

administrative wage garnishment regulations issued by the Department of the Treasury, 31 CFR 285.11; and other laws applicable to the collection of non-tax debts owed to the United States arising from activities under the Commission's jurisdiction. Subpart A describes procedures for collection by offset against obligations of the United States to the debtor, by compromise, and by referral to the Department of Justice for litigation. It also sets forth the Commission's policy on collecting interest on unpaid claims, the method used in calculating such interest, and the maximum inflation-adjusted civil monetary penalties that may be assessed and enforced for each violation of the Commodity Exchange Act or regulations or orders of the Commission promulgated thereunder. Subpart B describes procedures for collection by administrative garnishment of the debtor's wages.

3. Sections 143.2 through 143.8 are designated as subpart A of part 143, and a new heading, "Subpart A—General Provisions," is added above section 143.2 to read as follows:

#### **Subpart A—General Provisions**

4. Section 143.2 is amended by revising paragraph (c) to read as follows:

##### **§ 143.2 Notice of claim.**

\* \* \* \* \*

(c) If no response or an unsatisfactory response is received by the date indicated in the notice, the Commission may take further action as appropriate under the Commodity Exchange Act or regulations thereunder, or under 31 CFR parts 900–905 or the Federal Claims Collection Act, as amended, 31 U.S.C. 3701–3720E.

5. Section 143.7 is amended by revising paragraph (a) to read as follows:

##### **§ 143.7 Delegation of authority to the Executive Director.**

(a) The Commission hereby delegates, until such time as the Commission orders otherwise, to the Executive Director or to any Commission employee under the Executive Director's supervision as he or she may designate, authority to take action to carry out subpart A and subpart B of this Part and the requirements of 31 CFR parts 900–905 and 31 CFR 285.11.

\* \* \* \* \*

6. A new subpart B consisting of §§143.9 and 143.10 is added to part 143, to read as follows:

#### **Subpart B—Administrative wage garnishment**

##### **§ 143.9 Administrative wage garnishment orders.**

Whenever an individual owes the United States a delinquent non-tax debt arising from activities under the Commission's jurisdiction, the Commission, or another federal agency collecting the debt on behalf of the Commission, may initiate administrative proceedings to garnish the disposable income of the delinquent debtor in accordance with the requirements of, and the procedures set forth in, 31 CFR 285.11. The Commission's use of other debt-collection measures set forth in subpart A of this part does not preclude the initiation of an administrative wage garnishment proceeding against a delinquent debtor.

##### **§ 143.10 Garnishment hearings.**

Any oral or written hearing required to establish the Commission's right to collect a delinquent debt through administrative wage garnishment will be presided over by a hearing official designated by the Executive Director. Any qualified and impartial employee of the Commission designated by the Executive Director may serve as a hearing official. All documents presented to the hearing official for his or her consideration shall be marked as exhibits and retained in the record. All testimony given at an oral hearing, either in person or by telephone, shall be under oath or affirmation. A transcript of the hearing shall be prepared and made part of the record.

Issued in Washington, DC, on December 9, 2003, by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

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#### **ENVIRONMENTAL PROTECTION AGENCY**

##### **40 CFR Part 52**

**[Region II Docket No. NJ65–269, FRL–7599–1]**

#### **Approval and Promulgation of Implementation Plans; New Jersey; Motor Vehicle Enhanced Inspection and Maintenance Program**

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The EPA is proposing to approve a revision to the State

Implementation Plan (SIP) for New Jersey's enhanced inspection and maintenance (I/M) program. New Jersey has made several amendments to its I/M rules to comply with EPA regulations and to improve performance of the program and has requested that the SIP be revised to include these changes. Chief among the amendments EPA is proposing to approve is New Jersey's On-Board Diagnostic (OBD) program. EPA is proposing to approve New Jersey's latest I/M rule changes. The intended effect of this action is to maintain consistency between the State-adopted rules and the federally approved SIP.

**DATES:** Comments must be received on or before January 14, 2004. Public comments on this action are requested and will be considered before taking final action.

**ADDRESSES:** Submit your comments, identified by Docket No. NJ65–269, by email to [Werner.Raymond@epa.gov](mailto:Werner.Raymond@epa.gov), online at <http://www.regulations.gov>, which is an alternative method for submitting electronic comments to EPA; mailed to Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, 25th Floor, New York, New York 10007–1866; or by hand delivery or courier to the same address.

Copies of the state submittal(s) are available at the following address for inspection during normal business hours:

Environmental Protection Agency,  
Region II Office, Air Programs Branch,  
290 Broadway, 25th Floor, New York,  
New York 10007–1866, and  
New Jersey Department of  
Environmental Protection, Bureau of  
Air Quality Planning, 401 East State  
Street, CN027, Trenton, New Jersey  
08625.

#### **FOR FURTHER INFORMATION CONTACT:**

Reema Persaud, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249, [persaud.reema@epa.gov](mailto:persaud.reema@epa.gov).

**SUPPLEMENTARY INFORMATION:** If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD-ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information

provided in the body of a comment will be included as part of the comment that is made available to the public. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

If you send an electronic mail (e-mail) comment to the EPA e-mail address for this rulemaking,

*Werner.Raymond@epa.gov*, your e-mail address is automatically captured and included as part of the comment that is made available to the public.

Regulations.gov is an alternative method of submitting electronic comments to EPA. In contrast to EPA's e-mail system, Regulations.gov is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

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#### 1. Background

The Clean Air Act (CAA) requires certain states to implement an enhanced inspection and maintenance (I/M) program to detect gasoline-fueled motor vehicles which exhibit excessive emissions 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. New Jersey is required to have an enhanced I/M program pursuant to the CAA, and consequently has adopted, and has been implementing an enhanced I/M program statewide since December 13, 1999. In the January 22, 2002 **Federal Register** (67 FR 2811), EPA fully approved New Jersey's enhanced I/M program,

including the State's performance standard modeling, as meeting the applicable requirements of the CAA. Additional information on EPA's final approval of New Jersey's enhanced I/M program can be found in EPA's January 22, 2002 final approval notice.

On April 5, 2001, EPA's revised I/M program requirements rule was published in the **Federal Register** (Amendments to Vehicle Inspection and Maintenance Program Requirements Incorporating the On-Board Diagnostics Check; Final Rule (66 FR 18156)). The revised I/M rule requires that electronic checks of the On-Board Diagnostics (OBD) system of applicable 1996-and-newer motor vehicles be conducted as part of states' motor vehicle I/M programs. OBD is part of the sophisticated vehicle powertrain management system and is designed to detect engine and transmission problems that might cause the vehicle emissions to exceed allowable limits. The OBD system is also designed to fully evaluate the vehicle emissions control system. If the OBD 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 OBD system notifies the vehicle operator that an emission-related fault has been detected, and the vehicle should be repaired as soon as possible thus reducing the harmful emissions contributed by that vehicle.

This revised OBD I/M rule applies only to those areas required to implement an I/M program under the CAA. This rule established a deadline of January 1, 2002 for states to begin performing OBD checks on 1996-and-newer model OBD-equipped vehicles, and to require repairs to be performed on those vehicles with malfunctions identified by the OBD check.

The revised I/M rule also provided several options to states to delay implementation of OBD testing, under certain circumstances. An extension of the deadline for states to begin

conducting mandatory OBD checks is permissible provided the state making the request can show just cause to EPA for a delay and that the revised implementation date represents "the best the state can reasonably do." EPA's final rule identifies factors that may serve as a possible justification for states considering making a request to the EPA to delay implementation of OBD I/M program checks beyond the January 2002 deadline. Potential factors justifying such a delay request that are listed in EPA's rule include: contractual impediments, hardware or software deficiencies, data management software deficiencies, the need for additional training for the testing and repair industries, and the need for public education or outreach.

On April 24, 2002, New Jersey submitted a SIP revision to formally request an extension of the OBD I/M test deadline, per EPA's I/M requirement rule. New Jersey's SIP revision lists many of the same factors that are listed in EPA's I/M rule in order to justify the State's request for extension of the OBD testing deadline. These include the hybrid nature of the inspection network in New Jersey of both centralized and decentralized inspection facilities. The hybrid network system makes the software upgrades and programmatic changes more complicated. It requires the modification of two distinct software applications while assuring compatibility with a common vehicle inspection database (VID). All upgrades are required to conform with State specifications and pass stringent acceptance testing protocols before installation in testing facilities. Based on these and other reasons listed by New Jersey, EPA believes that the State's delayed implementation is justified.

#### 2. What Action Is EPA Taking Today?

The EPA is proposing approval of several submittals by the State of New Jersey pertaining to its enhanced I/M SIP. The content of those SIP submittals is described below and summarized in Table 1.

TABLE 1.—SUMMARY OF SUBMITTALS RELEVANT TO TODAY'S ACTION

Date	Content
April 22, 2002 .....	Request to delay implementation of OBD testing.
February, 10, 2003 .....	(1) Implementation of On-board Diagnostic Inspections and Schedule. (2) Continuation of "Initial" Standards for the ASM5015 Exhaust Emission Test. (3) Removal of the Requirements for "Final" Standards for the ASM5015 Exhaust emission test. (4) Removal of the requirements for the evaporative pressure and purge tests.
May 28, 2003 .....	(1) Requirements for issuance of temporary inspection decals. (2) Exemption of gasoline-fueled school buses. (3) Allowance of an on-road inspection to substitute for a biennial inspection.

TABLE 1.—SUMMARY OF SUBMITTALS RELEVANT TO TODAY'S ACTION—Continued

Date	Content
August 4, 2003 .....	NJMVC <sup>1</sup> adopted regulations for OBD inspections.

<sup>1</sup> New Jersey Motor Vehicle Commission (NJMVC) formerly New Jersey Department of Motor Vehicles.

*A. What Are the OBD Requirements and How Does New Jersey's Program Address Them?*

The OBD program requires scan tool equipment to read the vehicle's built-in computer sensors in model year 1996 and newer vehicles. The OBD-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 OBD computer itself. The failure criteria for OBD testing is any Diagnostic Trouble Code (DTC) or combination of DTCs that results in the Malfunction Indicator Light (MIL) to be commanded on. A DTC is a code that indicates an emission control system or component which may cause emissions to increase to 1.5 times the limit due to malfunction. New Jersey has incorporated this OBD component into the I/M program.

If the OBD 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 has been met. Vehicles may fail inspection if the vehicle connector is missing, tampered with or otherwise inoperable, if the MIL is commanded on and is not visually illuminated, and if the MIL is commanded on for 1 or more DTCs as defined in Society of Automotive Engineering (SAE) J2012 guidance document.

Vehicles are rejected from testing if the scan of the OBD system reveals a "not ready" code for any OBD component. The States have the flexibility to permit model year 1996 to 2000 vehicles with 2 or fewer unset readiness codes, and model year 2001 and newer with 1 unset readiness code to complete OBD-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 if 3 or more unset readiness codes were encountered. If the MIL is not commanded to be illuminated the vehicle shall pass the OBD inspection even if DTCs are present.

There are several reasons why a vehicle may arrive for testing without the required readiness codes set. These reasons include the following: (1) Failure to operate the vehicle under the conditions necessary to evaluate the monitors in question; (2) a recent

resetting of the OBD system due to battery disconnection or replacement, or routine maintenance immediately prior to testing; (3) a unique, vehicle-specific OBD system failure; (4) an as-of-yet undefined system design anomaly; or (5) a fraudulent attempt to avoid I/M program requirements by clearing OBD codes just prior to OBD-I/M testing. Once the cause for rejection has been corrected, the vehicle must return for reinspection. New Jersey has incorporated these OBD program factors into its I/M program.

The EPA believes that for an OBD-I/M test program to be most effective, whether centralized or decentralized, it should be designed to allow for: (1) Real-time data link connection to a centralized testing database; (2) quality-controlled input of vehicle and owner identification information; and (3) automated generation of test reports. New Jersey has incorporated these OBD program elements into its I/M program.

New Jersey has structured its On-Board Diagnostic (OBD) program to be implemented as outlined by EPA. New Jersey outlined the procedure for its OBD inspection program at N.J.A.C. 7:27B-5.7. The State requires that the procedures required to implement the OBD program should be performed in accordance with the procedures set forth by EPA. For this reason, and as detailed above, EPA is proposing that New Jersey's OBD program meets federal requirements and is approvable.

New Jersey has gone through the phase-in period of Beta testing, and all the systems have been updated with the appropriate software and hardware. The inspectors at both centralized and decentralized inspection facilities have been trained and licensed to operate the OBD scan tools and recognize the basis for failure or rejection. New Jersey has also taken steps to limit potential inspection fraud at centralized and decentralized inspection stations. A motor vehicle emission inspector license may be suspended or revoked if any fraudulent vehicle emission inspection is conducted. Also, no person licensed as an emission inspector shall own or be employed by any motor vehicle repair facility while employed by a centralized inspection facility. An emission inspector may be employed by a private inspection facility only if the facility is licensed by

the Division in accordance with N.J.A.C. 13:20-44.

*B. What Are the Additional I/M Changes Being Incorporated?*

In addition to the OBD programs, this proposal addresses a number of submissions from the New Jersey Department of Environmental Protection (NJDEP) concerning revisions to the I/M SIP for New Jersey. The State believes following the proposed revisions are necessary to enhance New Jersey's I/M program, and these elements of the program are approvable by EPA. The content of those submissions is described below.

The State requested a revision to its SIP to exempt new cars from inspection for four years, as opposed to two years, and to include a change in the minimum cost expenditure value for the issuance of a waiver, from \$200 to \$450. Subsequent to the first inspection, the inspection cycle is biennial (every two years). The EPA approved the State's new motor vehicle four-year exemption SIP revision on February 18, 2003 (68 FR 7704). New Jersey conducted I/M performance standard modeling using MOBILE6 to model emissions related to a 4 year exemption from inspection of new vehicles. The modeling also included other program details reflective of the State's current I/M program, for example, the removal of evaporative purge and pressure tests, and modifications listed below. The results of the MOBILE6 modeling indicated that the emission levels were still below the levels of emissions when EPA defaults are assumed.

The April 2002 submittal requested the exemption from dynamometer testing any motor vehicle "with a chassis height that has been modified so as to make its operation on a dynamometer either impractical or hazardous, as will be determined by the discretion of the Director of the New Jersey Motor Vehicle Commission (NJMVC)."

On February 10, 2003, a letter was transmitted by New Jersey requesting approval of the following revisions. A request was made for the end date of "initial" emission standards for ASM5015 exhaust emission tests to be eliminated in order to allow for continued use of these standards, and for the "final" emission standards for

the ASM5015 exhaust emission test to be removed. EPA received a request for the removal of all references to the evaporative pressure and purge test, while retaining the evaporative fuel cap leak test.

On May 28, 2003, EPA received a request from New Jersey to allow the substitution of an on-road inspection certification for the biennial inspection. The on-road inspection must comply with the testing that is required for the motor vehicle as part of a regular inspection, and must be within the two-month period prior to its regularly scheduled biennial inspection.

This letter also requested the exemption of OBD-eligible gasoline-fueled and bi-fueled school buses from I/M enhanced inspection purposes. All school buses must meet the Department emission standards and be inspected biannually using a 2,500 RPM test, not with an ASM5015 test, (*see* 34 N.J.R. 829(a) February 19, 2002). The school buses will be inspected under the MVC School Bus Inspection Unit regulation in accordance with N.J.S.A. 39:3B–18 *et seq.* The State also requested that leasing companies and out-of-state dealerships be allowed to issue temporary inspection decals, which would permit the motorist to present the vehicle at the exit of any centralized inspection facility and be issued a valid inspection decal.

In addition to restructuring the rule, amendments were made to: clarify the meaning of vehicles primarily operated in the area; clarify existing definitions and include new definitions; clarify fleet vehicle testing requirements, set fee payment methods, station testing procedures, emission test standards and waiver requirements; clarify the vehicle test report requirement for vehicles that fail the OBD test, reinspection, the clean screening test report requirements and the fleet vehicle reporting requirements; clarify the issuance of inspection certificates of approval or rejection; clarify the test methods for the OBD and the visual test methods, and clarify licensing of inspection agents and definitions of fraud. All of the factors of New Jersey's I/M program detailed above are approvable by the EPA.

### 3. Summary of Conclusions and Proposed Action

EPA's review of the materials submitted indicates that New Jersey has revised the I/M program in accordance with the requirements of the Clean Air Act (CAA), and all of EPA's technical requirements for an approvable OBD program. The CAA gives States the discretion in program planning to implement programs of the State's

choosing as long as necessary emission reductions are met. EPA is approving the proposed actions and revisions in addition to adding the OBD program described earlier, because New Jersey has successfully demonstrated through performance standard modeling that these modifications would not adversely affect emission reductions that the State is counting on from the program. The performance standard modeling, which reflects the State's enhanced I/M program as it is currently implemented, shows that the State's program meets the low enhanced performance standard. EPA's authority to approve New Jersey's enhanced I/M program is set forth at section 110 and 182 of the CAA.

### 4. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does 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 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: November 25, 2003.

**Jane M. Kenny,**

*Regional Administrator, Region 2.*

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**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[NV 050–0073B; FRL–7595–4]

**Approval and Promulgation of Implementation Plans; State of Nevada; Designation of Areas for Air Quality Planning Purposes; Lake Tahoe Nevada Area**

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