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described in appendix A of this subpart may be approved by the Administrator based on a demonstration of comparable performance.

(e) *Document security.* Measures shall be taken to maintain the security of all documents by which compliance with the inspection requirement is established including, but not limited to inspection certificates, waiver certificates, license plates, license tabs, and stickers. This section shall in no way require the use of paper documents but shall apply if they are used by the program for these purposes.

(1) Compliance documents shall be counterfeit resistant. Such measures as the use of special fonts, water marks, ultra-violet inks, encoded magnetic strips, unique bar-coded identifiers, and difficult to acquire materials may be used to accomplish this requirement.

(2) All inspection certificates, waiver certificates, and stickers shall be printed with a unique serial number and an official program seal.

(3) Measures shall be taken to ensure that compliance documents cannot be stolen or removed without being damaged.

(f) *SIP requirements.* The SIP shall include a description of quality control and record keeping procedures. The SIP shall include the procedure manual, rule, ordinance or law describing and establishing the quality control procedures and requirements.

[57 FR 52987, Nov. 5, 1992, as amended at 58 FR 59367, Nov. 9, 1993; 65 FR 45533, July 24, 2000]

### § 51.360 Waivers and compliance via diagnostic inspection.

The program may allow the issuance of a waiver, which is a form of compliance with the program requirements that allows a motorist to comply without meeting the applicable test standards, as long as the prescribed criteria described below are met.

(a) *Waiver issuance criteria.* The waiver criteria shall include the following at a minimum.

(1) Waivers shall be issued only after a vehicle has failed a retest performed after all qualifying repairs have been completed. Qualifying repairs include repairs of the emission control compo-

nents, listed in paragraph (a)(5) of this section, performed within 60 days of the test date.

(2) Any available warranty coverage shall be used to obtain needed repairs before expenditures can be counted towards the cost limits in paragraphs (a)(5) and (a)(6) of this section. The operator of a vehicle within the statutory age and mileage coverage under section 207(b) of the Clean Air Act shall present a written denial of warranty coverage from the manufacturer or authorized dealer for this provision to be waived for approved tests applicable to the vehicle.

(3) Waivers shall not be issued to vehicles for tampering-related repairs. The cost of tampering-related repairs shall not be applicable to the minimum expenditure in paragraphs (a)(5) and (a)(6) of this section. States may issue exemptions for tampering-related repairs if it can be verified that the part in question or one similar to it is no longer available for sale.

(4) Repairs shall be appropriate to the cause of the test failure, and a visual check shall be made to determine if repairs were actually made if, given the nature of the repair, it can be visually confirmed. Receipts shall be submitted for review to further verify that qualifying repairs were performed.

(5) General repairs shall be performed by a recognized repair technician (*i.e.*, one professionally engaged in vehicle repair, employed by a going concern whose purpose is vehicle repair, or possessing nationally recognized certification for emission-related diagnosis and repair) in order to qualify for a waiver. I/M programs may allow the cost of parts (not labor) utilized by non-technicians (*e.g.*, owners) to apply toward the waiver limit. The waiver would apply to the cost of parts for the repair or replacement of the following list of emission control components: oxygen sensor, catalytic converter, thermal reactor, EGR valve, fuel filler cap, evaporative canister, PCV valve, air pump, distributor, ignition wires, coil, and spark plugs. The cost of any hoses, gaskets, belts, clamps, brackets or other accessories directly associated with these components may also be applied to the waiver limit.

(6) In basic programs, a minimum of \$75 for pre-81 vehicles and \$200 for 1981 and newer vehicles shall be spent in order to qualify for a waiver. These model year cutoffs and the associated dollar limits shall be in full effect by January 1, 1998, or coincident with program start-up, whichever is later. Prior to January 1, 1998, States may adopt any minimum expenditure commensurate with the waiver rate committed to for the purposes of modeling compliance with the basic I/M performance standard.

(7) Beginning on January 1, 1998, enhanced I/M programs shall require the motorist to make an expenditure of at least \$450 in repairs to qualify for a waiver. The I/M program shall provide that the \$450 minimum expenditure shall be adjusted in January of each year by the percentage, if any, by which the Consumer Price Index for the preceding calendar year differs from the Consumer Price Index of 1989. Prior to January 1, 1998, States may adopt any minimum expenditure commensurate with the waiver rate committed to for the purposes of modeling compliance with the relevant enhanced I/M performance standard.

(i) The Consumer Price Index for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the Department of Labor, as of the close of the 12-month period ending on August 31 of each calendar year. A copy of the current Consumer Price Index may be obtained from the Emission Planning and Strategies Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105.

(ii) The revision of the Consumer Price Index which is most consistent with the Consumer Price Index for calendar year 1989 shall be used.

(8) States may establish lower minimum expenditures if a program is established to scrap vehicles that do not meet standards after the lower expenditure is made.

(9) A time extension, not to exceed the period of the inspection frequency, may be granted to obtain needed repairs on a vehicle in the case of economic hardship when waiver requirements have not been met. After having received a time extension, a vehicle

must fully pass the applicable test standards before becoming eligible for another time extension. The extension for a vehicle shall be tracked and reported by the program.

(b) *Compliance via diagnostic inspection.* Vehicles subject to a transient IM240 emission test at the cutpoints established in §§51.351 (f)(7) and (g)(7) of this subpart may be issued a certificate of compliance without meeting the prescribed emission cutpoints, if, after failing a retest on emissions, a complete, documented physical and functional diagnosis and inspection performed by the I/M agency or a contractor to the I/M agency show that no additional emission-related repairs are needed. Any such exemption policy and procedures shall be subject to approval by the Administrator.

(c) *Quality control of waiver issuance.* (1) Enhanced programs shall control waiver issuance and processing by establishing a system of agency-issued waivers. The State may delegate this authority to a single contractor but inspectors in stations and lanes shall not issue waivers. Basic programs may permit inspector-issued waivers as long as quality assurance efforts include a comprehensive review of waiver issuance.

(2) The program shall include methods of informing vehicle owners or lessors of potential warranty coverage, and ways to obtain warranty repairs.

(3) The program shall insure that repair receipts are authentic and cannot be revised or reused.

(4) The program shall insure that waivers are only valid for one test cycle.

(5) The program shall track, manage, and account for time extensions or exemptions so that owners or lessors cannot receive or retain a waiver improperly.

(d) *SIP requirements.* (1) The SIP shall include a maximum waiver rate expressed as a percentage of initially failed vehicles. This waiver rate shall be used for estimating emission reduction benefits in the modeling analysis.

(2) The State shall take corrective action if the waiver rate exceeds that committed to in the SIP or revise the SIP and the emission reductions claimed.

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(3) The SIP shall describe the waiver criteria and procedures, including cost limits, quality assurance methods and measures, and administration.

(4) The SIP shall include the necessary legal authority, ordinance, or rules to issue waivers, set and adjust cost limits as required in paragraph (a)(5) of this section, and carry out any other functions necessary to administer the waiver system, including enforcement of the waiver provisions.

[57 FR 52987, Nov. 5, 1992, as amended at 58 FR 59367, Nov. 9, 1993; 60 FR 48036, Sept. 18, 1995; 71 FR 17711, Apr. 7, 2006]

### § 51.361 Motorist compliance enforcement.

Compliance shall be ensured through the denial of motor vehicle registration in enhanced I/M programs unless an exception for use of an existing alternative is approved. An enhanced I/M area may use an existing alternative if it demonstrates that the alternative has been more effective than registration denial. An enforcement mechanism may be considered an "existing alternative" only in States that, for some area in the State, had an I/M program with that mechanism in operation prior to passage of the 1990 Amendments to the Act. A basic I/M area may use an alternative enforcement mechanism if it demonstrates that the alternative will be as effective as registration denial. Two other types of enforcement programs may qualify for enhanced I/M programs if demonstrated to have been more effective than enforcement of the registration requirement in the past: Sticker-based enforcement programs and computer-matching programs. States that did not adopt an I/M program for any area of the State before November 15, 1990, may not use an enforcement alternative in connection with an enhanced I/M program required to be adopted after that date.

(a) *Registration denial.* Registration denial enforcement is defined as rejecting an application for initial registration or reregistration of a used vehicle (i.e., a vehicle being registered after the initial retail sale and associated registration) unless the vehicle has complied with the I/M requirement prior to granting the application. Pur-

suant to section 207(g)(3) of the Act, nothing in this subpart shall be construed to require that new vehicles shall receive emission testing prior to initial retail sale. In designing its enforcement program, the State shall:

(1) Provide an external, readily visible means of determining vehicle compliance with the registration requirement to facilitate enforcement of the program;

(2) Adopt a schedule of testing (either annual or biennial) that clearly determines when a vehicle shall comply prior to registration;

(3) Design a testing certification mechanism (either paper-based or electronic) that shall be used for registration purposes and clearly indicates whether the certification is valid for purposes of registration, including:

(i) Expiration date of the certificate;

(ii) Unambiguous vehicle identification information; and

(iii) Whether the vehicle passed or received a waiver;

(4) Routinely issue citations to motorists with expired or missing license plates, with either no registration or an expired registration, and with no license plate decals or expired decals, and provide for enforcement officials other than police to issue citations (e.g., parking meter attendants) to parked vehicles in noncompliance;

(5) Structure the penalty system to deter non-compliance with the registration requirement through the use of mandatory minimum fines (meaning civil, monetary penalties, in this subpart) constituting a meaningful deterrent and through a requirement that compliance be demonstrated before a case can be closed;

(6) Ensure that evidence of testing is available and checked for validity at the time of a new registration of a used vehicle or registration renewal;

(7) Prevent owners or lessors from avoiding testing through manipulation of the title or registration system; title transfers may re-start the clock on the inspection cycle only if proof of current compliance is required at title transfer;

(8) Prevent the fraudulent initial classification or reclassification of a vehicle from subject to non-subject or exempt by requiring proof of address