMATION CONTACT:**

Peter Hagerty, (617) 918-1049.

**SUPPLEMENTARY INFORMATION:** On March 27, 1997, the Commonwealth of Massachusetts submitted an inspection and maintenance plan under the provisions on the National Highway Systems Designation Act. On July 14, 1997, EPA published in the **Federal Register** (62 FR 37506) an Interim Final Rule conditionally approving the Commonwealth's I/M SIP. The notice conditioned approval on start-up of the program by November 15, 1997, which was based on a commitment made by the Commonwealth as part of the SIP submittal. That **Federal Register** notice also listed other elements of the I/M program for which the Commonwealth was required to submit additional information. By means of a November 14, 1997, letter, EPA notified Massachusetts that EPA was converting the conditional approval of the enhanced I/M SIP revision to a disapproval on November 15, 1997 due to the fact that the program was not starting on November 15, 1997. The letter triggered the 18-month time clock for the mandatory application of sanctions under section 179(a) of the CAA. Therefore, the Act's offset sanction applied beginning May 15, 1999 because Massachusetts still had no enhanced I/M program started or approved as part of its SIP.

#### I. Enhanced I/M SIP

In order to remedy the failure to start its enhanced I/M program in November 1997, Massachusetts submitted a revision to its SIP on May 14, 1999 for an enhanced I/M program to begin on October 1, 1999. The Commonwealth in fact commenced operation of the

program on October 1, 1999. Although the Commonwealth commenced operation of the I/M program on October 1, 1999, there were routine start-up difficulties which required that DEP temper full enforcement of the program for two and one half months. During October, November and early December 1999, the Commonwealth is allowing drivers to obtain temporary stickers approving cars to operate for a year if a station in the program did not have fully operational test equipment ready when a driver came in for a test. In a November 15, 1999 letter to EPA, the Commonwealth has indicated that such temporary stickers will not be available starting December 15, 1999, and any car that must get tested will be required to find a station with operable testing equipment. This step ensures that the I/M program will meet EPA's definition of start-up and that the Commonwealth is fully enforcing an approvable I/M program as of December 15, 1999.

In the September 27, 1999 proposed approval of the I/M program (64 FR 51937), there were other elements of the I/M SIP which needed to be addressed prior to final action by EPA. These elements will be addressed by the contractor the Commonwealth has retained to implement the program and are listed as work elements of the contractor's scope of services. Since the focus of the contractor and the Commonwealth has been program start-up, these elements have not been addressed by the contractor to date. In response to EPA's September 27, 1999 proposed approval which describes the program elements Massachusetts must supplement, the Commonwealth submitted in a letter dated November 3, 1999 a schedule for submitting these elements from January to March 2000. As stated before, a November 15, 1999 letter informed EPA that the Commonwealth has taken steps that ensure the I/M program will be fully enforced starting December 15, 1999. Additional information submitted in support of the Commonwealth's I/M program is included in the contract with Keating Technologies signed January 28, 1999, Department of Environmental Protection (DEP) Regulations, chapter 310 CMR 60.02, and Registry of Motor Vehicles Regulations, chapter 540 CMR 4.00-4.09, and administrative items, including a description of the program being implemented and DEP's response to comments document dated May 14, 1999.

Starting on October 1, 1999, the Commonwealth began implementing a 31 second transient test utilizing the BAR 31 trace and NYTEST equipment. In the September 27, 1999 proposed

rulemaking, EPA inaccurately stated that the Commonwealth will use an IM240 test with NYTEST equipment and inaccurately implied that the test the Commonwealth was conducting should be allowed IM240 emission reduction credit. There is no data available at this time to assign the exact emission reduction credit for the combination of test type and equipment that the Commonwealth is implementing. Nevertheless, even if one makes extremely conservative assumptions about the efficacy of the Massachusetts test, EPA's mobile modeling shows that the I/M program demonstrates compliance with EPA's performance standard for a low enhanced program. EPA's analysis of these conservative assumptions is available in a technical support document in the docket for this action.

## II. Massachusetts 15% and 9% Plans for the Springfield Nonattainment Area

On April 1, 1999, June 25, 1999, and September 9, 1999, the Commonwealth of Massachusetts submitted revisions to its 15% and 9% rate-of-progress plans for the Springfield serious ozone nonattainment area. These revisions contain a new start-up date for the Commonwealth's automobile I/M program (i.e., October 1, 1999), and revised emission reduction estimates for this program. In the September 27, 1999 **Federal Register**, EPA proposed approval of the rate-of-progress (ROP) emission reduction plans as revisions to the Commonwealth's SIP (64 FR 51943). As stated in the September 27, 1999 proposed rulemaking, the Commonwealth's ROP plans contain a demonstration that the amount of emission reductions required in its 15% and 9% plans pursuant to sections 182 (b)(1) and (c)(2) of the Federal Clean Air Act can be achieved despite lessening the emission reductions attributable to the I/M program because of its delayed start-up date. The Commonwealth achieved the required reductions in ozone precursors by November 15, 1999, primarily by changing the way that emission increases due to growth were determined, based on more accurate date of actual growth rates rather than earlier inflated projections. This demonstration was the basis of EPA's September 27, 1999 proposed approval.

As discussed above, however, emission tests under the enhanced I/M program were phased in over a two and one half month period in October, November and December, 1999. Also, EPA is using more conservative assumptions of the amount of credit derived from the combination of I/M

test type and equipment that the Commonwealth is implementing. Therefore, it is no longer certain that the Commonwealth will achieve the emission reductions required of 15% and 9% plans by the November 15, 1999 evaluation date originally assumed. What is more certain is that the required reductions will be achieved sometime in early 2000 as more and more of the vehicles registered in Massachusetts are subject to more stringent emission testing under the Commonwealth's enhanced I/M program which started on October 1, 1999. Based on the volume of vehicles subject to emission testing each month, EPA believes the estimated reductions from I/M needed for the 15% and 9% plans will definitely be achieved and surpassed by the end of April 2000, prior to the next ozone season. EPA believes that these reductions are being achieved as expeditiously as practicable and that no other reasonable emissions control strategy would allow the Commonwealth or EPA to achieve these reductions sooner. In the future, Massachusetts will conduct necessary comparison testing to determine the appropriate emission reduction for SIP credit using the combination of the BAR 31 transient trace with NYTEST equipment. This will be important for purposes of approving the ozone attainment demonstration for the one-hour ozone standard submitted by the Commonwealth on July 27, 1998. In that submittal, the Commonwealth is relying on more substantial reductions from the enhanced I/M program it is implementing to show attainment with the one-hour ozone standard. When EPA acts on the attainment demonstration, we will evaluate whether Massachusetts has adequately demonstrated that the emission reduction credit it is claiming for its I/M program in that attainment demonstration is warranted for the combination of test type and equipment that the Commonwealth is implementing.

For a more detailed discussion of EPA's evaluation of when the emission reductions required of 15% and 9% plans will be achieved, the reader should refer to the Technical Support Document (TSD) entitled, "Revised Technical Support Document for the Massachusetts 15% and 9% plans" dated November 10, 1999. Copies of this TSD are available at the previously mentioned addresses.

## III. EPA's Current Rulemaking Actions

On September 27, 1999, EPA proposed approval of the Massachusetts I/M SIP revision to meet the

requirements of the federal I/M rule. In addition, on the same day EPA proposed approval of the Massachusetts rate-of-progress emission reduction plans which includes the 15% plan. These actions are tied together because in order for Massachusetts to meet the low enhanced performance standard for I/M, the 15% plan must be approvable. Elsewhere in today's **Federal Register**, EPA is publishing an Interim Final Determination that Massachusetts has taken the actions necessary to fully enforce an approvable I/M SIP as of December 15, 1999. This action will stay the imposition of sanctions starting December 15, 1999, until the SIP is either approved or partially disapproved. In the proposed rule for the Massachusetts I/M program, EPA proposed in the alternative to issue a limited approval/limited disapproval of the program if Massachusetts fails to start the program in a timely manner or fails to submit any of the program elements that the Contractor will provide under its scope of work. The limited disapproval would effectively withdraw the proposed approval. Withdrawal of the proposed approval would result in growth sanctions and highway sanctions going into effect immediately.

## IV. Proposed Action

EPA is reproposing approval of both the Massachusetts inspection and maintenance program statewide and the rate of progress plans for the Springfield nonattainment area which were originally proposed for approval on September 27, 1999 (64 FR 51937, 64 FR 51943). 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.

The Agency has reviewed this request for revision of the Federally-approved State implementation plan for conformance with the provisions of the 1990 amendments enacted on November 15, 1990.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in

relation to relevant statutory and regulatory requirements.

## 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 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order 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 does not involve decisions intended to mitigate environmental health 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 affects or 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

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. 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 approval action proposed does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate

matter, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: November 15, 1999.

**John P. DeVillars,**

*Regional Administrator, Region I.*

[FR Doc. 99-30781 Filed 11-29-99; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 93

[FRL-6481-9]

RIN 2060-A176

### Transportation Conformity Amendment: Deletion of Grace Period

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to delete a provision of the transportation conformity rule that was overturned by the U.S. Court of Appeals for the District of Columbia Circuit (*Sierra Club v. EPA, et al.*, 129 F.3d 137 (D.C. Cir. 1997)). In 1995, we amended the conformity rule so that new nonattainment areas would have a one-year grace period before transportation conformity began applying. In 1997, the court overturned this grace period. This action formally deletes the provision from the transportation conformity rule in compliance with the court ruling.

In addition, we discuss in this document some issues that were raised in a Petition for Reconsideration of the

original transportation conformity rule (finalized November 24, 1993). We are not proposing any changes to the conformity rule in response to these issues.

We are required by a court settlement to finalize rulemaking on these issues by December 31, 1999. We agreed to this settlement in 1998 in response to litigation by the Environmental Defense Fund.

Transportation conformity is a Clean Air Act requirement for transportation plans, programs, and projects to conform to state air quality plans. Conformity to a state air quality plan means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national air quality standards.

Our transportation conformity rule establishes the criteria and procedures for determining whether or not transportation activities conform to the state air quality plan.

**DATES:** Written comments on this proposal must be submitted on or before December 30, 1999.

**ADDRESSES:** Interested parties may submit written comments in response to this rule (in duplicate, if possible) to: Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Attention: Docket No. A-99-35, 401 M Street, SW., Washington, DC 20460. (Those desiring notification of receipt of comments must include a self-addressed, stamped postcard).

Materials relevant to this rulemaking are in Public Docket A-99-35 at the above EPA address in room M-1500

Waterside Mall (ground floor). You may look at them from 8:00 a.m. to 5:30 p.m. on weekdays, except holidays. You may have to pay a reasonable fee for copying docket material.

The notice of proposed rulemaking is also available electronically from our web site. See **SUPPLEMENTARY INFORMATION** for information on accessing and downloading files.

#### FOR FURTHER INFORMATION CONTACT:

Laura Voss, Transportation and Market Incentives Group, Regional and State Programs Division, U.S. Environmental Protection Agency, 2000 Traverwood Road, Ann Arbor, MI 48105, voss.laura@epa.gov. (734) 214-4858.

**SUPPLEMENTARY INFORMATION:** You can access and download files on your first call using a personal computer according to the following information:

#### Internet Web Sites

<http://www.epa.gov/docs/fedrgstr/EPA-AIR/> (either select desired date or use Search feature)

OR

<http://www.epa.gov/OMSWWW/> (look in What's New or under the Conformity file area)

A version should be available today on any of the above-listed sites. Please note that you may see format changes due to differences in software.

#### Regulated Entities

Entities potentially regulated by the conformity rule are those which adopt, approve, or fund transportation plans, programs, or projects under title 23 U.S.C. or title 49 U.S.C. Regulated categories and entities include:

Category	Examples of regulated entities
Local government .....	Local transportation and air quality agencies.
State government .....	State transportation and air quality agencies.
Federal government .....	Department of Transportation (Federal Highway Administration and Federal Transit Administration).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this rule. This table lists the types of entities that EPA is now aware could potentially be regulated by the conformity rule. Other types of entities not listed in the table could also be regulated. To determine whether your organization is regulated by this action, you should carefully examine the applicability requirements in § 93.102 of the conformity rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

The contents of this preamble are listed in the following outline:

- I. Background
- II. How Soon Does Conformity Apply to a New Nonattainment Area?
- III. Issues From Petition for Reconsideration
  - A. Fiscal Constraint
  - B. Horizon Years for Hot-Spot Analyses
  - C. Assumptions Regarding Regional Distribution of Emissions
  - D. Credit for Delayed TCMs
- IV. How Would this Action Affect Conformity SIPs?
- V. Administrative Requirements

#### I. Background

In 1998, we entered into a settlement with the Environmental Defense Fund (EDF) in response to litigation. We

agreed to finalize rulemaking by December 31, 1999, to repeal the grace period in 40 CFR 93.102(d) and respond to four issues identified in EDF's May 1994 Petition for Reconsideration of the original conformity rule.

Section 93.102(d) and the four issues from the petition for reconsideration are described below.

The original conformity rule was finalized on November 24, 1993 (58 FR 62188). We subsequently amended the rule on August 7, 1995 (60 FR 40098), November 14, 1995 (60 FR 57179), and August 15, 1997 (62 FR 43780).