



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R01-OAR-2024-0018; FRL-11714-01-R1]

### **Air Plan Approval; New Hampshire; Amendments to Motor Vehicle Inspection and Maintenance Program Regulation**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of New Hampshire. This revision includes an amended regulation for the Enhanced Motor Vehicle Inspection and Maintenance (I/M) program in New Hampshire. Overall, the submittal updates and clarifies the implementation of the New Hampshire I/M program. The intended effect of this action is to propose approval of the updated I/M program regulation into the New Hampshire SIP. This action is being taken under the Clean Air Act.

**DATES:** Written comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R01-OAR-2024-0018 at <https://www.regulations.gov>, or via email to [martinelli.ayla@epa.gov](mailto:martinelli.ayla@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 <https://www.epa.gov/dockets/commenting-epa-dockets>. Publicly available docket materials are available at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square – Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office’s official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID-19.

**FOR FURTHER INFORMATION CONTACT:** Ayla Martinelli, Air Quality Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square – Suite 100, (Mail code 5-MI), Boston, MA 02109 – 3912, tel. (617) 918- 1057, email: [martinelli.ayla@epa.gov](mailto:martinelli.ayla@epa.gov)

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

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

On September 22, 2022, the State of New Hampshire submitted a formal revision to its State Implementation Plan (SIP). The submitted SIP revision included amendments to the New

Hampshire Code of Administrative Rules Chapter Saf-C 3200 entitled, “Official Motor Vehicle Inspection Requirements,” which update the Enhanced Motor Vehicle Inspection and Maintenance (I/M) program in New Hampshire.

New Hampshire first submitted an I/M program SIP revision on November 17, 2011, which EPA approved into the New Hampshire SIP on January 25, 2013 (78 FR 5292). New Hampshire’s November 17, 2011 revision included all the regulatory and technical documentation required in an I/M SIP submittal to address the requirements of EPA’s I/M regulations at 40 CFR 51 subpart S. The emissions modeling, I/M SIP narrative, and other technical documentation, included in New Hampshire’s November 17, 2011 submittal continue to be applicable as the technical demonstration that New Hampshire’s implemented I/M program meets the requirements of EPA’s I/M regulations at 40 CFR 51 subpart S.

More recently, the State of New Hampshire submitted a formal revision to its SIP on June 7, 2016, which included amendments to the New Hampshire Code of Administrative Rules Chapter Saf-C 3200. This revision updated several regulatory provisions by adding language to clarify the I/M program requirements in New Hampshire. These updates did not reflect any changes to the technical implementation characteristics of the New Hampshire I/M program and thus resulted in no changes to the EPA-approved emissions modeling analysis. EPA approved this revision into the New Hampshire SIP on September 25, 2018 (83 FR 48385).

## **II. Summary of New Hampshire’s Regulatory Changes**

New Hampshire’s amended Saf-C 3200 regulation, submitted as a SIP revision on September 22, 2022, updates a number of regulatory provisions by adding language to clarify the I/M program requirements in New Hampshire. A summary of the most substantial changes made to New Hampshire’s SIP-approved regulation follows. New Hampshire (1) added clarifying definitions to Saf-C 3202; (2) amended Saf-C 3204.02 to update the required information for an application to become a fleet inspection station; (3) amended 3205.8 to extend the expiration date of inspection station certificates from once a year to biennially; (4) revised

3209.01 to reflect the updated sticker order form and respective revision date; (5) made multiple amendments to Saf- C 3209 regarding obtaining inspection stickers; (6) made multiple amendments to Saf-C 3222.08 to clarify criteria for an economic hardship waiver; and (7) amended Saf-C 3222.09 to replace exemption from visual inspection requirements with application requirements for a low mileage waiver.

### **III. New Hampshire Satisfying Clean Air Act Requirements for I/M programs**

In this document, EPA is only proposing to update New Hampshire's I/M regulation by revising subsections or provisions of the regulation as it currently exists in the New Hampshire SIP.<sup>1</sup> As stated earlier in this document, the remaining technical aspects (i.e., I/M SIP narrative, the emissions modeling, and other technical documentation) included in New Hampshire's November 17, 2011 SIP revision, as approved by EPA on January 25, 2013 (78 FR 5292) continue to be applicable as the technical demonstration that New Hampshire's implemented I/M program meets the requirements of EPA's I/M regulations at 40 CFR 51 Subpart S.

### **IV. Proposed Action**

EPA is proposing to approve New Hampshire's September 22, 2022 SIP revision request. This SIP revision request contains New Hampshire's revised motor vehicle I/M program regulation. Specifically, EPA is proposing to approve amendments to the following New Hampshire Department of Safety Regulation Saf-C 3200 subsections or provisions as they currently exist in the New Hampshire SIP: amendments to Saf-C 3202, Saf-C 3203, Saf-C 3204, Saf-C 3205, Saf-C 3206.04, Saf-C 3207.01, Saf-C 3209, Saf-C 3210.02, and Saf-C 3222. EPA is proposing to approve New Hampshire's September 22, 2022 SIP revision, containing New Hampshire's updated I/M program regulation, because it is consistent with the CAA's I/M requirements and EPA's I/M regulations at 40 CFR 51 Subpart S, and will strengthen the SIP.

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<sup>1</sup> EPA's January 25, 2013 (78 FR 5292) approval of New Hampshire's November 17, 2011 I/M SIP submittal describes how New Hampshire's I/M program satisfies the OBD2 and other I/M regulatory requirements established by the Clean Air Act and EPA's I/M regulations at 40 CFR 51 Subpart S. In addition, EPA's January 25, 2013 (78 FR 5292) approval contains a detailed discussion of EPA's rationale for approving New Hampshire's November 17, 2011 I/M SIP revision and will not be restated in this document.

The New Hampshire September 22, 2022 SIP that EPA is proposing to approve did not reflect any changes to the technical implementation characteristics of the New Hampshire I/M program and thus resulted in no changes to the EPA-approved emissions modeling analysis. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to this proposed rule by following the instructions listed in the **ADDRESSES** section of this **Federal Register**.

#### **V. Incorporation by Reference**

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the aforementioned New Hampshire Department of Safety Regulation Saf-C 3200 subsections identified in section IV of this proposal, except as set forth below. The EPA has made, and will continue to make, these documents generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

New Hampshire's I/M program regulation contains enforcement provisions that detail state enforcement procedures, including administrative, civil, and criminal penalties, and administrative and judicial procedures. Such enforcement-related provisions are required elements of an I/M SIP under 40 CFR 61.364, and EPA is proposing to approve the provisions as meeting those requirements. However, EPA is not proposing to incorporate those provisions by reference into the EPA-approved federal regulations at 40 CFR part 52. In any federal action to enforce violations of the substantive requirements of the New Hampshire I/M program, the relevant provisions of Section 113 or 304 of the CAA, rather than state enforcement provisions would govern. Similarly, the applicable procedures in any federal action would be the applicable federal court rules or EPA's rules for administrative proceedings at 40 CFR part 22, rather than

state administrative procedures. Since the state enforcement provisions would not be applicable in a federal action, incorporating these state-only enforcement provisions into the federal regulations would have no effect. To avoid confusion to the public and regulated parties, EPA is not proposing to incorporate these provisions by reference into the EPA-approved federal regulations in the New Hampshire plan identification in 40 CFR part 52. Specifically, EPA is not proposing to incorporate New Hampshire's regulations Saf-C 3222.04(d) and Saf-C 3248 into the federal regulations at 40 CFR 52.1520(c).

## **VI. 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. *See* 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 proposed 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 proposed 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); and
- 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.

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).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

New Hampshire did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of EO 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

#### **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:** January 25, 2024.

**David Cash,**  
*Regional Administrator,*  
*EPA Region 1.*

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