CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to ''fix-up'' their RACT rules. See section 182(a)(2)(A). For some source categories, such as steam-enhanced crude oil production well vents, EPA did not publish a CTG. Therefore, there is no CTG applicable to Rule 4401. In such cases, the District makes a determination of what controls are required to satisfy the RACT requirement, by reviewing the operations of facilities within the affected source category. In that review, the technological and economic feasibility of the proposed controls are considered. Additionally, the District may rely on EPA policy documents or technical guidance to ensure that the adopted VOC rules are fully enforceable and strengthen or maintain the SIP.

SJVUAPCD's submitted Rule 4401 includes the following significant changes from the current SIP:

1. Language in several provisions has been amended to clarify the intent of the rule.
2. Provisions related to implementation of best available control technology (BACT) and offsets have been amended to be consistent with Federal requirements.
3. Additional recordkeeping requirements have been added to determine compliance with the rule.

EPA has evaluated the submitted rule and has determined that it is consistent with the CAA, EPA regulations, and EPA policy. Therefore, SJVUAPCD Rule 4401 is being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D. Based on this proposed full approval, EPA is also making an interim final determination that the State has corrected the deficiencies for which a sanctions clock began on September 27, 1996. See 61 FR 44161, August 28, 1996. Elsewhere in today's **Federal Register**, EPA has published a document that defers the imposition of sanctions until EPA's final action approving SJVUAPCD Rule 4401 becomes effective or until EPA takes action proposing or finally disapproving in whole or part the State submittal. If EPA takes final action fully approving SJVUAPCD Rule 4401, any sanctions clocks will be permanently stopped and any imposed, stayed or deferred sanctions will be permanently lifted upon the effective date of that final action.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Regulatory Process

A. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. section 600 *et. seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. sections 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIAP approvals under sections 100 and 301(a) and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

B. Unfunded Mandates Reform 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 that includes a Federal mandate that may result in estimated costs to State, local, or tribal government in the aggregate, or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives 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 or uniquely impacted by the rule.

Through submission of this State implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under part D of the Clean Air Act. These rules may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rule being proposed for approval by this action will impose no new requirements because affected sources are already subject to these regulations under State law. Therefore, no additional costs to State, local, or tribal governments, or to the private sector result from this action. EPA has also determined that this proposed action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

C. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52:

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: March 20, 1998.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 98–8063 Filed 3–27–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DC036–2007; FRL–5988–6]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Enhanced Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed conditional approval and withdrawal of proposed disapproval action.

SUMMARY: EPA is proposing to conditionally approve a State Implementation Plan (SIP) revision submitted by the District of Columbia (the District) on November 27, 1997. This revision establishes and requires the implementation of an enhanced motor vehicle inspection and maintenance (I/M) program within the District. The intended effect of this action is to propose conditional approval of the District's enhanced

motor vehicle I/M program. EPA is proposing approval conditioned upon the District meeting the April 30, 1999 start date committed to and contained in its enhanced I/M SIP revision. EPA is also withdrawing its October 10, 1996 (61 FR 53166) proposed disapproval action of the enhanced I/M SIP revision submitted by the District of Columbia on July 13, 1995 (supplemented March 27, 1996).

DATES: Comments must be received on or before April 29, 1998.

ADDRESSES: Comments may be mailed to David L. Arnold, Chief, Ozone/CO & Mobile Sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107.

FOR FURTHER INFORMATION CONTACT: Catherine L. Magliocchetti @ 215–566–2174, at the EPA Region III address above, or via e-mail at magliocchetti.catherine @epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the Region III office.

SUPPLEMENTARY INFORMATION:

I. Introduction

Motor vehicles are significant contributors of volatile organic compounds (VOC), carbon monoxide (CO) and nitrogen oxide (NO_X) emissions. An important control measure to reduce these emissions is the implementation of a motor vehicle inspection and maintenance (I/M) program. Despite being subject to the most rigorous vehicle pollution control program in the world, cars and trucks still create about half of the ozone air pollution and nearly all of the carbon monoxide air pollution in United States cities, as well as toxic contaminants. Of all highway vehicles, passenger cars and light-duty trucks emit most of the vehicle-related carbon monoxide and ozone-forming hydrocarbons. They also emit substantial amounts of nitrogen oxides and air toxics. Although the U.S. has made progress in reducing emissions of these pollutants, total fleet emissions remain high. This is because the number of vehicle miles traveled on U.S. roads has doubled in the last 20 years to 2 trillion miles per year, offsetting much of the technological progress in vehicle emission control over the same two decades. Projections indicate that the steady growth in vehicle travel will continue. Ongoing efforts to reduce emissions from individual vehicles will be necessary to achieve our air quality goals.

Today's cars are absolutely dependent on properly functioning emission controls to keep pollution levels low. Minor malfunctions in the emission control system can increase emissions significantly, and the average car on the road emits three to four times the new car standard. Major malfunctions in the emission control system can cause emissions to skyrocket. As a result, 10 to 30 percent of cars are causing the majority of the vehicle-related pollution problem. Unfortunately, it is rarely obvious which cars fall into this category, as the emissions themselves may not be noticeable and emission control malfunctions do not necessarily affect vehicle driveability.

Effective I/M programs, however, can identify these problem cars and assure their repair. I/M programs ensure that cars are properly maintained during customer use. I/M produces emission reduction results soon after the program is put in place.

The Clean Air Act as amended in 1990 (the Act) requires that most polluted cities adopt either ''basic'' or ''enhanced'' I/M programs, depending on the severity of the problem and the population of the area. The moderate ozone nonattainment areas, plus marginal ozone areas with existing or previously required I/M programs, fall under the ''basic'' I/M requirements. Enhanced programs are required in serious, severe, and extreme ozone nonattainment areas with urbanized populations of 200,000 or more; CO areas that exceed a 12.7 parts per million (ppm) design value [1] with urbanized populations of 200,000 or more; and all metropolitan statistical areas with a population of 100,000 or more in the Northeast Ozone Transport Region.

''Basic'' and ''enhanced'' I/M programs both achieve their objectives by identifying vehicles that have high emissions as a result of one or more malfunctions, and requiring them to be repaired. An ''enhanced'' program covers more of the vehicles in operation, employs inspection methods that are better at finding high emitting vehicles, and has additional features to better assure that all vehicles are tested properly and effectively repaired.

The Act requires states to make changes to improve existing I/M programs or to implement new ones for certain nonattainment areas. Section 182(a)(2)(B) of the Act directed EPA to publish updated guidance for state I/M programs, taking into consideration findings of the Administrator's audits and investigations of these programs. The Act further requires each area required to have an I/M program to incorporate this guidance into the SIP. Based on these requirements, EPA promulgated I/M regulations on November 5, 1992 (57 FR 52950, codified at 40 Code of Federal Regulations (CFR) 51.350–51.373), herein referred to as the I/M Rule. Flexibility amendments to this rule, which provided for a low enhanced I/M performance standard for use in certain qualifying areas were published on September 18, 1995 (60 FR 48029) and additional I/M flexibility amendments for qualified areas in the OTR were published on July 25, 1996 (61 FR 39031).

Under sections 182(c)(3), 187(a)(6) and 187(b)(1) of the Act, and 40 CFR 51.350(a), any area having a 1980 Bureau of Census-defined urbanized area population of 200,000 or more and that is either: (1) designated as serious or worse ozone nonattainment or (2) moderate or serious CO nonattainment areas with a design value greater than 12.7 ppm, shall implement enhanced I/M in the 1990 Census-defined urbanized area. The Act also established the ozone transport region (OTR) in the northeastern United States comprised of 11 states and the District. Section 184(b)(1)(A) of the Act require the implementation of enhanced I/M programs in all metropolitan statistical areas (MSAs) located in the OTR that have a population of 100,000 or more people.

The November 1992 I/M Rule establishes minimum performance standards for basic and enhanced I/M programs as well as requirements for the following: network type and program evaluation; adequate tools and resources; test frequency and convenience; vehicle coverage; test procedures and standards; test equipment; quality control; waivers and compliance via diagnostic inspection; motorist compliance enforcement; motorist compliance enforcement program oversight; quality assurance; enforcement against contractors, stations and inspectors; data collection; data analysis and reporting; inspector training and licensing or certification;

[1] The air quality design value is estimated using EPA guidance. Generally, the fourth highest monitored value with 3 complete years of data is selected as the ozone design value because the standard allows one exceedance for each year. The highest of the second high monitored values with 2 complete years of data is selected as the carbon monoxide design value.

public information and consumer protection; improving repair effectiveness; compliance with recall notices; on-road testing; SIP revisions; and implementation deadlines. The performance standard for enhanced I/M programs is based on a high-technology transient test, known as IM240, for new technology vehicles (i.e, those with closed-loop control and, especially, fuel injected engines), including a transient loaded exhaust short test incorporating hydrocarbons (HC), CO and NO_X cutpoints, an evaporative system integrity (pressure) test and an evaporative system performance (purge) test.

Under the November 1992 I/M Rule enhanced I/M programs were required to initially begin phased-in implementation by January 1, 1995, with final full implementation slated for January 1, 1996. Due to EPA rule changes, and the flexibility afforded by the National Highway Systems Designation Act of 1995 (NHA) EPA believes states should be afforded extra time to begin full implementation of their enhanced I/M programs. Since the 1995 deadline has now passed, EPA believes that state I/M programs must now start up as soon as practicable.

II. Background

The District of Columbia is part of the OTR and is part of the Washington DC, MSA with a population of 100,000 or more. Section 184(b)(1)(A) of the Act require all states in the OTR region which contain MSAs or parts thereof with populations of 100,000 or more, to submit a SIP revision for an enhanced I/M program.

On July 13, 1995 the District of Columbia Department of Consumer and Regulatory Affairs, now known as the Department of Health (DoH), submitted to EPA a SIP revision for an enhanced I/M program. On March 27, 1996, DoH submitted a supplement to this SIP revision, in response to changes to the federal program requirements resulting from new federal legislation governing enhanced I/M programs, and EPA rule changes to the program. EPA's evaluation of this SIP revision submittal (including its supplement) concluded that it did not meet the requirements of the Clean Air Act, and subsequently EPA proposed disapproval of the SIP revision on October 10, 1996 (61 FR 53166). The rationale for EPA's disapproval can be found in the notice of proposed rulemaking, and will not be restated here. In response to EPA's proposed disapproval of the District's plan, DoH completely redesigned the District's enhanced I/M program. On November 25, 1997, DoH submitted to EPA another enhanced I/M SIP revision which replaced, completely, its earlier enhanced I/M submittal, and simultaneously requested that EPA withdrawal the October 1996 proposed disapproval. In preparing the latest SIP revision, DoH has attempted to address all of the programmatic deficiencies identified in the October 1996 proposed disapproval of the previously submitted SIP revision.

EPA's summary of the requirements of the federal I/M rule as found in 40 CFR 51.350–51.373 and EPA's analysis of the District's November 25, 1997 submittal is outlined below. A more detailed analysis of the District's submittal is contained in a Technical Support Document (TSD) dated March 10, 1998. For interested parties, the TSD is available upon request from the Region III office, listed in the **ADDRESSES** section above. Parties desiring additional details on the I/M rule are referred to the November 5, 1992 **Federal Register** notice (57 FR 52950) or 40 CFR 51.350–51.373, as well as the I/M Flexibility Amendments in the September 18, 1995 **Federal Register** notice (60 FR 48029) and the additional I/M flexibility amendments for qualified areas in the OTR, published on July 25, 1996 at (61 FR 39031).

III. EPA's Analysis of the District of Columbia's Enhanced I/M Program

As discussed above, sections 182(c)(3), 184(b)(1)(A), 187(a)(6) and 187(b)(1) of the Act require that states adopt and implement regulations for enhanced I/M programs in certain areas. Based upon EPA's review of the District's submittal, EPA believes the District has complied with all aspects of the Act and the I/M rule. EPA is proposing approval, conditioned upon the District meeting the April 30, 1999 start date committed to and contained in its enhanced I/M SIP revision. EPA is imposing this condition because while it agrees that the District's start date of April 30, 1999 is as expeditious as practicable given current circumstances, EPA also believes that it is imperative that this date be met with no further delay beyond the originally mandated federal date for start-up of enhanced I/M programs. Because the originally mandated start date has now passed, EPA proposes to condition approval of the District's I/M program on start-up as soon as practicable. In light of the current status of the District program, EPA concludes that April 30, 1999 is as soon as practicable to start the program in the District. EPA has reviewed the November 25, 1997 SIP revision, and has determined that the enhanced I/M program detailed in the SIP revision meets all of the other requirements of the CAA.

A. Applicability—40 CFR 51.350

Section 184(b)(1)(A) of the Act and 40 CFR 51.350(a) require all states in the OTR which contain MSAs or parts thereof with populations of 100,000 or more to implement an enhanced I/M program. The District of Columbia is part of the OTR and is a part of the Washington, DC, MSA, which has a population in excess of 100,000. DC's enhanced I/M program will be implemented throughout the District.

The District's I/M legislative authority (Title 40, Chapter 2) provides the legal authority to establish the geographic boundaries of the program. The program boundaries listed in Section 1 of the SIP revision are the inclusive zipcode listings for the entire District, and thus meet the federal I/M requirements under § 51.350.

The I/M rule requires that the state program shall not sunset until it is no longer necessary. EPA interprets the I/M rule as stating that a SIP which does not sunset prior to the attainment deadline for each applicable area satisfies this requirement. DoH has previously informed EPA, through its November 13, 1996 comment letter on the October 1996 proposed disapproval, that the legislation governing the District's I/M program will not sunset unless it is actively repealed or amended by the City Council. DoH therefore believes that the program is authorized up to and beyond the attainment date. EPA agrees with this assessment, since there is no sunset date provision attached to the enabling legislation. Therefore, EPA has determined that the District of Columbia has satisfied all of the requirements of § 51.350 of the I/M rule.

B. Enhanced I/M Performance Standard—40 CFR 51.351

In accordance with the Act and with the I/M rule, the enhanced I/M program must be designed and implemented to meet or exceed a minimum performance standard, which is expressed as emission levels in area-wide average grams per mile (gpm) for certain pollutants. The performance standard shall be established using local characteristics, such as vehicle mix and local fuel controls, and the following model I/M program parameters: network type, start date, test frequency, model year coverage, vehicle type coverage, exhaust emission test type, emission standards, emission control device, evaporative system function checks, stringency, waiver rate, compliance rate and evaluation date. The emission

levels achieved by the State's program design shall be calculated using the most current version, at the time of submittal, of the EPA mobile source emission factor model. Areas shall meet the performance standard for the pollutants which cause them to be subject to enhanced I/M requirements. In the case of ozone nonattainment areas such as the District, the performance standard must be met for both NO_X and HC.

The District's submittal includes the following program design parameters:

Network Type—Centralized, test-only.

Start Date—April 1999.

Test Frequency—Biennial.

Model Year/Vehicle Type Coverage—All 1974 and newer light duty gasoline vehicles (LDGV); light duty gasoline trucks 1 & 2 (LDGT1, LDGT2); and heavy duty gasoline vehicles up to 26,000 lbs gross vehicle weight.

Exhaust Emission Test Type—Transient test for 1984 and newer model year vehicles idle test for1983 and older model year vehicles.

Emission Standards—Permanent transient test standards for 1984 and newer model year light duty vehicles: 0.8 gpm HC, 15 gpm CO, 2.0 gpm NO_X. [Please refer to the District's I/M regulations (18 DCMR 752) for transient test standards for other applicable model years]

Emission Control Device—Pressure and purge check on all 1984 and newer model year vehicles.

Stringency (pre-1981 failure rate)—40%.

Waiver Rate—3% on pre- and post-1981 vehicles.

Compliance Rate—96%.

Evaluation Date—For HC and NO_X: July 1, 2002.

EPA has reviewed the District's modeling of the program and has determined that the design parameters are acceptable; and that the model performance standard has been met. EPA notes that an appropriate methodology was used by the District in accounting for a start-date month of April, which cannot be directly entered into the MOBILE model. For further information on the modeling approach, please consult the TSD. EPA has determined that the District of Columbia has satisfied all of the requirements of § 51.351 of the I/M rule.

C. Network Type and Program Evaluation—40 CFR 51.353

The enhanced program must include an ongoing evaluation to quantify the emission reduction benefits of the program, and to determine if the program is meeting the requirements of the Act and the I/M rule. The SIP shall include details on the program evaluation and shall include a schedule for submittal of biennial evaluation reports.

In response to the changing format of many enhanced I/M programs (resulting from increased flexibility under the I/M Flexibility Rule and the National Highway Systems Designation Act of 1995) EPA has committed to re-examining the requirements of this section of the I/M rule (see 63 FR 1362, January 9, 1998). EPA here notes that, as indicated in that rulemaking, whatever the outcome of this examination of alternative program evaluation methods, the original evaluation method will also be available to programs such as the District's that have opted for a centralized approach using IM240 equipment.

The original approach calls for the SIP to include the collection of data from a state monitored or administered mass emission test of at least 0.1% of the vehicles subject to inspection each year, a description of the sampling methodology, a description of the data collection and analysis system and the legal authority enabling the evaluation program.

In addition to these requirements, the state should also provide, in the biennial report, the results of undercover surveys of inspector effectiveness related to identifying vehicles in need of repair. Also, the State should, in its biennial reports, provide local fleet emission factors in assessing the actual effectiveness of the I/M program.

The District's submittal includes an ongoing program evaluation that meets the original I/M rule requirements. The District has the legal authority to conduct this testing under Title 40, Chapter 2. Therefore, EPA has determined that the District of Columbia has satisfied all of the requirements of § 51.353(d) of the I/M rule.

D. Adequate Tools and Resources—40 CFR 51.354

The federal regulation requires the state to demonstrate that adequate funding of the program is available. A portion of the test fee or separately assessed per vehicle fee shall be collected, placed in a dedicated fund and used to finance the program. Alternative funding approaches are acceptable if it can be demonstrated that the funding can be maintained. Reliance on funding from the state or local General Fund is not acceptable unless doing otherwise would be a violation of the state's constitution. The SIP shall include a detailed budget plan which describes the source of funds for personnel, program administration, program enforcement, and purchase of equipment. The SIP shall also detail the number of personnel dedicated to the quality assurance program, data analysis, program administration, enforcement, public education and assistance and other necessary functions.

The November 25, 1997 SIP revision documents that sufficient funds, equipment and personnel for the I/M program are available. EPA has determined that the District of Columbia has satisfied all of the requirements of § 51.354(d) of the I/M rule.

E. Test Frequency and Convenience—40 CFR 51.355

The enhanced I/M performance standard assumes an annual test frequency, however, other schedules may be approved if the performance standard is achieved. The SIP shall describe the test year selection scheme, how the test frequency is integrated into the enforcement process and shall include the legal authority, regulations or contract provisions to implement and enforce the test frequency. The program shall be designed to provide convenient service to the motorist by ensuring short wait times, short driving distances and regular testing hours.

The District's statutory authority provides for a biennial test frequency, and meets the test frequency and convenience requirements of the I/M rule. Therefore, EPA has determined that the District of Columbia has satisfied all of the requirements of § 51.355.

F. Vehicle Coverage—40 CFR 51.356

The performance standard for enhanced I/M programs assumes coverage of all 1968 and later model year light duty vehicles and light duty trucks up to 8,500 pounds GVWR, and includes vehicles operating on all fuel types. Other levels of coverage may be approved if the necessary emission reductions are achieved. Vehicles registered or required to be registered within the I/M program area boundaries and fleets primarily operated within the I/M program area boundaries and belonging to the covered model years and vehicle classes comprise the subject vehicles. Fleets may be officially inspected outside of the normal I/M program test facilities, if such alternatives are approved by the program administration, but shall be subject to the same test requirements using the same quality control standards as non-fleet vehicles and shall be inspected in independent, test-only facilities, according to the requirements

of 40 CFR 51.353(a). Vehicles which are operated on Federal installations located within an I/M program area shall be tested, regardless of whether the vehicles are registered in the State or local I/M area.

The I/M rule requires that the SIP shall include the legal authority or rule necessary to implement and enforce the vehicle coverage requirement, a detailed description of the number and types of vehicles to be covered by the program and a plan for how those vehicles are to be identified including vehicles that are routinely operated in the area but may not be registered in the area, and a description of any special exemptions including the percentage and number of vehicles to be impacted by the exemption.

The District's enhanced I/M program requires coverage of all 1974 and newer LDGV, LDGT1 and LDGT2, and HDGV up to 26,000 pounds GVWR (gross vehicle weight rating), which are registered or required to be registered in the I/M program area. District regulations allow for the inspection of any vehicle that is operating in the public space of the District.

As of the date of the SIP submittal, approximately 236,600 vehicles (118,300 vehicles annually) will be subject to enhanced I/M testing. Title 40, Chapter 2 and the District's I/M regulations provide the legal authority to implement and enforce the vehicle coverage requirement. The District's program provides for fleet self-testing, using the same testing requirements and the same quality control standards as the centralized component. The District's plan for testing fleet vehicles is acceptable and meets the requirements of the I/M rule. The District's regulation provides for special exemptions for antique vehicles (i.e., vehicles more than 25 years old) and vehicles that are 2 years old and newer. These are acceptable exemptions and have been appropriately accounted for in the District's modeling demonstration.

EPA has determined that the District of Columbia has satisfied all of the requirements of § 51.356(b) of the I/M rule.

G. Test Procedures and Standards—40 CFR 51.357

Written test procedures and pass/fail standards shall be established and followed for each model year and vehicle type included in the program. Test procedures and standards are detailed in 40 CFR 51.357 and in the EPA document entitled ''High-Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications'', EPA–AA–EPSD–IM–93–1, dated April 1994. The I/M rule also requires vehicles that have been altered from their original certified configuration (i.e. engine or fuel switching) to be tested in the same manner as other subject vehicles.

The District's regulations provide test procedures for transient emission and evaporative system purge and pressure testing in accordance with the requirements of the I/M rule. EPA has determined that the District of Columbia has satisfied all of the requirements of § 51.357(e) of the I/M rule.

H. Test Equipment—40 CFR 51.358

Computerized test systems are required for performing any measurement on subject vehicles. The I/M rule requires that the State SIP submittal include written technical specifications for all test equipment used in the program. The specifications shall describe the emission analysis process, the necessary test equipment, the required features, and written acceptance testing criteria and procedures.

The District's submittal contains the written technical specifications for all test equipment to be used in the program. The specifications require the use of computerized test systems. The specifications also include performance features and functional characteristics of the computerized test systems which meet the I/M rule and are approvable. Therefore, EPA has determined that the District of Columbia has satisfied all of the requirements of § 51.358(c) of the I/M rule.

I. Quality Control—40 CFR 51.359

Quality control measures shall insure that emission measurement equipment is calibrated and maintained properly, and that inspection, calibration records, and control charts are accurately created, recorded and maintained.

The District's submittal contains the appropriate regulations and technical manuals that describe and establish quality control measures for the emission measurement equipment, record keeping requirements and measures to maintain the security of all documents used to establish compliance with the inspection requirements. Therefore, EPA has determined that the District of Columbia has satisfied all of the requirements of § 51.359(f) of the I/M rule.

J. Waivers and Compliance Via Diagnostic Inspection—40 CFR 51.360

The I/M rule allows for 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. For enhanced I/M programs, an expenditure of at least $450 in repairs, adjusted annually to reflect the change in the Consumer Price Index (CPI) as compared to the CPI for 1989, is required in order to qualify for a waiver. Waivers can only be issued after a vehicle has failed a retest performed after all qualifying repairs have been made. Any available warranty coverage must be used to obtain repairs before expenditures can be counted toward the cost limit. Tampering related repairs shall not be applied toward the cost limit. Repairs must be appropriate to the cause of the test failure. The federal regulation allows for compliance via a diagnostic inspection after failing a retest on emissions and requires quality control of waiver issuance. The SIP must set a maximum waiver rate and must describe corrective action that would be taken if the waiver rate exceeds that committed to in the SIP.

The District's regulations and statutory authority provide the necessary authority to issue waivers, set and adjust cost limits, administer and enforce the waiver system, and set a $450 cost limit and allow for an annual adjustment of the cost limit to reflect the change in the CPI as compared to the CPI in 1989. The SIP revision includes provisions that address waiver criteria and procedures, including cost limits, tampering and warranty related repairs, quality control and administration. These provisions meet the I/M rule requirements and are approvable. The District has set a maximum waiver rate of 3% for both pre-1981 and 1981 and later vehicles. EPA has interpreted a section of the District's SIP revision to say that the District will take corrective action if the waiver rate exceeds 3%. The interpretation was needed to address what appears to be a typographical error in the District's submittal. The District used a 3% waiver rate in its performance standard modeling. EPA has determined that the District of Columbia has satisfied all of the requirements of § 51.360(d) of the I/M rule.

K. Motorist Compliance Enforcement—40 CFR 51.361

The federal regulation requires that 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. The SIP shall provide information concerning the enforcement process, legal authority to implement and enforce the program, and a commitment to a compliance rate

to be used for modeling purposes and to be maintained in practice.

Title 40, Chapter 2 provides the legal authority to implement a registration denial system. The District's program will use registration denial to enforce the program, if the vehicle is not in compliance with the inspection requirement. The District's regulations call for ticketing of any vehicle found with an expired registration sticker. In the District's submittal, DoH states that the fine for an expired registration is $300. EPA believes this penalty schedule constitutes a ''meaningful'' fine for noncompliance with the inspection program. EPA has determined that the District of Columbia has satisfied all of the requirements of § 51.361(c) of the I/M rule.

L. Motorist Compliance Enforcement Program Oversight—40 CFR 51.362

The I/M rule requires that the enforcement program shall be audited regularly and shall follow effective program management practices, including adjustments to improve operation when necessary. The SIP shall include quality control and quality assurance procedures to be used to insure the effective overall performance of the enforcement system. An information management system shall be established that will characterize, evaluate and enforce the program.

The District's program includes a strategy for effective auditing of the I/M program. The program's QA/QC procedures are outlined in the SIP revision, as is the program's information management system. EPA has determined that the District of Columbia has satisfied all of the requirements of § 51.362(c) of the I/M rule.

M. Quality Assurance—40 CFR 51.363

An ongoing quality assurance program shall be implemented to discover, correct and prevent fraud, waste, and abuse in the program. The program shall include covert and overt performance audits of the inspectors, audits of station and inspector records, equipment audits, and formal training of all State I/M enforcement officials and auditors. A description of the quality assurance program that includes written procedure manuals on the above discussed items must be submitted as part of the SIP.

The District's submittal contains procedures for conducting overt and covert audits. These audit results will be recorded and retained in station and inspector files. Performance audits of inspectors will consist of both covert and overt audits. The District will provide an adequate number of covert vehicles for the purposes of conducting audits, so as to avoid detection by the inspectors during audit procedures. Formal training is required for all program auditors and enforcement officials. EPA has determined that the District of Columbia has satisfied all of the requirements of § 51.363(e) of the I/M rule.

N. Enforcement Against Contractors, Stations and Inspectors—40 CFR 51.364

Enforcement against licensed stations, contractors and inspectors shall include swift, sure, effective, and consistent penalties for violation of program requirements. The I/M Rule requires the establishment of minimum penalties for violations of program rules and procedures which can be imposed against stations, contractors and inspectors. The legal authority for establishing and imposing penalties, civil fines, license suspensions and revocations must be included in the SIP. State quality assurance officials shall have the authority to temporarily suspend station and/or inspector licenses immediately upon finding a violation that directly affects emission reduction benefits, unless constitutionally prohibited. An official opinion explaining any state constitutional impediments to immediate suspension authority must be included in the submittal. The SIP shall describe the administrative and judicial procedures and responsibilities relevant to the enforcement process, including which agencies, courts and jurisdictions are involved, who will prosecute and adjudicate cases and the resources and sources of those resources which will support this function.

The District has provided evidence of authority and sufficient resources to impose penalties and a penalty schedule for enforcement against the District's inspectors. Since the program will be ''state-operated'', other penalty schedules (e.g. contractor penalty schedules) are not required under this section. EPA notes that the penalty schedule provided by the District does differ from the federal requirements in terms of the types and severity of individual penalties that will be levied against inspectors for fraud, incompetency, or other misconduct. However, EPA has reviewed the District's penalty schedule and has determined that overall, it will adequately serve the intent of § 51.364(d)(1) of the I/M rule and be equivalent to the minimum penalties specified in the I/M Rule.

EPA has therefore determined that the District of Columbia has satisfied all of the requirements of § 51.364(d) of the I/M rule.

O. Data Collection—40 CFR 51.365

Accurate data collection is essential to the management, evaluation and enforcement of an I/M program. The I/M Rule requires data to be gathered on each individual test conducted and on the results of the quality control checks of test equipment required under 40 CFR 51.359. The District's regulation and RFP require the collection of data on each individual test conducted as well as quality control checks, and describe the type of data to be collected. The type of test data collected meets the I/M Rule requirements and is approvable.

EPA has determined that the District of Columbia has satisfied all of the requirements of § 51.365 of the I/M rule.

P. Data Analysis and Reporting—40 CFR 51.366

Data analysis and reporting are required to allow for monitoring and evaluation of the program by the state and EPA. The I/M Rule requires annual reports to be submitted that provide information and statistics and summarize activities performed for each of the following programs: testing, quality assurance, quality control and enforcement. These reports are to be submitted by July of each year, and shall provide statistics for the period of January to December of the previous year. A biennial report shall also be submitted to EPA which addresses changes in program design, regulations, legal authority, program procedures and any weaknesses in the program found during the two year period and how these problems will be or were corrected.

The District SIP revision provides for the analysis and reporting of data for the testing program, quality assurance program, quality control program and the enforcement program. The type of data to be collected and analyzed and reported on meets the I/M rule requirements and is approvable. The District commits to submit annual reports on these programs to EPA by July of the subsequent reporting year. A commitment to submit a biennial report to EPA which addresses reporting requirements set forth in 40 CFR 51.366(e) is also included in the SIP. EPA has determined that the District of Columbia has satisfied all of the requirements of § 51.366(f) of the I/M rule.

Q. Inspector Training and Licensing or Certification—40 CFR 51.367

The I/M rule requires all inspectors to be formally trained and licensed or certified to perform inspections.

The District's regulations requires all inspectors to receive formal training, and be certified by the DC Department of Public Works. The District's regulations and the SIP revision include a description of and the information covered in the training program, a description of the required written and hands-on tests, and a description of the certification process. Recertification of inspectors is required every two years. EPA has determined that the District of Columbia has satisfied all of the requirements of § 51.367(c) of the I/M rule.

R. Public Information and Consumer Protection—40 CFR 51.368

The I/M rule requires the SIP to include public information and consumer protection programs. The DC program includes both of these features. EPA has determined that the District of Columbia has satisfied all of the requirements of § 51.368 of the I/M rule.

S. Improving Repair Effectiveness—40 CFR 51.369

Effective repairs are the key to achieving program goals. The I/M rule requires states to take steps to ensure that the capability exists in the repair industry to repair vehicles. The SIP must include a description of the technical assistance program to be implemented, a description of the procedures and criteria to be used in meeting the performance monitoring requirements required in the I/M rule, and a description of the repair technician training resources available in the community.

The District's SIP revision requires the implementation of a technical assistance program, which includes a hot line service to assist repair technicians and a method of regularly informing the repair facilities of changes in the program, training courses, and common repair problems. A repair facility performance monitoring program is also included in the District's SIP revision. This monitoring will provide the motoring public a summary of local repair facilities' performances, and provide regular feedback to each facility on their repair performance and requires the submittal of a completed repair form at the time of retest. The District's regulation provides for the establishment and implementation of a repair technician training program which, at a minimum, covers the four types of training described in 40 CFR 51.369(c). EPA has determined that the District of Columbia has satisfied all of the requirements of § 51.369(d) of the I/M rule.

T. Compliance with Recall Notices—40 CFR 51.370

The federal regulation requires the states to establish methods to ensure that vehicles that are subject to enhanced I/M and are included in a emission related recall receive the required repairs prior to completing the emission test and/or renewing the vehicle registration.

Under the District's regulation, owners are required to comply with emission related recalls before completing the emission test and renewing the vehicle registration. EPA notes that the District will readdress this requirement once EPA finalizes its policy and guidance on Recall Compliance. EPA has determined that the District of Columbia has satisfied all of the requirements of § 51.370(d) of the I/M rule.

U. On-road Testing—40 CFR 51.371

On-road testing is required in enhanced I/M areas. The use of either remote sensing devices (RSD) or roadside pullovers including tailpipe emission testing can be used to meet the federal regulations. The program must include on-road testing of 0.5% of the subject fleet or 20,000 vehicles, whichever is less, in the nonattainment area or the I/M program area. Motorists that have passed an emission test and are found to be high emitters as a result of an on-road test shall be required to pass an out-of-cycle test.

Legal authority to implement the on-road testing program and enforce off-cycle inspection and repair requirements is contained in Title 40, Chapter 2. The SIP submittal requires the use of RSD to test 0.5% of the fleet per year and will be implemented by a contractor. A description of the program, which includes resource allocations, and methods of collecting, analyzing and reporting the results of the testing are detailed in the submittal. EPA has determined that the District of Columbia has satisfied all of the requirements of § 51.371(b) of the I/M rule.

V. State Implementation Plan Submissions/Implementation Deadlines—40 CFR 51.372–52.373

The District's submittal included the final I/M regulations, legislative authority to implement the program, and a detailed discussion on each of the required program design elements. The start date for implementation of full-stringency cutpoints will be April 30, 1999.

The District has adequately completed a modeling demonstration showing that the program design meets the performance standard, and the District has provided evidence of adequate funding and resources to implement the program. EPA has determined that the District has satisfied the requirements of §§ 51.372(e) and 51.373.

EPA's review of the material indicates that the District has adopted an enhanced I/M program in accordance with the requirements of the Act. EPA is proposing to conditionally approve the District's SIP revision that was submitted on November 25, 1997. The only condition of this proposed rulemaking is that the District begin full implementation of the enhanced I/M program on or before April 30, 1999. 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 the EPA Regional office listed in the **ADDRESSES** section of this document.

IV. Proposed Action

EPA is proposing to conditionally approve the revision to the District of Columbia SIP submitted on November 27, 1997 for an enhanced I/M program. EPA's proposed approval is conditioned upon the District meeting the April 30, 1999 start date committed to and contained in its November 27, 1997 SIP revision submittal. EPA is also withdrawing its previously proposed disapproval action of an enhanced I/M SIP revision submitted by the District of Columbia on July 13, 1995 (supplemented March 27, 1996) because that action is no longer germane, given that the District's submittal of November 27, 1997 completely replaced those earlier submittals.

After full consideration of any comments received on this proposed conditional approval, EPA shall take final rulemaking action. In the event that final conditional approval is granted, the conversion from conditional approval to full approval or to disapproval will be dependent upon whether or not the District meets the start date of April 30, 1999 committed to in the SIP revision. If the District starts the enhanced testing program on or before April 30, 1999, then any final conditional approval shall convert to a full approval of the SIP revision. If the District fails to fully implement

enhanced I/M testing in the District by April 30, 1999, EPA would notify the District by letter that the condition has not been met and that any final conditional approval has converted to a disapproval, and the clock for imposition of sanctions under section 179(a) of the Act would start as of the date of the letter. Subsequently, a notice would be published in the **Federal Register** announcing that the SIP revision has been disapproved.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Conditional approvals of SIP submittals under section 110 and a subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If the proposed conditional approval is promulgated and subsequently is converted to a disapproval under section 110(k), based on the District's failure to meet the condition committed to in its submittal, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new federal requirement.

C. Unfunded Mandates

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 that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives 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 or uniquely impacted by the rule. EPA has determined that the conditional approval action being proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action only proposes to approve pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

The Administrator's decision to approve or disapprove the District's enhanced I/M SIP revision will be based on whether it meets the requirements of the federal enhanced I/M regulations, section 110(a)(2)(A)–(K) and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Nitrogen dioxide, Ozone.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 19, 1998.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 98–8064 Filed 3–27–98; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–5986–4]

40 CFR Part 300

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to delete the H & K Sales Superfund site from the national priorities list; request for comments.

SUMMARY: The United States Environmental Protection Agency (EPA) Region V announces its intent to delete the H & K Sales Site from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended. This action is being taken by EPA, because it has been determined that all Fund-financed responses under CERCLA have been implemented and EPA, in consultation with the State of Michigan, has determined that no further response is appropriate. Moreover, EPA and the State have determined that remedial activities conducted at the Site to date have been protective of public health, welfare, and the environment.

DATES: Comments concerning the proposed deletion of the Site from the NPL may be submitted on or before April 29, 1998.

ADDRESSES: Comments may be mailed to Gladys Beard, Associate Remedial Project Manager, Superfund Division, U.S. EPA, Region V, 77 W. Jackson Blvd. (SR–6J), Chicago, IL 60604. Comprehensive information on the site is available at U.S. EPA's Region V office and at the local information repository located at: Alvah N. Belding Library, 302 East Main Street, Belding, Michigan 48809. Requests for comprehensive copies of documents should be directed formally to the Region V Docket Office. The address and phone number for the Regional