

amendments, were published in the **Federal Register** and the State citations or a brief description of each

amendment. The amendments in this table are listed in order of the date of

final publication in the **Federal Register**.

Original amendment sub- mission date	Date of final publication	Citation/description
May 6, 1997	January 9, 1998	MSCMRL 53-9-3; 5; 7; 9; 11; 13; 15; 17; 19; 21; 23; 25; 26; 27; 28; 29; 31; 32; 33; 35; 37; 39; 41; 43; 45; 47; 49; 51; 53; 55; 57; 59; 61; 63; 65; 67; 69; 71; 73; 75; 77; 79; 81; 83; 85; 87; 89; 91.

3. Section 924.16 is revised to read as follows:

§ 924.16 Required program amendments.

Pursuant to 30 CFR 732.17(f)(1), Mississippi is required to submit to OSM by the specified date the following written, proposed program amendments, or a description of the amendments to be proposed, that meet the requirements of SMCRA and 30 CFR chapter VII and a timetable for enactment that is consistent with Mississippi's established administrative or legislative procedures.

(a) Mississippi prior to allowing coal exploration or surface mining operations shall submit and have approved by OSM amendments to the Mississippi Surface Coal Mining Regulations that are no less effective than the Federal regulations at 30 CFR chapter VII in existence at the time.

(b) By March 10, 1998, Mississippi shall submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption of proposed revisions to the Mississippi Surface Coal Mining and Reclamation Law to correct the following typographical errors that would have a substantive impact on implementation of the Mississippi program:

(1) At section 53-9-26 change the word "operation" in the phrase "at all locations of a surface coal mining operation" to "operator."

(2) At section 53-9-45(4)(b) remove the reference to subsection (2) in the phrase "a variance from the requirement to restore to approximate original contour set forth in subsection (2) or (3) of this section."

(c) By March 10, 1998, Mississippi shall submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption of proposed revisions to section 53-9-69(1)(c)(i) of the Mississippi Surface Coal Mining and Reclamation Law to change the word "may" to "shall" in the phrase "the commission, executive director or the executive director's authorized representative may issue an

order to the permittee or agent of the permittee."

(d) By March 10, 1998,

(1) Mississippi shall submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption of proposed revisions to section 53-9-77 of the Mississippi Surface Coal Mining and Reclamation Law to provide requirements for assessing court costs and attorney fees that are no less stringent than those provided in section 525(e) of SMCRA.

(2) Mississippi shall submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption of proposed revisions to section 53-9-77 of the Mississippi Surface Coal Mining and Reclamation Law, consistent with section 526(e) of SMCRA, to provide that the availability of judicial review shall not be construed to limit the operation of the rights established for civil actions in section 53-9-67 except as provided therein.

(e) By March 10, 1998, Mississippi shall submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption of proposed revisions to section 186.23(b)(2) of the Mississippi Surface Coal Mining Regulations, or otherwise amend its program, to require agreement to an extension of the 60-day time frame for acting upon a complete permit application by the applicant and interested parties who requested the public hearing, if a public hearing is requested and held.

4. Section 924.17 is added to read as follows:

§ 924.17 State regulatory program provisions and amendments disapproved.

The proposed language in section 53-9-55(3), as submitted by Mississippi on May 6, 1997, that allows the commission to promulgate regulations regarding a waiver from the requirement to post a penalty payment bond upon a showing by the operator of an inability to post the bond is disapproved.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[FRL-5945-8]

RIN 2060-AH61

Minor Amendments to Inspection Maintenance Program Evaluation Requirements; Amendment to the Final Rule

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Today's action revises the Motor Vehicle Inspection/Maintenance (I/M) requirements by replacing the I/M rule requirement that the tailpipe portion of the mandatory program evaluation be performed using only an IM240 or equivalent mass-emission transient test with a requirement that states use a sound evaluation methodology capable of providing accurate information about the overall effectiveness of an I/M program. The goal of this action is to allow states additional flexibility to use not only IM240 but other approved alternative methodologies for their program evaluation. Today's action also clarifies that such program evaluation testing shall begin no later than November 30, 1998, and is not required to be coincident with program start up (though the first report is still due two years after program start up). This action also clarifies that "initial test" simply means that the test is conducted before repairs for each test cycle, and does not therefore preclude states from using alternative sampling methodologies such as roadside pullover to sample the fleet. Today's action also amends the conditions relating to the program evaluation testing requirements that were part of the conditional interim approval actions taken on the I/M State Implementation Plans (SIPs) for the Commonwealths of Pennsylvania and Virginia and the State of Delaware. States wishing to take advantage of the flexibility provided by today's action should review their implementation plans for any language that conflicts

with today's amendments. Such language will need to be amended and the amendment submitted as a SIP revision by November 30, 1998.

EFFECTIVE DATE: This rule will take effect on February 9, 1998.

ADDRESSES: Materials relevant to this rulemaking are contained in the Public Docket No. A-97-46. The docket is located at the Air Docket, room M-1500 (6102), Waterside Mall SW., Washington, DC 20460. The docket may be inspected between 8:30 a.m. and 12 noon and between 1:30 p.m. until 3:30 p.m. on weekdays. A reasonable fee may be charged for copying docket material. Electronic copies of the preamble and the regulatory text of this rulemaking are available on the Office of Mobile Sources' World Wide Web site, <http://www.epa.gov/OMSWWW/>.

FOR FURTHER INFORMATION CONTACT: Tracey Bradish, Office of Mobile Sources, National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan, 48105. Telephone (313) 668-4239. E-mail bradish.tracey@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Table of Contents

II. Summary of Rule

III. Authority

IV. Public Participation

- A. Increased Flexibility
- B. METT vs. "Sound" Evaluation Method
- C. "Sound" vs. non-METT Evaluation Method
- D. FTP Correlation
- E. SIP Submission Deadlines
- F. Need for New State Regulations
- G. State Monitoring

V. Economic Costs and Benefits

VI. Administrative Requirements

- A. Administrative Designation
- B. Reporting and Recordkeeping Requirement
- C. Regulatory Flexibility Act
- D. Unfunded Mandates Act
- E. Small Business Regulatory Enforcement Fairness Act
- F. Petition for Judicial Review

II. Summary of Rule

Under the Clean Air Act as amended in 1990 (the Act), 42 U.S.C. 7401 *et seq.*, the U.S. Environmental Protection Agency (EPA) published in the **Federal Register** on November 5, 1992, (40 CFR part 51, subpart S) a rule related to state air quality implementation plans for Motor Vehicle Inspection and Maintenance (I/M) programs (hereafter referred to as the I/M rule; see 57 FR 52950). With today's action, EPA is amending this rule to provide greater flexibility to states in conducting program evaluation. This action: 1)

amends the I/M program evaluation requirements at 40 CFR 51.353(c) to remove the current requirement that the tailpipe portion of the program evaluation can only be performed by conducting mass emission transient testing (METT), 2) creates a new evaluation requirement at 40 CFR 51.353(c) that instead requires states to conduct program evaluation testing using a sound evaluation methodology capable of providing accurate information about I/M program effectiveness, such evaluation to begin no later than November 30, 1998, 3) amends the requirement that the program evaluation test be conducted "at the time the initial test is due" to clarify that states are not barred from using alternative sample gathering methods like roadside pullovers by defining "the time of initial test" as any time prior to repairs during the inspection cycle under consideration, 4) deletes the current conditions on Pennsylvania's and Virginia's conditional interim I/M approvals and Delaware's conditional approval (40 CFR part 52, subpart NN, § 52.2026(a)(2), 40 CFR part 52, subpart V, § 52.2450(b)(2), and 40 CFR part 52, subpart I, § 52.424(b), respectively) that require submission of program evaluation regulations under the existing I/M rule, and 5) imposes a new condition on Pennsylvania's, Virginia's, and Delaware's I/M approvals that will require them to submit I/M SIP revisions which include a requirement to perform a program evaluation using a sound evaluation methodology meeting the amended requirements of 40 CFR 51.353(c) by November 30, 1998.

Prior to today's action, the I/M rule required states to test at least 0.1 percent of the vehicles subject to inspection in a given year using a state administered or monitored IM240 or an EPA-approved equivalent METT evaluation methodology. Today's action revises this requirement to allow states the option of using an approved, alternative, sound methodology for their program evaluation. This action also clarifies that states are to start vehicle testing for their program evaluation no later than November 30, 1998, and are not required to do so coincident with program start up. EPA notes that existing requirements for program start up as soon as possible remain in place and are not effected in any way by today's program evaluation amendments.

Today's action is in response to the many changes that have occurred in the field of I/M since the original rule was promulgated in November 1992. Program designs and test types not

originally envisioned in 1992 are now becoming the options of choice among many states required to implement enhanced I/M programs. For example, non-METTs like the Acceleration Simulation Mode (ASM) test have been adopted by several enhanced I/M states that were originally expected to choose the METT-based IM240. These states have subsequently voiced the concern that requiring a METT like the IM240 for the purpose of evaluating a program using a non-METT as its day-to-day test poses certain practical implementation difficulties not experienced in programs that have opted to use a METT as the day-to-day test. While these problems are not insurmountable, EPA acknowledges the potential, practical benefits of adopting a sound evaluation methodology that does not rely on METT. Today's action, therefore, introduces the flexibility needed to allow states who choose to do so to make the case for alternative evaluation methodologies, including those centered on non-METT-based testing. In addition to considering state proposals, EPA will also be conducting formal reviews of several alternative evaluation methodologies presented to it during a stakeholder's meeting held in Ann Arbor, Michigan on August 11, 1997, details of which are discussed in the "Public Participation" section of this document. Today's action will also better accommodate new advances in analytical methodologies, given the speed at which new technology in this field has been shown to evolve and mature.

To ensure that all states have an equal opportunity to take advantage of the flexibilities created by today's action, it is necessary that EPA also amend certain I/M SIP approval actions previously published in the **Federal Register** in response to the National Highway System Designation Act of 1995 (NHSDA) as well as those published in response to EPA's own I/M flexibility amendments of September 18, 1995 and July 25, 1996. The NHSDA and I/M amendments introduced additional flexibility with regard to I/M program design, and states that opted to take advantage of this flexibility were required to submit new SIPs. In review of these revised I/M SIPs, EPA found that many failed to fully address one aspect or another of the I/M rule, leading the Agency to propose either conditional interim approvals (in the case of NHSDA-triggered revisions) or conditional approvals in the remaining cases. For example, the Commonwealths of Pennsylvania and Virginia failed to fully address the I/M rule's program

evaluation requirements for conducting the IM240 or an equivalent, approved METT on 0.1 percent of their in-use fleet. In response to this omission, EPA originally placed conditions on the Virginia and Pennsylvania interim approval actions, based on commitments made by the commonwealths, requiring them to adopt the regulations needed to meet the METT-based program evaluation requirement. Since today's action broadens the program evaluation requirement to include other sound evaluation methodologies, it is also appropriate to withdraw these METT-based program evaluation conditions on the interim approval notices for Virginia and Pennsylvania. In place of these original conditions, today's action imposes new conditions that will require the commonwealths instead to submit SIP revisions that meet the more flexible requirements of the amended 40 CFR 51.353(c). These new conditions are based on new commitments submitted by the states to meet the new evaluation requirements. In the case of Delaware, while the program evaluation condition did not explicitly require METT-based program evaluation, the deadline for meeting that condition falls sooner than it would based upon today's amendments. To allow the State to take advantage of this deadline extension, it is necessary for EPA to also amend the **Federal Register** document conditionally approving the Delaware I/M SIP based upon a new state commitment to meet the new program evaluation requirements. All three—Delaware, Virginia, and Pennsylvania—must submit revised SIPs meeting the amended evaluation methodology requirements by November 30, 1998 in order to meet the new conditions imposed by today's action under section 110(k)(4) of the Act.

Of the three above SIP approval notices, only Virginia's originally required the Commonwealth to meet its METT-based program evaluation condition before EPA could complete today's action. The original published deadline for Virginia to meet its program evaluation condition was September 15, 1997, which did not reflect the full twelve month period available under the statute for meeting such conditions. Therefore, in conjunction with the publication of the notice proposing today's action, and based upon a commitment by the Commonwealth, EPA took an interim final action to extend the deadline for Virginia's existing program evaluation condition to May 15, 1998, which represented the latest date available

prior to finalization of today's action. Today's action creates a new deadline of November 30, 1998, in keeping with the time extension provided to other states by today's action for compliance with the new evaluation requirements promulgated today and consistent with Virginia's new commitment to meet the new requirements by that date.

Lastly, it may similarly be necessary for some states to amend their currently approved I/M SIPs to take advantage of flexibilities provided by today's action. EPA therefore suggests that such states review their enhanced I/M SIPs for any language that may conflict with today's amendments. Such language will need to be amended and the amendment submitted as a SIP revision no later than November 30, 1998, in order to take advantage of today's flexibility.

III. Authority

Authority for the rule change proposed in this document is granted to EPA by section 182 of the Clean Air Act as amended (42 U.S.C. 7401, *et seq.*). Authority to conditionally approve a SIP based on a state's commitment to revise the SIP by a date certain within one year is provided by section 110(k)(4) of the Act.

IV. Public Participation

Written comments on the September 19, 1997 proposal were received from seven sources prior to the close of public comment period on October 20, 1997: The Georgia, Missouri, and Wisconsin Departments of Natural Resources; the Maryland Department of the Environment; Pennsylvania's Department of Transportation and Department of Environmental Protection (jointly); the Service Station Dealers of America and Allied Trades; and the International Tire and Rubber Association. The Missouri and Wisconsin Departments of Natural Resources and the Maryland Department of the Environment opposed the amendments, while the remainder of the commenters supported the proposed amendments, in whole or in part.

In addition, the Texas Natural Resource Conservation Commission (TNRCC) submitted comments one month after the close of public comment period, in a letter dated November 20, 1997. While we will not be addressing each of TNRCC's comments separately and specifically in this rulemaking due to time constraints, EPA does acknowledge their receipt and has included them in the docket for this rulemaking. In general, TNRCC supported the proposed amendments and reiterated and/or reinforced

comments made by the other, above commenters.

The main issues raised by the commenters are summarized and addressed below.

A. Increased Flexibility

All the commenters supporting changes to the program evaluation requirement as well as the other proposed amendments cited the greater flexibility provided to states as the primary reason for their support. Among these supporters, one stands out: Pennsylvania. Unlike the other supporters, Pennsylvania augmented its support of the amendments with numerous additional comments suggesting that even greater flexibility is still needed. These additional comments will be addressed as appropriate, below.

B. METT vs. "Sound" Evaluation Method

1. Summary of Proposal

The proposal removed the I/M rule's requirement that the program evaluation testing be performed using either an IM240 or "any other transient, mass emission test procedure approved as equivalent," and replaced it with the more flexible requirement that such testing be conducted using an EPA-approved, "sound evaluation methodology * * * capable of providing accurate information about the overall effectiveness of an I/M program."

2. Summary of Comments

Commenters opposed to the proposed amendments focused on the test type to be used for the program evaluation. These commenters generally favored leaving the original requirement for IM240 or an equivalent METT unchanged. Most of the opposing commenters cited EPA's original reasons for choosing the IM240—its accuracy, its ability to reflect real world driving conditions, its correlation to the Federal Test Procedure (FTP), and its ability to measure actual mass emissions, as opposed to percent concentrations—in support of retaining the requirement. The opposing commenters also suggested that METT testing was the only way to provide an objective and consistent criterion for comparing the effectiveness of state programs, particularly given the number and variety of untested program designs being implemented by the states, post-NHSDA. One such commenter was also concerned that allowing program evaluations based upon potentially less rigorous criteria could unfairly penalize those states that opt for METT-based

program evaluations, by artificially overestimating the benefit of decentralized, non-METT-based programs (and therefore underestimating those areas' contribution to regional ozone transport problems).

3. Response to Comments

While EPA agrees that IM240 and equivalent METTs are a cost effective, accurate, objective, and consistent method for evaluating the program effectiveness of both METT and non-METT-based I/M programs, suggesting that only a METT evaluation will suffice is premature. While we can assure states that have opted to use IM240 as their day-to-day inspection that the IM240 itself will continue as an approved program evaluation test method (because it represents a sound evaluation technique capable of providing accurate data on the effectiveness of I/M programs), we cannot now rule out the possibility of acceptable METT and non-METT alternatives to the IM240. EPA is in the process of reviewing several alternative, non-IM240-based program evaluation methodologies that were presented at a stakeholder's meeting held in Ann Arbor on August 11, 1997 and at the 13th Annual Mobile Sources/Clean Air Conference held September 16–19, 1997 in Steamboat Springs, Colorado. While many of these methods are cheaper, easier-to-implement variations on the METT concept that could be conducted with minimal equipment retrofitting in an otherwise decentralized, non-METT setting, at least one would allow states to use their existing, non-METT I/M program data in the determination of program effectiveness. Furthermore, while EPA's resources necessarily limit us in the number of alternative methodologies we can evaluate, we remain open to reviewing evaluations of additional methodologies conducted by the states or other interested parties and submitted to EPA, including non-METT alternatives. Lastly, while it is still too early to tell which of these methods will be deemed approved alternatives, EPA is sensitive to the need for both equity and accuracy in whatever candidate methodologies are selected for approval. EPA will take special care to insure that the benefits of non-METT programs are not overestimated as a result of the selected evaluation methodologies.

C. "Sound" vs. non-METT Evaluation Method

1. Summary of Proposal

While the proposed amendment language discussed above removes the

explicit requirement that the program evaluation test be METT-based—thereby opening the door to the possibility of non-METT-based alternatives—the amendment does not jump to the conclusion that such non-METT alternatives actually exist.

2. Summary of Comments

While Pennsylvania supported the spirit of the proposed amendments, the Commonwealth argued that EPA fell short by failing to specify that a non-METT program evaluation methodology would, in fact, be found and adopted. The Commonwealth argued that the program evaluation test should be the same test used for day-to-day testing (i.e., in the case of Pennsylvania, the non-METT-based idle and ASM tests). To support this claim, Pennsylvania cited the CAA's requirement that the biennial program evaluation be "based on data collected *during* the inspection and repair of vehicles" (emphasis added). Pennsylvania also quoted Conference Report 105–297 accompanying H.R. 2158, in support of its claim that Congress intended to bar EPA from mandating the use of IM240 for any purpose, including program evaluation. Furthermore, citing the same conference report, Pennsylvania indicated its belief that EPA was specifically directed by Congress to develop (not merely consider) a non-METT program evaluation test. In particular, Pennsylvania objected to the proposal's claim that it introduced "the flexibility needed to allow states who choose to do so to make the case for alternative evaluation methodologies, including those centered on non-METT based testing." Specifically, Pennsylvania claimed that it is "EPA's statutory obligation to develop a non-METT evaluation method; it is not the states' obligation to 'make the case' for one."

3. Response to Comments

As indicated in the previous response, EPA is still in the process of evaluating several alternative program evaluation methods, at least one of which would be consistent with Pennsylvania's request to use routine test data as the basis for program evaluation. Also, the intention of the "make the case" statement quoted by Pennsylvania was not to shift the obligation for test review and evaluation to the states. Rather, as previously stated, EPA's resources necessarily limit us in the number of alternative methodologies we can evaluate, and while a non-METT-based alternative *is* being considered by EPA, we remain open to reviewing evaluations of additional methodologies conducted by

the states or other interested parties. Further, EPA does not view comments in legislative history on unrelated legislation to impose any new requirements on EPA with respect to I/M program evaluations. The CAA gives EPA the flexibility to establish appropriate program evaluation methodologies and EPA is properly exercising that discretion. Under these amended requirements, EPA is no longer requiring use of IM240 and has specifically opened the door so that non-METT-based alternatives may be considered. Finally, EPA does not believe that the CAA requirement to base program evaluation on data collected during inspection places any limitation on the test type to be used to conduct such evaluations. Whatever test is to be used, EPA agrees it will be conducted at the time of initial testing as defined in today's action.

D. FTP Correlation

1. Summary of Proposal

The proposal did not address the criteria by which candidate alternative program evaluation methodologies would be judged, other than specifying that the method would be "sound" and "capable of providing accurate information about the overall effectiveness of an I/M program."

2. Summary of Comments

Though correlation to the FTP was not stipulated as a criterion for evaluating alternative program evaluation methodologies in the proposal submitted for public comment, several commenters raised FTP correlation as an issue. Those commenters opposed to the proposed amendments argued for the retention of IM240 because of the high degree to which that test correlates with the test used to certify new vehicles to the applicable emission standards (i.e., the FTP). One of the opposing commenters—Maryland—while not ruling out the possibility of valid alternatives, specifically requested that any approved alternative methods be "no less rigorous or reliable than the IM240 METT." Pennsylvania, on the other hand, objected to using correlation to the FTP as a criterion for determining the approvability of alternative program evaluation methods. The Commonwealth also suggested that, should EPA choose correlation to the FTP as the primary criterion for establishing an alternative method's approvability, then it is EPA's responsibility to make non-METTs like the ASM and idle test correlate better to the FTP. This last comment was in

response to the Commonwealth's reference to previous EPA statements regarding the very poor correlation to the FTP exhibited by non-METTs like the ASM and idle tests.

3. Response to Comments

While EPA believes that a high degree of correlation to the FTP is a reliable indicator of a test's ability to accurately measure real world in-use vehicle emissions, we are not prepared to rule out the possibility that other, surrogate measurements could provide equally valid indicators of program effectiveness. EPA will explore other potential measures in conjunction with development and analysis of alternative evaluation techniques. Nevertheless, EPA disagrees with the suggestion that should FTP correlation be found to be the only reliable indicator of an evaluation method's acceptability that EPA therefore is obligated to somehow improve the degree to which non-METTs correlate to the FTP. While it is possible to increase correlation to the FTP by starting with the same basic equipment used to perform a non-METT like the ASM and either changing the test procedure and/or retrofitting the equipment to gather variables like exhaust volume, the resultant test is no longer an ASM by definition, but likely something approximating a METT. Trying to change the correlation of a given test without fundamentally changing the underlying nature of the test itself is a logical impossibility. Furthermore, strategies such as tightening cutpoints—which states have used historically to increase emission reductions by increasing the failure rate for a chosen test—do not improve a test's correlation to the FTP, which is based on actual emission measurements and not relative failure rate.

E. SIP Submission Deadlines

1. Summary of Proposal

The proposal revised the conditional approvals for Pennsylvania, Virginia, and Delaware to require the submission of SIP revisions addressing the revised program evaluation requirements by November 30, 1998. The proposal also set the date by which program evaluation testing is to begin for all enhanced I/M programs at no later than November 30, 1998. The proposal did not address which alternative program evaluation tests would be reviewed nor when guidance on approved alternatives would be issued.

2. Summary of Comments

Both Maryland and Pennsylvania raised concerns regarding whether or

not EPA would be able to complete its review of alternative program evaluation methodologies in time for states to meet the November 30, 1998 deadline. While Pennsylvania commented that it "agrees that states need to start vehicle testing for their program evaluation no later than November 30, 1998," it also requested that states be given until November 30, 2000 to submit revised SIPs. Pennsylvania also requested that the requirement that the revised SIP include an "approved" program evaluation methodology be deleted, suggesting that such a requirement would either circumvent the public notice-and-comment rulemaking process SIP approvals are usually subjected to, or require states to submit SIP revisions substantially earlier than November 30, 1998 to allow EPA time to process and approve the submission by the November 30, 1998 deadline.

3. Response to Comments

EPA has currently identified four alternative program evaluation methodologies which will be the subject of further investigation in the coming months. The methods to be reviewed are: 1) The V-MAS method, a low cost method for measuring exhaust flow for the purpose of converting concentration measurements into mass emissions measurements; 2) The California Analytical Bench method, a low cost analyzer bench that uses the same type of analyzers as the IM240; 3) The Sierra Research method, a method that relies on state I/M program data, modeling data, and correlation to a base I/M program with a known effectiveness level; and 4) The RSD method, which relies on remote sensing (RSD) data. EPA projects the following schedule for its program evaluation methodology review, including milestones already completed:

August 11, 1997—EPA hosted a stakeholder's meeting for states, contractors, vendors, and all interested parties for the purpose of seeking input regarding which alternative methods to investigate. This milestone has been completed.

September 15, 1997—EPA selected the candidate methodologies for further investigation. This milestone has also been completed.

May 31, 1998—The testing of candidate methodologies will be completed.

October 15, 1998—EPA's analysis of the testing results will be completed.

October 31, 1998—EPA will release a policy memo and guidance on approved program evaluation methodologies.

While a review of the above schedule initially suggests that states hoping to

meet a November 30, 1998 deadline will have only one month in which to prepare and submit their SIP revisions, such a conclusion assumes that states can take no relevant action prior to the release of official EPA guidance on alternative methods. In fact, many elements of the necessary SIP revision are not test-dependent and can be addressed well prior to finalization of EPA guidance. Furthermore, while final guidance may not be released until October 31, 1998, the direction of the investigation should be clear well before that deadline, and EPA will keep all interested parties informed of our progress as the review process moves forward. Also, it should be pointed out again that today's action does not bind any state to change whatever course it may have been on prior to the introduction of this additional flexibility. States that choose to make use of this additional flexibility must determine for themselves the feasibility of such a decision within the context of their local needs and competing resource demands. EPA does not see any reason to extend compliance beyond November 1998.

Concerning Pennsylvania's request that EPA delete the requirement that the evaluation method included in the SIP revision be "approved," EPA declines this request. Contrary to the Commonwealth's expressed concern, "approved" as it is used in this context does not mean that the SIP revision itself has to be somehow pre-approved prior to submission (or prior to November 30, 1998). Rather, "approved" simply refers to the program evaluation test methodology included in the submission. The approval of alternative program evaluation methodologies is the goal of the investigation discussed earlier in this response. The guidance scheduled for release no later than October 31, 1998 will indicate which methods are "approved" in this sense. EPA wishes to retain the "approved" language in the rule merely to indicate that states may not do I/M program evaluations with methodologies that EPA has not found to be acceptable. EPA will still complete notice-and-comment rulemaking on any SIP submission containing program evaluation methodology revisions once it is submitted.

F. Need for New State Regulations

1. Summary of Proposal

The proposal revised the program evaluation conditions on the Pennsylvania and Virginia conditional interim I/M SIP approvals to require the submission of revised state I/M program

evaluation regulations by November 30, 1998, based upon commitments from the commonwealths.

2. Summary of Comments

Pennsylvania commented that its existing state I/M program evaluation regulations are sufficiently broad as to meet the new general program evaluation requirements without further revision. The Commonwealth also suggested that the specific details necessary as part of a SIP revision to address implementation of the revised program evaluation requirements would be provided by EPA guidance, implying that perhaps no SIP revision would be required to implement them (though this conclusion was not stated explicitly).

3. Response to Comments

EPA agrees that the Commonwealth's standing regulation, previously approved into the Pennsylvania I/M SIP, is broad enough to meet the revised general program evaluation requirements and has revised that portion of today's action to reflect this. This said, EPA cautions against jumping to the conclusion that the detail provided in future EPA guidance will satisfy the detailed program description requirements necessary for an approvable SIP revision addressing these requirements. EPA guidance, by necessity, must be general and applicable to a wide range of program possibilities. It will likely include options that states will need to select from and tailor to their local needs. EPA guidance will not be so limited and prescriptive as to obviate the need for separate SIP submissions from the states to implement alternative program evaluation methodologies. Thus, although Pennsylvania will likely not need new regulations, EPA believes that it will need a new SIP revision to address today's amended program evaluation requirements.

G. State Monitoring

1. Summary of Proposal

The proposal requires that the sample of vehicles selected for program evaluation testing receive a program evaluation test that is either "administered or monitored" by the state. This requirement was not introduced or revised as part of the proposed amendment, and has been a part of I/M requirements since publication of the 1992 rule.

2. Summary of Comments

Pennsylvania objected to the requirement that the program evaluation test be administered or monitored by the

state, indicating that it "is not in the 'business' of emissions testing." In particular, the Commonwealth objected to the notion of having to invest in the purchase of any testing equipment whatsoever for the purpose of evaluating program effectiveness. Instead, Pennsylvania indicated its preference to "monitor the program through computer programming and software," with the possibility of random station visits at its discretion. The Commonwealth concluded by suggesting that it would not object to this requirement if it is subsequently determined that states can, in fact, use their day-to-day I/M tests as the program evaluation test.

3. Response to Comments

As explained elsewhere, EPA is still in the process of evaluating possible program evaluation methodologies, at least one of which would allow states to use their day-to-day I/M test as the program evaluation test. Regardless of the conclusions of the program evaluation investigation, however, EPA does not believe that removing the requirement for state administration or monitoring of the program evaluation test is justified. The requirement is intended to ensure quality assurance and quality control of the subset of vehicle testing data devoted to program evaluation. Given the small size of the sample required (i.e., 0.1%) it is essential that the objectivity and quality of the data under consideration not be questioned. EPA believes this can only be accomplished by state operated or contracted program evaluations. Thus, EPA believes the requirement that program evaluation tests be administered or monitored by the state should remain no matter what test type is selected.

V. Economic Costs and Benefits

Today's action provides states additional flexibility that lessens rather than increases the potential economic burden on states. Furthermore, states are under no obligation, legal or otherwise, to modify existing plans meeting the previously applicable requirements as a result of today's action.

VI. Administrative Requirements

A. Administrative Designation

It has been determined that this amendment to the I/M rule is not a significant regulatory action under the terms of Executive Order 12866 and are therefore not subject to OMB review. Any impacts associated with these revisions do not constitute additional burdens when compared to the existing

I/M requirements published in the **Federal Register** on November 5, 1992 (57 FR 52950) as amended. Nor do the amendments create an annual effect on the economy of \$100 million or more or otherwise adversely affect the economy or the environment. It is not inconsistent with nor does it interfere with actions by other agencies. It does not alter budgetary impacts of entitlements or other programs, and it does not raise any new or unusual legal or policy issues.

B. Reporting and Recordkeeping Requirement

There are no information requirements in this action which require the approval of the Office of Management and Budget under the Paperwork Reduction Act 44 U.S.C. 3501 *et seq.*

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this action will not have a significant economic impact on a substantial number of small entities and, therefore, is not subject to the requirement of a Regulatory Impact Analysis. A small entity may include a small government entity or jurisdiction. This certification is based on the fact that the I/M areas impacted by this rulemaking do not meet the definition of a small government jurisdiction, that is, "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." The enhanced I/M requirements only apply to urbanized areas with population in excess of either 100,000 or 200,000 depending on location. Furthermore, the impact created by this action does not increase the pre-existing burden of the existing rule which this action amends.

D. Unfunded Mandates Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule where the estimated costs to State, local, or tribal governments, or to the private sector, will be \$100 million or more. Under § 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objective of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly impacted by the rule. To the extent that the rules being

finalized by this action would impose any mandate at all as defined in § 101 of the Unfunded Mandates Act upon the state, local, or tribal governments, or the private sector, as explained above, this action is not estimated to impose costs in excess of \$100 million. Therefore, EPA has not prepared a statement with respect to budgetary impacts. As noted above, this rule offers opportunities to states that would enable them to lower economic burdens from those resulting from the I/M rule which this action amends.

E. Small Business Regulatory Enforcement Fairness Act

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. The rule is not a "major rule" as defined by 5 U.S.C. 804(2).

F. Petition for Judicial Review

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 March 10, 1998.

Filing a petition for reconsideration by the Administrator of this final rule to amend the program evaluation requirements of the I/M rule does not affect the finality of this rule for the purpose 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. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Clean Air Act).

List of Subjects

40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Transportation.

40 CFR Part 52

Air pollution control, Carbon monoxide.

Dated: December 29, 1997.

Carol M. Browner,
Administrator.

For the reasons set out in the preamble, parts 51 and 52 of title 40, chapter I of the Code of Federal

Regulations is amended to read as follows:

PART 51—[AMENDED]

1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

2. Section 51.353 is amended by revising paragraph (c)(3) and (c)(4) to read as follows:

§ 51.353 Network type and program evaluation.

* * * * *

(c) * * *

(3) The evaluation program shall consist, at a minimum, of those items described in paragraph (b)(1) of this section and program evaluation data using a sound evaluation methodology, as approved by EPA, and evaporative system checks, specified in § 51.357(a)(9) and (10) of this subpart, for model years subject to those evaporative system test procedures. The test data shall be obtained from a representative, random sample, taken at the time of initial inspection (before repair) on a minimum of 0.1 percent of the vehicles subject to inspection in a given year. Such vehicles shall receive a state administered or monitored test, as specified in this paragraph (c)(3), prior to the performance of I/M-triggered repairs during the inspection cycle under consideration.

(4) The program evaluation test data shall be submitted to EPA and shall be capable of providing accurate information about the overall effectiveness of an I/M program, such evaluation to begin no later than November 30, 1998.

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PART 52—[AMENDED]

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

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

2. Section 52.2026 is amended by revising paragraph (a)(2) to read as follows:

§ 52.2026 Conditional approval.

* * * * *

(a) * * *

(2) The Commonwealth must submit to EPA as a SIP amendment, by November 30, 1998, the final Pennsylvania I/M program evaluation plan requiring an approved alternative sound evaluation methodology to be performed on a minimum of 0.1 percent of the subject fleet each year as per 40 CFR 51.353(c)(3) and which meets the program evaluation elements as specified in 40 CFR 51.353(c).

* * * * *

3. Section 52.2450 is amended by revising paragraph (b)(2) to read as follows:

§ 52.2450 Conditional approval.

* * * * *

(b) * * *

(2) The Commonwealth must submit to EPA as a SIP amendment, by November 30, 1998, the final Virginia I/M program evaluation regulation requiring an approved alternative sound evaluation methodology to be performed on a minimum of 0.1 percent of the subject fleet each year as per 40 CFR 51.353(c)(3) and which meets the program evaluation elements as specified in 40 CFR 51.353(c).

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4. Section 52.424 is amended by revising paragraph (b) introductory text to read as follows:

§ 52.424 Conditional approval.

* * * * *

(b) The State of Delaware's February 17, 1995 submittal for an enhanced motor vehicle inspection and maintenance (I/M) program, and the November 30, 1995 submittal of the performance standard evaluation of the low enhanced program, is conditionally approved based on certain contingencies. The following conditions must be addressed in a revised SIP submission. Along with the conditions listed is a separate detailed I/M checklist explaining what is required to fully remedy the deficiencies found in the proposed notice of conditional approval. This checklist is found in the Technical Support Document (TSD), located in the docket of this rulemaking, that was prepared in support of the proposed conditional I/M rulemaking for Delaware. This checklist and Technical Support Document are available at the Air, Radiation, and Toxics Division, 841 Chestnut Bldg., Philadelphia, PA 19107, telephone (215) 566-2183. By no later than one year from June 18, 1997, Delaware must submit a revised SIP that meets the following conditions for approvability, with the exception of condition item in paragraph (b)(3) of this section which addresses I/M program evaluation requirements. Condition in paragraph (b)(3) of this section must be met by November 30, 1998, in keeping with the amended requirements of 40 CFR 51.353.

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