



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2009-0436; FRL-9970-66-Region 1]

Air Plan Approval; Rhode Island; Enhanced Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving State Implementation Plan (SIP) revisions submitted by the State of Rhode Island. These revisions include regulations to update the enhanced motor vehicle inspection and maintenance (I/M) program in Rhode Island. The revised program includes a test and repair network consisting of on-board diagnostic (OBD2) testing for model year 1996 and newer vehicles and tailpipe exhaust test, using a dynamometer, for model year 1995 and older vehicles. The intended effect of this action is to approve the revised program into the Rhode Island SIP. This action is being taken in accordance with the Clean Air Act (CAA).

DATES: This direct final rule will be effective **[insert date 60 days after date of publication in the Federal Register]**, unless EPA receives adverse comments by **[insert date 30 days after 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 No. EPA-R01-OAR-2009-0436 at www.regulations.gov, or via email to garcia.ariel@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit www.epa.gov/dockets/commenting-epa-dockets.

FOR FURTHER INFORMATION CONTACT: Ariel Garcia, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA Region 1 Regional Office, 5 Post Office Square, Suite 100 (mail code: OEP05-2), Boston, MA 02109-3912, telephone number: (617) 918-1660, email: garcia.ariel@epa.gov.

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

Table of Contents

- I. Background and Purpose
- II. What are the Clean Air Act requirements for I/M programs?
- III. What are the OBD2 requirements and how does Rhode Island's program address these requirements?
- IV. What are all the other I/M regulatory requirements and how does Rhode Island's I/M program satisfy these requirements?
 - A. Applicability
 - B. Enhanced I/M Performance Standard
 - C. Network Type and Program Evaluation
 - D. Adequate Tools and Resources
 - E. Test Frequency and Convenience
 - F. Vehicle Coverage
 - G. Test Procedure and Standards
 - H. Test Equipment
 - I. Quality Control
 - J. Waivers and Compliance via Diagnostic Inspection
 - K. Motorist Compliance Enforcement
 - L. Motorist Compliance Enforcement Program Oversight
 - M. Quality Assurance
 - N. Enforcement Against Contractors, Stations, and Inspectors
 - O. Data Collection, Analysis, and Reporting
 - P. Inspector Training and Licensing or Certification
 - Q. Public Information and Consumer Protection

- R. Improving Repair Effectiveness
- S. Compliance with Recall Notices
- T. On-Road Testing
- U. Concluding Statement
- V. Final Action
- VI. Incorporation by Reference
- VII. Statutory and Executive Order Reviews

I. Background and Purpose

On January 28, 2009, the State of Rhode Island submitted a formal revision to its State Implementation Plan (SIP). This SIP revision included regulations to update the enhanced motor vehicle inspection and maintenance (I/M) program in Rhode Island. Rhode Island submitted a supplement to this 2009 SIP revision on February 17, 2017; this supplement included the emissions modeling and I/M SIP narrative required by EPA's I/M regulations. EPA is approving Rhode Island's revised I/M program because it is consistent with the CAA's I/M requirements and EPA's I/M regulations, and will strengthen the SIP. Specifically, the SIP revisions include amendments to the Rhode Island Department of Environmental Management's (DEM's) Air Pollution Control Regulation (APCR) No. 34, "Rhode Island Motor Vehicle Inspection/Maintenance Program," and the Rhode Island Division of Motor Vehicles' (DMV's) regulation "Rhode Island Motor Vehicle Safety and Emissions Control Regulation No. 1," and other administrative and technical documentation required in a SIP submittal to address the requirements for the implementation of the motor vehicle I/M program in Rhode Island. 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.

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 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. Section 184 of the CAA also created an “Ozone Transport Region” (OTR), and includes I/M requirements for that region. The OTR geographically extends from northern Virginia to Maine, including the entire state of Rhode Island. 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 81.340 for Rhode Island), and by virtue of its inclusion in the OTR, Rhode Island has implemented an enhanced vehicle emissions testing program throughout the entire State. Rhode Island began implementing an I/M program in January 2000. The Rhode Island I/M program was first approved into the SIP on February 9, 2001(66 FR 9661), and Rhode Island’s SIP submittal included all of the elements required of an I/M program as specified in 40 CFR Part 51, Subpart S. Since that time, the program has been modified in a number of ways.

Most notably it has been changed to a test and repair network, and now also includes on-board diagnostic (OBD2) testing of model year 1996 and newer vehicles.

III. What are the OBD2 Requirements and how does Rhode Island's program address these requirements?

On April 5, 2001 (66 FR 18156), EPA published in the **Federal Register** "Amendments to Vehicle Inspection and Maintenance Program Requirements Incorporating the On-Board Diagnostics Check." EPA's revised I/M rule requires that electronic checks of the On-Board Diagnostics (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 the 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 Rhode Island. The revised I/M program submitted by Rhode Island on January 28, 2009, and supplemented on February 17, 2017, includes OBD2 testing for model year 1996 and newer vehicles, and continues to require that 1995 and older vehicles (up to 25 years old) continue to receive a tailpipe emissions test using a dynamometer to meet the previously SIP-approved exhaust emissions standards,¹ or a two-speed idle test for vehicles with drive configurations that prevents a dynamometer test. Rhode Island’s motor vehicle I/M program conducts OBD2 tests on gasoline and diesel powered light-duty vehicles;

¹ Rhode Island’s previous I/M SIP submittal was approved on February 9, 2001 (66 FR 9661). Although Rhode Island only requires compliance with the emissions testing program of vehicles up to 25 model years old, Rhode Island does conduct an advisory-only emissions test on all vehicles regardless of age, in conjunction with the safety inspection conducted on those older vehicles.

light-duty vehicles being those vehicles with a gross vehicle weight rating (GVWR) of up to and including 8,500 pounds.

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 examination: 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. Rhode Island has incorporated these OBD2 program elements into its program.

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 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 vehicles 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. Rhode Island's testing program is consistent with the EPA recommended readiness failure criteria. Rhode Island DEM's APCR No. 34 requires that the program meet the OBD2 testing requirements and procedures set forth in 40 CFR 85.2222.²

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 vehicles and owner identification information; and (3) automated generation of test reports. Rhode Island has incorporated these OBD2 program elements into the State's I/M program.

IV. What are all the other I/M regulatory requirements and how does Rhode Island's I/M program satisfy these requirements?

A. Applicability

As previously stated above, 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. Rhode Island has had varying nonattainment designations and classifications for the ozone NAAQS.³ Nonetheless, Section 184 of the CAA requires areas in the OTR (such as Rhode Island), to implement enhanced vehicle I/M programs.

The SIP describes in detail the areas subject to the enhanced I/M program and, consistent with 40 CFR 51.372, includes the legal authority necessary to establish program

² Rhode Island's Air Pollution Control Regulation No. 34, at subsection 34.5, directly cites, and therefore incorporates by reference, the federal regulation at 40 CFR 85.2222. For purposes of the federal SIP, EPA interprets Rhode Island's regulation as incorporating by reference the version of 40 CFR 85.2222 as amended on April 5, 2001 (66 FR 18156), rather than prospectively incorporating any future changes to 40 CFR 85.2222.

³ See Nonattainment Areas for Criteria Pollutants at www.epa.gov/green-book.

boundaries. The Rhode Island I/M regulations (RI DEM's APCR No. 34 "Rhode Island Motor Vehicle Inspection/Maintenance Program," and RI DMV's "Rhode Island Motor Vehicle Safety and Emissions Control Regulation No. 1") and authorizing legislation (Rhode Island General Laws at Title 31, Chapter 31-47.1) ensure that the enhanced I/M program be implemented statewide.

B. Enhanced I/M Performance Standard

Today's rulemaking discusses the I/M program designed, in part, to meet the enhanced I/M performance standard for ozone precursors in Rhode Island. EPA's performance standard establishes an emission reduction target that must be met by an I/M program in order for the SIP to be approvable. The program, as documented in the 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 submittal illustrates that the revised Rhode Island I/M program, contained in the January 28, 2009 and February 17, 2017 SIP revisions, is more stringent than the federally-required performance standard, and more stringent than Rhode Island's preceding I/M program approved into the SIP on February 9, 2001 (66 FR 9661). Thus, these Rhode Island SIP revisions satisfy the requirements of the CAA Section 110(l) because the SIP revision will not interfere with any applicable requirement concerning attainment and reasonable further progress, or with any other applicable requirement of the CAA.

Included in Rhode Island's February 17, 2017 submittal is the appropriate vehicle emission modeling demonstration, using EPA's MOtor Vehicle Emissions Simulator Model (MOVES), considering the required performance standards and the actual Rhode Island program

as it is currently being implemented statewide, as well as a comparison to the preceding I/M program approved on February 9, 2001 (66 FR 9661), that the State is no longer implementing. The modeling runs considered evaluations with 2015, 2016, and 2017 compliance dates. Rhode Island has demonstrated that reductions from its updated program are greater than those achieved by the preceding I/M program, and the EPA performance standard. The MOVES modeling performed reflects the fact that Rhode Island tests all gasoline-powered vehicles that are less than 25 years old. Model year 1996 and newer vehicles are tested with OBD2, and pre-1996 vehicles (i.e., they are not equipped with OBD2 technology) are tested using an exhaust dynamometer test. Vehicles are tested every other year, and vehicles up to 2 years old that have driven less than 24,000 miles are not tested. Vehicle testing requirements are included in APCR No. 34, and details of meeting the performance standard are included in section 2 of the SIP narrative.

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.

Rhode Island has maintained its decentralized test and repair I/M network program design utilizing contractors to manage and oversee the inspection portion of the program. Rhode Island's decentralized infrastructure meets all the federal I/M requirements. Rhode Island has implemented a continuous ongoing evaluation program consistent with the federal I/M rule. Rhode Island commits 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. In addition, the ongoing evaluation program consists of conducting on-road testing, as required by 40 CFR 51.371, by using remote sensing to test the emissions performance of the required amount of vehicles in the State's motor vehicle fleet. The remote sensing data collected by Rhode Island continually supports that the Rhode Island I/M program is efficiently reducing emissions. Rhode Island has sufficient legal authority to implement this contractor managed program in concert with local inspection stations and to 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 the 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.

Rhode Island operates a self-funded I/M program, in which, revenue from the inspection fee charged to motorists is used for all expenses associated with the administration, implementation, and enforcement of the enhanced I/M program. The Rhode Island DEM provides additional support to the I/M program by providing a full-time "Air Quality Specialist"

that devotes 100% of staff time to serving as a DEM to the Rhode Island DMV's operation of the Rhode Island I/M program. Rhode Island has adequate staff dedicated to overt and covert auditing, data analysis, program administration, enforcement, and other necessary program functions. Section 4 of the State's SIP narrative, and the appendices to the SIP narrative, describe the budget, staffing support, and equipment needed to implement the program.

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 Rhode Island SIP revision requires biennial inspections for all subject motor vehicles that are at least two years old, or newer vehicles that have driven at least 24,000 miles. The inspections are conducted based on when the vehicle is initially purchased. To provide motorist's convenience, Rhode Island has set geographic criteria ensuring that at least one testing facility is located in each city or town in the State. Section 5 of the SIP narrative and the contract with the I/M program vendor includes additional information for ensuring convenient testing wait times and convenient testing locations. The authority for enforcing the testing frequency is contained in the Rhode Island DMV's "Rhode Island Motor Vehicle Safety and

Emissions Control Regulation No. 1,” covering the emissions testing of light-duty vehicles in Rhode Island.

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 Rhode Island I/M program covers all light-duty vehicles and light-duty trucks, rated up to and including 8,500 pounds GVWR, operating on all fuel types, as required by the federal I/M rule for enhanced programs. Rhode Island requires biennial testing of vehicles, which are less than 25 years old, except any new motor vehicle until twenty-four months after its date of initial purchase or 24,000 miles, whichever occurs first. In addition, Rhode Island’s enhanced I/M program covers any motor vehicle fleets, including all federal, state, and municipal fleets; as well as any motor vehicle operating on the highways of Rhode Island with a dealer registration, loan agreement, or being operated as a demonstration vehicle.

Rhode Island exempts special classes of vehicles from the emissions testing program being approved in today’s Direct Final Rulemaking, including: vehicles older than 25 model

years old;⁴ new vehicles until 24 months after its date of initial purchase or until such new vehicle has been driven for 24,000 miles, whichever occurs first; tactical military vehicles; electric vehicles; competition and off-road vehicles used solely for off-highway activities; motorized wheelchairs; motorcycles; farm tractors; and special mobile equipment. Rhode Island's I/M program also provides a temporary exemption from the emissions testing requirement for vehicles that may be temporarily out of State, but the operator of such a vehicle must obtain an emissions inspection within five days of returning to the State. In addition, vehicles owned or controlled by a dealer are granted a temporary exemption for the first five days after the vehicle is owned or controlled by the dealer. Based on information provided in the SIP submittal, Rhode Island has shown that such exemptions will not prevent the program from achieving the EPA-required performance standard. Additional detail supporting this conclusion was included in section 6 of the SIP narrative. Legal authority for the vehicle coverage requirements are contained in the Rhode Island I/M regulations (RI DEM's APCR No. 34 "Rhode Island Motor Vehicle Inspection/Maintenance Program," and RI DMV's "Rhode Island Motor Vehicle Safety and Emissions Control Regulation No. 1"), and the authorizing legislation (Rhode Island General Laws at Title 31, Chapter 31-47.1).

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. Rhode Island's enhanced I/M program requires that all vehicles, equipped with OBD2 technology, be subjected to an OBD2 inspection. Rhode Island gasoline-powered

⁴ Section 1.3.1 of the Rhode Island DMV's "Rhode Island Motor Vehicle Safety and Emissions Control Regulation No. 1" states that Rhode Island exempts "any model year vehicle 25 years old or older from the requirement to obtain repairs in order to comply, but such vehicles must undergo an emissions inspection."

vehicles are tested using one of three methods: (1) OBD2 testing, (2) a dynamometer test to test tailpipe exhaust emissions, or (3) a two-speed idle test. Rhode Island diesel-powered vehicles are tested using one of two methods: (1) an OBD2 test on OBD2-equipped diesel vehicles, or (2) a dynamometer opacity test. The Rhode Island I/M SIP revision and associated regulations obligate the State to perform OBD2 testing on all model year 1996 and newer vehicles, in accordance with EPA procedures. All model year 1995 and older covered vehicles, excluding full time four-wheel-drive vehicles, continue to receive a tailpipe emissions test using a dynamometer to meet the previously SIP-approved exhaust emissions standards for gasoline-powered vehicles or opacity emission standards for diesel-powered vehicles. A gasoline-powered vehicle which cannot be tested using either OBD2 or the dynamometer test, will be given a two-speed idle test.⁵ Rhode Island'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 in Rhode Island's I/M regulations and in section 7 of the 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.

⁵ Gasoline and diesel powered vehicles with known issues with readiness monitors, or lack of electronic communication, cannot be tested using OBD2. Full time four-wheel-drive vehicles cannot be tested on a dynamometer. Diesel-powered vehicles that cannot be tested on a dynamometer will not be subjected to an emissions test.

Rhode Island's SIP submittal provides written equipment specifications as contained in EPA's Final Implementation Guidance and the appendices of EPA's I/M rule. The Rhode Island SIP submission and its appendices address the requirements in 40 CFR 51.358 and include descriptions of performance features and functional characteristics of the computerized test systems. The SIP submittal references 40 CFR Part 51 and Part 85, and are consistent with the procedures outlined in 40 CFR 85.2222 and EPA's June 2001 Final Implementation Guidance. The necessary test equipment, required features, and acceptance testing criteria are discussed in section 8 of the Rhode Island 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.

The Rhode Island I/M SIP narrative and 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 the SIP narrative, the Rhode Island SIP complies 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). Rhode Island DMV's "Rhode Island Motor Vehicle Safety and Emissions Control Regulation No. 1" at section 1.9.1(d) allows for waivers to be issued which meet minimum repair expenditures in accordance with the federal I/M rule. Section 10 of Rhode Island's SIP narrative describes that expenditure waivers are allowed to be issued if a motorist makes an expenditure of at least \$700 on actual, non-tampering related repairs on a vehicle that still does not pass the required emissions test. Rhode Island intends to annually update the cost to receive a waiver from the emissions testing program in accordance with federal requirements. In addition, Rhode Island allows for an economic hardship time extension as allowed under EPA's rule. Rhode Island has demonstrated that it can

meet the enhanced I/M performance standard testing with the I/M program as it is described in the SIP submittal.

The Rhode Island I/M program commits to a waiver rate of one percent per inspection cycle, that is, a maximum of 1% of initially failed vehicles are allowed to receive a waiver in a given two-year period. The 1% waiver rate is used in the performance standard modeling demonstration discussed in Section IV.B., “*Enhanced I/M Performance Standard*,” of today’s rulemaking. The 1% waiver rate is incorporated into the performance standard modeling demonstration in accordance with EPA’s modeling guidance, “Performance Standard Modeling for New and Existing Vehicle Inspection and Maintenance (I/M) Programs Using the MOVES Mobile Source Emissions Model” (EPA-420-B-14-006, January 2014). Rhode Island’s SIP narrative describes the types of waivers that will be allowed: minimum expenditure waivers; economic hardship time extensions; and/or a diagnostic waiver.⁶ 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 Rhode Island and the State’s I/M program contractor and are detailed in section 10 of the SIP narrative and in the State’s I/M regulations.

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

⁶ A diagnostic waiver applies to vehicle owners of a vehicle that has failed an emissions inspection, and subsequent re-inspection, and after undergoing a complete, documented physical and functional diagnosis and inspection conducted by the Rhode Island Division of Motor Vehicles, it is determined that the vehicle has all emission control devices in place and operating properly and no additional repairs are reasonably possible or because a vehicle is unable to get repaired because the necessary emission parts are no longer available or no longer manufactured.

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.

The State of Rhode Island has chosen to use a program of denying registration to anyone who fails to meet emissions testing requirements. The motorist compliance enforcement program will be implemented primarily by the Rhode Island DMV. 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 the Rhode Island SIP submittal. The enforcement strategy is designed to ensure a high rate of compliance. Any motorist who operates their vehicle on the highways in Rhode Island that is not in compliance with the I/M program will face fines and suspension of their registration. Those not receiving the emissions test as scheduled will be subject to fines and late penalties, and will also be denied registration when their registration expires. Rhode Island presently has over a 96% compliance rate with the emissions inspection program. The legal authority to implement and enforce the program is included in

Rhode Island's I/M regulations and the State's General Laws. Additional detail of the motorist compliance enforcement program is included in section 11 of the 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 Rhode Island 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. These program oversight and information management activities are described in the SIP narrative, and include a description of the emissions testing database and how this system interfaces with registration records. If a vehicle is out of compliance with the emissions testing requirement, registration is denied. This is done through computer matching and is directly available to law enforcement. The SIP describes the procedures to be followed in identifying noncomplying vehicles, along with appropriate follow-up and program documentation audits in section 12 of the SIP narrative.

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 Rhode Island SIP submittal includes a description of the quality assurance program. The quality assurance program will include overt and covert performance audits, digital audits on station and inspector performance, and equipment audits. Rhode Island covers

all of its program's inspection stations with the implemented quality assurance plan and conducts 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 the SIP submittal at section 13 of the SIP narrative and in the inspection program service agreement contract.

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, the State Attorney General shall furnish an official opinion within the SIP explaining the constitutional impediment as well as relevant case law. The 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 program 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 Rhode Island I/M SIP revision includes specific penalties in its enforcement against contractors, stations and inspectors in accordance with the federal I/M rule. Based on the Rhode Island SIP submittal, dated January 28, 2009 and supplemented on February 17, 2017, the State's enforcement procedures can be pursued through contractual or regulatory action. The State, through the contract that it has been authorized to enter into and directly under Rhode

Island General Laws at Title 31, Chapter 31-47.1, 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 the 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 Rhode Island I/M SIP revision provides 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 the SIP narrative and the inspection program service agreement 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 I/M program. Rhode Island has 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 Rhode Island'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 Rhode Island I/M SIP submittal provides details on the inspector training program. The Rhode Island I/M SIP provides for implementation of training, licensing, and refresher programs for emission inspectors. The SIP and the inspection 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 the Rhode Island I/M program. Further details of the inspector training program are included in section 17 of the SIP narrative and Appendix I of the SIP revision.

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.

Rhode Island has implemented a web site for the State's I/M program.⁷ The web site is designed to provide information to motorists, the general public, inspectors, and repair technicians regarding the State's I/M program. Rhode Island has the ability to take in general questions and concerns, both via a telephone hotline and electronically via the web site, and has established a mechanism by which a vehicle owner can contest the results of an inspection. Further details of the public information and consumer protection plan are included in the inspection program service agreement contract and in section 18 of the SIP narrative.

R. Improving Repair Effectiveness

⁷ State of Rhode Island, Division of Motor Vehicles, Safety and Emissions program website: www.dmv.ri.gov/inspections.

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 the SIP submittal, Rhode Island provided additional detail and a description of the technical assistance, performance monitoring and repair technician training programs to be implemented. The SIP revision, as detailed in section 19 of the SIP narrative, provides 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 SIP submittal, the State has also ensured that repair technicians may utilize the telephone hotline, or the electronic inquiry system on the program web site, 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 State has 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, through a private contractor, has established the National On-Board

Diagnostics Clearinghouse which serves, amongst other functions, as a computerized database listing all emissions-related vehicle recalls.⁸

The Rhode Island I/M SIP will ensure that vehicles subject to the enhanced 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 inspection. Section 1.4.5 of the Rhode Island DMV's "Rhode Island Motor Vehicle Safety and Emissions Control Regulation No. 1" requires inspectors to verify whether a vehicle presented for inspection is in need of repairs as a result of a recall notice; if such repairs are required, motorists with unresolved recall notices will be required to show proof of compliance or will be denied the opportunity for inspection. As described in section 20 of the SIP narrative, Rhode Island inspectors have access to the National On-Board Diagnostics Clearinghouse.

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

⁸ National On-Board Diagnostics Clearinghouse website: www.obdclearinghouse.com

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 SIP submitted by Rhode Island on January 28, 2009, and supplemented on February 17, 2017, includes a description of the status of an on-road testing program in section 21 of the SIP narrative. Rhode Island's SIP highlights that the on-road testing program implemented consists of testing using remote sensing technology. Rhode Island conducts on-road tests using remote sensing on the appropriate number of vehicles required by the federal I/M rule. Since Rhode Island has not included additional modeling credit for the on-road portion of the State's inspection program when demonstrating that EPA's performance standard was met, the State's approach is acceptable.

U. Concluding Statement

A more detailed analysis of the SIP submittal and how Rhode Island meets 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 Rhode Island program meets such requirements. This checklist, the CAA, and the federal I/M regulation formed the basis for EPA's technical review. EPA has reviewed the Rhode Island I/M SIP revisions using the criteria stated above. The Rhode Island I/M regulations and

accompanying materials contained in the SIP submittal represent an acceptable plan to comply with the I/M requirements and meet all the criteria required for EPA to approve the SIP submittal. EPA's review of the materials submitted indicates that Rhode Island has revised its I/M program in accordance with the requirements of the CAA, 40 CFR Part 51, and all of EPA's technical requirements for approvable vehicle inspection and maintenance programs, including OBD2. EPA's detailed I/M approvability checklist serves as the TSD for this action.

V. Final Action

EPA is approving the SIP revisions submitted by the State of Rhode Island on January 28, 2009, and supplemented with a SIP revision on February 17, 2017. These SIP revisions contain the State's revised vehicle inspection and maintenance program. Specifically, EPA is approving the Rhode Island DEM Air Pollution Control Regulation No. 34 entitled "Rhode Island Motor Vehicle Inspection/Maintenance Program" (effective January 5, 2009), and the Rhode Island DMV's "Rhode Island Motor Vehicle Safety and Emissions Control Regulation No. 1" (effective January 28, 2009), and incorporating these rules into the Rhode Island SIP. EPA is approving Rhode Island's revised I/M program because it is consistent with the CAA and EPA's I/M regulations and it will strengthen the Rhode Island SIP.

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 after date of publication in the Federal**

Register] without further notice unless the Agency receives relevant adverse comments by **[insert date 30 days after 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. 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 after 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.

VI. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of Rhode Island's regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these materials generally available through www.regulations.gov, and/or at the EPA Region 1 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information).

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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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 **[insert date 60 days after date of publication 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.

Dated: October 24, 2017.

Deborah A. Szaro,
Acting Regional Administrator,
EPA New England.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart OO--Rhode Island

2. In §52.2070:

a. The table in paragraph (c) is amended by revising the entries “Air Pollution Control Regulation 34” and “Rhode Island Motor Vehicle Safety and Emissions Control Regulation No. 1”.

b. The table in paragraph (e) is amended by adding the entry “I/M SIP Narrative” at the end of the table.

The addition and revisions read as follows:

§52.2070 Identification of plan.

* * * * *

(c) * * *

EPA-Approved Rhode Island Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanations
**	*	*	*	**
Air Pollution Control Regulation 34	Rhode Island Motor Vehicle Inspection/Maintenance Program	1/5/2009	[insert date of publication in the Federal Register], [insert Federal Register citation]	Department of Environmental Management regulation containing I/M standards. Approving all sections except Section 34.9.3 “Application” which was excluded from the SIP submittal.
**	*	*	*	**

Rhode Island Motor Vehicle Safety and Emissions Control Regulation No. 1	Rhode Island Motor Vehicle Inspection/Maintenance Program	1/28/2009	[insert date of publication in the Federal Register], [insert Federal Register citation]	Division of Motor Vehicles regulation for the light-duty vehicle I/M program. Approving all sections except Section 1.12.2 "Penalties" and Section 1.13 "Proceedings for Enforcement" which were excluded from the SIP submittal.
**	*	*	*	**

* * * * *

(e) * * *

Rhode Island Non Regulatory

Name of non regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approved date	Explanations
**	*	*	*	**
I/M SIP Narrative	Statewide	Submitted 2/17/2017	[insert date of publication in the Federal Register], [insert Federal Register citation]	Narrative describing how the Rhode Island I/M program meets the requirements in the federal I/M rule.

[FR Doc. 2017-24541 Filed: 11/13/2017 8:45 am; Publication Date: 11/14/2017]