ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–7857–4]

RIN 2060–AM21

Amendments to Vehicle Inspection Maintenance Program Requirements To Address the 8-Hour National Ambient Air Quality Standard for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes minor revisions to the Motor Vehicle Inspection/Maintenance (I/M) regulation to update submission and implementation deadlines and other timing-related requirements to more appropriately reflect the implementation schedule for meeting the 8-hour National Ambient Air Quality Standards (NAAQS) for ozone. This proposal is directed specifically at those areas that will be newly required to implement I/M as a result of being designated and classified under the 8-hour ozone standard; the conditions under which an existing I/M program under the 1-hour ozone standard must continue operation under the 8-hour standard are addressed under the anti-backsliding provisions of the April 30, 2004 final rulemaking which established several key requirements for implementing the 8-hour ozone standard (69 FR 23931).[1]

DATES: Written comments on this proposal must be received no later than February 7, 2005.

ADDRESSES: You may submit comments, identified by Docket #OAR–2004–0095, by any of the following methods:

- Federal eRulemaking portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail: *A-and-R-Docket@epa.gov.* Include Docket #OAR–2004–0095 in the subject line of the message.
- Fax: (202) 566–1741.
- Mail: U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Avenue, NW., Room: B108; Mail Code: 6102T, Washington, DC 20460.
- Hand Delivery/Courier: EPA Docket Center (Air Docket), U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room: B108; Mail Code: 6102T, Washington, DC 20004.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to *http://cascade.epa.gov/RightSite/dk_public_home.htm,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://cascade.epa.gov/RightSite/dk_public_home.htm* or EPA Docket Center (Air Docket), U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room: B108; Mail Code: 6102T, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: David Sosnowski, Office of Transportation and Air Quality, Transportation and Regional Programs Division, 2000 Traverwood, Ann Arbor, Michigan 48105. Telephone (734) 214–4823.

SUPPLEMENTARY INFORMATION:

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II. Summary of Proposal

On April 30, 2004, EPA published a notice of final rulemaking (69 FR 23931) addressing several key requirements related to the implementation of the 8-hour ozone standard originally promulgated on July 18, 1997 (62 FR 38856). Among other things, the 8-hour ozone standard implementation rule established deadlines for meeting the 8-hour ozone standard based upon an area's designation and classification. The rule also addresses when State Implementation Plans (SIPs) and attainment demonstrations must be submitted. As a general matter, the deadlines associated with implementation of the 8-hour ozone standard relate back to the effective date of an area's designation and classification under the 8-hour ozone standard, and new 8-hour ozone non-attainment areas are given the same amount of time to meet their various obligations as was given to comparably classified non-attainment areas under the 1-hour ozone standard. For example, under the Clean Air Act Amendments of 1990 (CAA), most areas designated and classified as moderate under the 1-hour standard were given 6 years after designation as non-attainment to attain the 1-hour ozone standard. Similarly, under the rule for implementing the 8-hour ozone standard, an area designated and classified as moderate under the 8-hour standard will also have up to 6 years after the effective date of its non-attainment designation to attain the 8-hour ozone standard.

In addition to establishing the above-mentioned deadlines, the April 30, 2004 rulemaking also clarified how the CAA's anti-backsliding provisions would be applied under the 8-hour standard to certain applicable requirements such as I/M once the 1-hour ozone standard is revoked. In general, if an existing I/M area is not able to redesignate to attainment for the 1-hour ozone standard prior to revocation of that standard (and is also designated as non-attainment for the 8-hour standard, regardless of classification or subpart) then that area will be required to continue implementing an I/M program until it has attained the 8-hour ozone standard. Readers interested in learning more about how the Act's anti-backsliding provisions apply to I/M under the 8-hour standard should consult the anti-backsliding provisions of the April 30, 2004 final rulemaking

[1] Additional guidance on anti-backsliding under the 8-hour standard and how it applies to I/M programs can be found in the May 12, 2004 policy memo signed by Tom Helms, Ozone Policy and Strategies Group, and Leila Cook, State Measures and Conformity Group, entitled ''1-Hour Ozone Maintenance Plans Containing Basic I/M Programs,'' a copy of which is contained in the docket for this proposed rulemaking.

as well as the May 12, 2004 policy memo concerning exceptions to the general anti-backsliding policy for certain maintenance areas signed by Tom Helms and Leila Cook entitled ''1-Hour Ozone Maintenance Plans Containing Basic I/M Programs,'' a copy of which is contained in the docket for this proposed rulemaking.

When the rulemaking establishing the requirements for vehicle inspection and maintenance (I/M) programs was first published in November 1992, some of the deadlines were expressed relatively (i.e., ''within X years of Y * * *'') while others were set as explicit dates (i.e., ''no later than November 15, 1993 * * *''). The purpose of today's proposed rulemaking is to revise outdated timing-related references in the I/M rule such as submission dates, start dates, evaluation dates, and other milestones and/or deadlines to make them relevant for those areas that will be newly required to begin I/M programs as a result of being designated and classified under the 8-hour ozone standard. It is not the intention of this proposal to revise or establish new requirements for existing I/M programs established in response to the 1-hour ozone standard. As discussed above, the requirements that apply to existing 1-hour I/M programs that must continue implementation under the 8-hour standard have already been addressed under the anti-backsliding provisions of the April 30, 2004 final rulemaking as well as the May 12, 2004 policy memo entitled ''1-Hour Ozone Maintenance Plans Containing Basic I/M Programs,'' a copy of which is contained in the docket for this proposed rulemaking.

Today's notice proposes to: (1) Revise sections 51.351 and 51.352 (the basic and enhanced I/M performance standards) to update the start date and model year coverage associated with specific elements of the basic and enhanced I/M performance standards as well as to set the benchmark comparison date(s) for performance standard modeling purposes that better reflects milestones associated with the 8-hour ozone standard; (2) revise section 51.353 (network type and program evaluation) to make the deadline for beginning the first round of program evaluation testing (which is currently listed as ''no later than November 30, 1998'') a relative deadline keyed to the date of program start up; (3) amend section 51.360 (waivers and compliance via diagnostic inspection) so that the deadline for establishing full waiver limits for those basic I/M programs choosing to allow waivers (currently, ''no later than January 1, 1998'') becomes ''January 1, 1998, or coincident with program start up, whichever is later''; (4) update section 51.372 (state implementation plan submissions) to set the I/M SIP submission deadline for areas newly required to adopt I/M programs under the 8-hour ozone standard as 1 year after the effective date of EPA's final action on today's proposal or 1 year after the effective date of designation and classification under the 8-hour standard (whichever is later); (5) update section 51.373 (implementation deadlines) to establish the implementation deadline for new I/M programs required under the 8-hour standard as 4 years after the effective date of designation and classification under the 8-hour ozone standard; and (6) revise section 51.373 (implementation deadlines) to clarify that the deadline for beginning OBD testing for areas newly required to implement I/M as a result of being designated and classified under the 8-hour ozone standard is ''coincident with program start up.''

III. Authority

Authority for the rule changes proposed in this notice is granted to EPA by sections 182, 184, 187, and 118 of the Clean Air Act as amended (42 U.S.C. 7401, *et seq.*).

IV. Background of the Proposed Amendments

On July 18, 1997, EPA revised the National Ambient Air Quality Standard (NAAQS) for ozone (62 FR 38856) by promulgating a standard of 0.08 parts per million (ppm) as measured over an 8-hour period. At the time, EPA indicated its belief that the 8-hour ozone NAAQS should be implemented under the less prescriptive requirements of subpart 1 of part D of title I of the CAA rather than the more prescriptive mandates of subpart 2 of that part. For mandatory I/M—which falls under subpart 2, as opposed to the more flexible subpart 1—this approach to implementing the 8-hour ozone NAAQS solely under subpart 1 would have meant that I/M would not be mandatory for any area that was newly designated under the 8-hour ozone standard (unless the area in question had previously been required to implement I/M under the 1-hour standard, in which case the Act's anti-backsliding provisions would apply).

Various industry groups and states challenged EPA's final rule promulgating the 8-hour ozone NAAQS, which eventually led to a Supreme Court ruling, issued in February 2001. Among other things, the Supreme Court found that EPA's original implementation approach, which did not provide a role for subpart 2 in implementing the 8-hour NAAQS, was unreasonable. Specifically, the Court noted EPA could not ignore the provisions of subpart 2 that ''eliminate[] regulatory discretion'' allowed by subpart 1. The Court also identified several portions of the CAA's classification scheme under subpart 2 that are ''ill-fitted'' to the revised standard and remanded the implementation rule to EPA for the development of a reasonable approach for implementation. *Whitman* v. *American Trucking Assoc.,* 121 S.Ct. 916–919 (2001) (Whitman).

The Agency's 8-hour ozone implementation proposal was published in the **Federal Register** on June 2, 2003 (68 FR 32802). Key portions of the June 2, 2003 proposal relevant to I/M (and other subpart 2 requirements) were subsequently promulgated as final in a rulemaking published in the **Federal Register** on April 30, 2004 (69 FR 23951). It is, therefore, appropriate and timely for EPA to update the I/M rule to clarify the requirements for areas newly required to implement I/M as a result of being designated and classified under the 8-hour ozone standard. It is not, however, the intention of this proposal to address requirements for existing, 1-hour I/M programs which must continue under the 8-hour standard; those requirements are already addressed under the anti-backsliding provisions of the April 30, 2004 final rulemaking as well as the May 12, 2004 policy memo entitled ''1-Hour Ozone Maintenance Plans Containing Basic I/M Programs.''

Today's proposed revisions to the I/M rule and EPA's rationale for each are discussed under separate headings below.

A. Amendments to the I/M Performance Standards

1. What Is an I/M Performance Standard?

An I/M performance standard is a collection of program design elements (such as start date, test type, network type, vehicle coverage, etc.) which defines a benchmark program to which a state's proposed program is compared in terms of its potential to reduce emissions of carbon monoxide (CO) and/or the ozone precursors, hydrocarbons (HC) and oxides of nitrogen (NO_X) by certain benchmark comparison dates (also known as ''evaluation dates''). Unless an alternative method or model has been approved by EPA, the mechanism used to compare the performance standard program to a state's proposed program is

the currently applicable version of EPA's mobile source emission factor model—currently, MOBILE6.2. The MOBILE model uses input files that include descriptions of the program design elements but which also include locally variable parameters, such as the age distribution of the local fleet, average temperature of the local area, local fuel characteristics, etc.

To determine whether or not a given program meets the performance standard, it is necessary to produce three MOBILE input files: (1) The applicable performance standard benchmark program; (2) the state's proposed program; and (3) a no-I/M scenario which characterizes the emissions from the local fleet with no I/M program in place. Once these input files have been created, the MOBILE model is then run to produce assessments of the emission levels expected with the performance standard in place, with the proposed program in place, and with no I/M program in place. The emission reduction ''credits'' associated with the performance standard and proposed program are calculated by subtracting the emission levels projected with either program in place from the emission levels projected with no I/M program in place. If the emission reduction credits associated with the state's proposed program are equal to or greater than those associated with the performance standard, then the state's proposed program is considered to have met its performance standard.

2. What Are ''I/M Program Design Elements'' and How Do They Interact With ''Locally Variable Parameters''?

I/M program design elements are program features most likely to have a direct impact on the ability of the program to reduce levels of the three criteria pollutants (CO, HC, and NO_X). Factors that directly influence the level of emission reductions associated with a given I/M program design include but are not limited to the following: test frequency, compliance rate, vehicle type coverage, model year coverage, start date, evaluation date, and test type [*e.g.*, idle, IM240, Acceleration Simulation Mode (ASM), onboard diagnostics (OBD)].

To illustrate how an I/M program design element can interact with a ''locally variable parameter,'' consider model year (MY) coverage and a local variable such as in-use fleet age distribution. Generally speaking, the more model years covered, the greater the potential for reducing emissions, though not all model years are considered equal in this regard. For example, testing the newest vehicles only provides marginal, additional emission reductions because new cars are unlikely to have accumulated the wear and tear that typically lead to high emissions. On the opposite end of the spectrum, testing the very oldest cars may not provide much in the way of emission reductions either, given the small number of such vehicles still capable of being driven and their limited contribution to a given non-attainment area's overall vehicle miles traveled (VMT). What constitutes optimal model year coverage will vary from area to area, depending upon the characteristics of the local, in-use fleet. This local variability (and its impact on the emission reductions that can potentially be achieved by a given I/M program) is one of the reasons why the input files used to demonstrate compliance with an I/M performance standard must include both the I/M program design elements that define the programs being compared and the local variables likely to affect the mobile source emission inventory, like local in-use fleet age distribution, VMT distribution, average temperature, and local fuel composition.

3. How Much Discretion Does EPA Have in Deciding What I/M Program Design Elements To Include in a Performance Standard?

In mandating that EPA establish performance standards for I/M programs, the Clean Air Act Amendments of 1990 were fairly prescriptive with regard to several of the I/M program design elements that must be included. For example, EPA's I/M performance standard for areas designated and classified as having ''serious'' or worse air quality (*i.e.*, the ''enhanced'' I/M performance standard) is required by the statute to include annual vehicle testing with at least two tests per vehicle (an emissions test and a component check to detect tampering and/or misfueling) covering both passenger cars and light-duty trucks, with no allowance for any model year exemptions. EPA was given more discretion, however, when it came to determining what specific emission test and failure threshold combination would apply for any given model year covered by the performance standard, so that older vehicles certified to more lenient emission standards would not be subject to the same stringent I/M testing criteria established for newer, more technologically advanced vehicles.

4. How Much Discretion Does a State Have in Deciding the Design of Its Actual I/M Program?

The 1990 CAA specifies certain minimum program design requirements that must be part of a state's I/M program. For example, all mandatory I/M programs must include some level of OBD testing, while all enhanced I/M programs are required to include some form of on-road testing. Nevertheless, states have far more latitude in designing their own programs than EPA has in setting the performance standard. For example, states can adopt biennial programs provided equivalent emission reductions are achieved and can exempt the newest and/or oldest model years, while EPA's performance standard was required to be annual and was not allowed to exempt vehicles based upon model year. As long as a state's program meets the 1990 CAA's minimum requirements and can be shown through modeling to achieve the same or better emission reductions as the applicable performance standard, the actual design of the I/M program (whether annual or biennial, with or without model year exemptions, centralized or decentralized, allowing waivers or not, using dynamometer-based testing or not, covering heavy-duty trucks or not, etc.) is for the state to decide. The criteria that a subject area should consider in designing (or redesigning) its I/M program are discussed below, under item 10 of this subsection.

5. Why Do EPA's Current Performance Standards Need To Be Revised for Areas Newly Required To Do I/M Under the 8-Hour Ozone NAAQS?

The current I/M performance standards were written to reflect the deadlines set by the 1990 CAA for 1-hour ozone non-attainment areas. For example, the start dates for various elements of the current performance standards reflect either the actual mandated start dates for those elements, or what were considered reasonable start dates for areas newly required to do I/M under the 1-hour standard. These date assumptions do not make sense under the schedule promulgated for meeting the 8-hour standard. For example, one current enhanced I/M performance standard assumes a start date of no later than 1995, while current 8-hour ozone non-attainment areas were not even designated and classified until 2004 and are not expected to submit attainment plans until 2007. It is therefore essential to revise the timing assumptions associated with the I/M performance standards so that they

make sense for 8-hour ozone non-attainment areas new to I/M.

6. What Regulatory Change Does EPA Propose?

EPA proposes to make the following regulatory changes to the basic I/M performance standard for areas newly required to implement a basic I/M program as a result of being designated and classified moderate non-attainment under the 8-hour ozone NAAQS (and meeting the existing I/M population criteria): (1) Start date: four years after the effective date of designation and classification under the 8-hour ozone standard; (2) emission test types: Model Year (MY) 1968–2000—idle, MY 2001 and newer—onboard diagnostic (OBD) check; (3) evaluation date: six years after the effective date of designation and classification under the 8-hour ozone standard rounded to the nearest July. All other basic I/M performance design elements shall be the same as previously promulgated for 1-hour ozone non-attainment areas (see 40 CFR 51.352).

For areas newly required to implement an enhanced I/M program as a result of being designated and classified as serious or higher non-attainment under the 8-hour ozone NAAQS (and meeting the existing I/M population criteria for enhanced I/M areas), EPA proposes that an 8-hour ozone enhanced I/M performance standard be established assuming the same program design elements as the current low enhanced I/M performance standard defined at 40 CFR 51.351 (g) but with the following exceptions: (1) Start date: four years after the effective date of designation and classification under the 8-hour ozone standard; (2) emission test types: MY 1968–2000—idle, MY 2001 and newer—onboard diagnostic (OBD) check; (3) evaluation dates: six years after the effective date of designation and classification under the 8-hour ozone standard rounded to the nearest July and the applicable attainment date, also rounded to the nearest July.

A state's program will be deemed in compliance with the 8-hour ozone enhanced I/M performance standard if it can demonstrate through modeling that the proposed program will achieve the same percent reduction in HC and NO_X: (1) As achieved by the performance standard program based upon an evaluation date set to the six year anniversary of the effective date of the area's designation and classification under the 8-hour ozone standard, rounded to the nearest July and (2) can demonstrate through modeling that the same percent reduction as achieved under number 1 is still being achieved as of the first July following the area's attainment date under the 8-hour ozone standard.

7. Why Does EPA Propose That Only MY 2001 and Newer Vehicles Be Subjected To the OBD–I/M Check as Part of the Proposed I/M Performance Standards for Areas New to I/M Under the 8-Hour Ozone Standard When Vehicles Have Included OBD Systems Since MY 1996? Does This Reflect EPA's Recommended MY Coverage for Such Testing? Is There Something Which Prevents Successful Testing of Older (i.e., pre-2001) OBD-Equipped Vehicles?

EPA's proposed MY coverage for OBD-I/M testing in the 8-hour I/M performance standards does not reflect the Agency's recommended MY coverage for such testing nor does it suggest a problem with testing pre-2001 OBD-equipped vehicles. Since 2000, I/M programs across the country have been successfully testing MY 1996 and newer vehicles using the OBD-I/M test, in accordance with EPA requirements and guidance. Although older OBD-equipped vehicles tend to have higher failure rates than newer OBD-equipped vehicles, this relationship holds true for all older versus newer vehicles.

The reason EPA proposes to limit coverage of the OBD test as part of the proposed 8-hour I/M performance standards goes to the heart of why the CAA required EPA to establish performance standards as opposed to mandating program designs: Flexibility. Test type coverage is one of the mechanisms used in setting an I/M performance standard that can either increase or all but eliminate the level of flexibility states will have in designing their own I/M programs. If, for example, EPA established a performance standard using maximum MY coverage of the most rigorous test available, the performance standard would effectively cease to be a ''performance standard'' and would become, instead, a mandatory program design.

In 1992 when the original I/M performance standards were established, OBD testing was included in the performance standards only as an uncredited placeholder because, at the time, no OBD-equipped vehicles were available for test credit assessment. Since that time, however, EPA has done extensive testing of OBD-equipped vehicles and the effectiveness of OBD testing. As a result, EPA's mobile source emission factor model (currently MOBILE6.2) affords OBD testing the maximum credit available to any I/M test. This, in turn, means that what was previously an uncredited placeholder has now become the driving factor in determining how much or how little flexibility is reflected in the I/M performance standards.

EPA is proposing MY 2001 and newer as the model year coverage for the OBD test in the 8-hour I/M performance standards because that is the level of coverage that has been found (through modeling) to afford 8-hour areas newly subject to I/M the same level of flexibility included in the existing I/M regulations and currently available to I/M programs required under the 1-hour standard. MY 2001 was chosen to ensure that new and existing programs are held to comparable standards. EPA invites commenters interested in proposing alternative ranges of model year coverage to provide their recommendations, including an explanation addressing why the alternative is preferable to today's proposal.

8. How Much Flexibility Will States Have in Designing Their Newly Required, 8-Hour I/M Programs To Meet EPA's Proposed I/M Performance Standards Under the 8-Hour Ozone Standard?

Under EPA's proposal, areas newly subject to I/M under the 8-hour ozone standard will have approximately the same level of flexibility that currently exists for areas subject to I/M as a result of the 1-hour standard. That said, designing a new I/M program will nevertheless involve facing different opportunities and/or challenges than were faced in the mid-1990's when many of today's current programs were designed. This is because the vehicle fleet is not static; as time passes—and standards and requirements change—the relative proportion of old to new technology vehicles is constantly changing, with the percent and number of older technology vehicles shrinking as newer technology vehicles begin to dominate the in-use fleet.

In the mid-1990's, fleet turnover was not much of an issue when it came to designing I/M programs because even though testing technology had evolved considerably since the simple idle test, the new tests were, for the most part, downwardly compatible. An IM240 could be used to test a 1968 model year vehicle just as readily as it could test a 1993 model year vehicle. Such is no longer the case with the OBD test, which, while inexpensive, accurate, easy, and effective, can only be performed on OBD-equipped vehicles (*i.e.*, light-duty vehicles and trucks, MY 1996 and newer). Given the substantial difference in capital investment involved in traditional tailpipe testing

(and especially dynamometer-based testing like the IM240 and ASM) versus that associated with the OBD test, areas newly required to implement I/M under the 8-hour standard will face a challenge not faced by I/M programs which began testing in the 1990's or earlier—namely, how to take full advantage of the evolving nature of the in-use fleet. As suggested earlier, one important characteristic of that evolving in-use fleet is the rate at which OBD-equipped vehicles are becoming an increasing proportion of any fleet while non-OBD-equipped vehicles play an ever shrinking role, in terms of absolute numbers as well as overall contribution to an area's VMT and the local mobile source emission inventory. This trend toward an OBD majority in-use fleet will only become more pronounced as time goes on, making the prospect of an I/M program that relies exclusively (or nearly exclusively) on OBD testing an attractive alternative to traditional, tailpipe-based testing.

Based upon the time period associated with implementing the 8-hour ozone standard and the national default rate of fleet turnover from non-OBD-equipped to OBD-equipped vehicles, EPA believes that both of today's proposed basic and enhanced I/M performance standards can be met by a state program that exempts model year 1995 and older vehicles from testing and only performs the OBD and gas cap test on MY 1996 and newer, OBD-equipped vehicles. The degree to which the proposed standards also allow for other forms of flexibility (such as allowing newer model year exemptions, and/or permitting the testing of vehicles biennially as opposed to annually) will depend largely upon an area's locally variable parameters, such as local fleet age and VMT distributions. Whether adopting such a program will meet the area's other Clean Air Act goals, however, will vary on a case-by-case basis. Item 10 of this subsection will discuss some of the criteria states should consider as they begin the process of developing their newly required I/M programs (as well as revamping existing programs to capitalize on evolving vehicle and vehicle testing technology).

9. Is EPA Barring 8-Hour Ozone Non-Attainment Areas Newly Required To Adopt I/M From Performing Tailpipe Testing?

No. EPA does not have the authority to prohibit I/M programs from tailpipe testing, nor would it be appropriate to do so. Instead, EPA is merely providing the flexibility needed to allow areas to exempt vehicles from tailpipe testing in favor of OBD testing on vehicles MY 1996 and newer, if a state so desires. However, EPA does recommend that 8-hour non-attainment areas newly required to implement I/M programs look closely at their local fleet characteristics such as age distributions, the fraction of local VMT attributable to MY 1995 and older vehicles, and the rate of fleet turn-over from non-OBD-equipped vehicles to OBD-equipped vehicles to assess the financial viability of various program designs before deciding on an appropriate program design. For example, based upon the number of such vehicles in the local fleet, can the cost of starting up and running a dynamometer-based testing network dedicated to MY 1995 and older vehicles be recouped without charging an exorbitant per-vehicle test fee or subsidizing the program through some alternative funding mechanism, such as an across-the-board increase in vehicle registration fees?

10. What Are Some of the Factors That Should Be Considered as Areas New to I/M Begin Designing Their Vehicle Inspection Programs in Response to the 8-Hour Ozone Standard?

As newly required (as well as existing) I/M programs look at ways to optimize those programs, it is appropriate to consider what programmatic and financial efficiencies and other improvements might be feasible. To facilitate this process, in 2002, EPA (in consultation with the states and other stakeholders) developed a list of questions and/or issues states should consider as they make choices about their existing and/or future I/M programs, entitled ''Considerations for State I/M Program Optimization,'' [2] an abbreviated version of which is provided in the list of criteria below.

In providing this list, it is not EPA's intention to advocate for one I/M program type or element versus another, or to make formal recommendations. The history of I/M has clearly shown that what is appropriate for one area is not always appropriate for another. The following list is therefore intended merely to outline the various factors that should be taken into consideration when designing (or redesigning) the optimal I/M program for a given area. It should be used to supplement whatever I/M optimization efforts may already be underway, to raise issues that may have been overlooked, and to otherwise ensure that the optimization process is as comprehensive as possible and does not lead to unintended consequences.

Although today's proposal focuses on those 8-hour ozone non-attainment areas brand-new to I/M, the list of criteria provided below includes considerations that may be relevant to both new and/or existing I/M programs.[3] States should consult with their EPA Regional offices early in the I/M optimization process, and such efforts should be conducted taking the following factors into consideration:

- What portion of the state's emissions inventories for ozone, CO, and/or air toxics do on-road mobile sources constitute?
- What portion of the state's attainment, maintenance, and/or Rate-of-Progress (ROP) plans does and/or will I/M constitute?
- How important will I/M reductions be in demonstrating attainment and transportation conformity?
- Are there additional emission reduction benefits an area may need from an I/M program in addition to what is needed to meet the performance standard?
- Alternatively, how much credit can an area afford to lose without negatively affecting these plans?
- If an area with an existing I/M program is redesignated to attainment, what changes (if any) can be made without backsliding or interfering with any other CAA requirement?
- Even if an existing I/M program plays a relatively modest role in a state's 1-hour ozone standard attainment strategy, what role will it play in attaining the 8-hour ozone standard?
- Is the I/M program useful in meeting an area's goal for reducing air toxics? Will an OBD-only program meet this goal?
- What are the legal and/or contractual constraints associated with optimizing the I/M program?
- What number of MYs should be exempted to strike the right balance among competing factors such as the likelihood of failure, equity to vehicle owners of exposure to program requirements, and the cost of testing clean vehicles?
- What is the proportion of pre- to post-MY 1996 vehicles in the local fleet? When will post-MY 1996 vehicles predominate?
- How do the pre- and post-MY 1996 fleets compare in terms of the VMT attributed to each? When will MY 1996

[2] A copy of the full document from which these criteria are drawn is located in the docket for this action (Docket # OAR–2004–0095).

[3] It should be noted that any revision to an existing I/M program which is part of a previously approved SIP will require the submission and approval of a SIP revision prior to those revisions going into effect.

and newer vehicles make up the majority of the area's VMT?

• What proportion of the local mobile source emission inventory is attributable to pre- vs. post-MY 1996 vehicles?

• What are the projected failure rates for the pre- vs. post-MY 1996 fleets?

• If an area already has an I/M program, how recent was the last change to the program? Will changing the program again undermine public confidence in the program? Will voluntarily changing the program make it vulnerable to pressure to incorporate additional, unwelcome changes?

• Will changing an existing program require changes to the program's legal authority?

B. Amendments to Program Evaluation Requirements

1. What Is the Program Evaluation Requirement?

Section 182(c)(3)(C) of the 1990 CAA requires that each state subject to enhanced I/M shall ''biennially prepare a report to the Administrator which assesses the emission reductions achieved by the program required under this paragraph based upon data collected during the inspection and repair of vehicles. The methods used to assess the emission reductions shall be those established by the Administrator.'' Section 51.353 of EPA's current I/M rule (network type and program evaluation) provides additional detail on how this requirement is to be met, including minimum sampling requirements and specific deadlines by which program evaluation testing must begin. Currently, section 51.353(c)(4) of the I/M rule specifies that the first round of program evaluation testing is to begin ''no later than November 30, 1998.''

2. What Regulatory Change Does EPA Propose?

EPA proposes to revise section 51.353(c)(4) of the I/M rule which currently indicates that the first round of program evaluation testing is to begin ''no later than November 30, 1998'' to ''no later than 1 year after program start up.'' This 12 month period prior to the beginning of program evaluation testing is comparable to that permitted under the original I/M program evaluation requirements and is intended to allow new programs under the 8-hour ozone standard the opportunity to resolve the sorts of start-up problems typical of such programs in their first few months of implementation.

C. Amendments to the Basic I/M Waiver Requirements

1. What Are the Basic I/M Waiver Requirements?

Neither the 1990 CAA nor the existing I/M rule require (or prohibit) basic I/M programs to grant waivers from the program's repair requirements once a minimum dollar limit has been spent toward repairs relevant to the cause of failure. To help ensure that the issuance of waivers did not become excessive in the basic I/M programs that chose to allow them, EPA established specific repair expenditure levels that had to be met prior to a waiver's being granted in a basic I/M program as part of its original 1992 I/M rule. Specifically, for pre-1981 model year vehicles, a minimum of $75 has to be spent on relevant repairs while for 1981 and newer vehicles, the minimum expenditure level is $200. Because several basic I/M programs were already operating at the time the 1992 rule was promulgated—some complying with the waiver allowances provided in the rule, some not—EPA also established a deadline by which the new requirements were to be met (*i.e.*, ''no later than January 1, 1998'').

2. What Regulatory Change Does EPA Propose?

EPA proposes to amend section 51.360(a)(6) which sets the deadline for establishing waiver limits for those basic I/M programs choosing to allow waivers (currently, ''no later than January 1, 1998'') to read ''January 1, 1998, or coincident with program start up, whichever is later.'' Since all existing programs should already be meeting these requirements and requiring spending limits prior to waiver will impose no additional program implementation delay in areas newly starting programs, EPA sees no reason to delay implementation of these requirements for either new or existing programs.

D. Amendments to Update SIP Submission Deadlines

1. What Are the Current SIP Submission Deadlines?

Under the CAA as amended in 1990, areas required to implement basic I/M programs were to submit SIP revisions for such programs ''immediately after the date of enactment'' of the 1990 Act. The basic I/M programs submitted under this provision were to be based upon pre-existing EPA I/M guidance that was in effect immediately before passage of the 1990 Act. As a separate (but related) matter, the 1990 CAA required EPA to revise this pre-1990 I/M guidance within 12 months of enactment. Enhanced I/M SIPs were required to be submitted 1 year after EPA was to have published its revised I/M guidance (*i.e.*, two years after enactment). Previously submitted basic I/M SIPs were required to be revised to incorporate EPA's revised I/M guidance.

The Act did not define what was meant by the term ''immediately,'' nor did it attempt to explain how such a requirement might be met, especially for areas new to the I/M requirement and therefore lacking the necessary legal authority and implementing regulations. To provide basic I/M program areas a reasonable amount of time in which to prepare and submit the required basic I/M SIP, EPA proposed to use its authority to grant conditional approvals under section 110(k)(4) of the 1990 CAA to give these areas up to 1 year after conditional approval of a so-called ''committal SIP''.[4] EPA was challenged on its attempt to extend I/M SIP deadlines through the SIP approval process and although the court found that 110(k)(4) could not be used to effect such extensions, in its decision, the court identified the states' need for further guidance from EPA in the case of enhanced I/M programs as the deciding factor regarding whether or not a given I/M deadline extension was justified. See *Natural Resources Defense Council, Inc.* v. *EPA, et al.*, 22 F.3d 1125 (D.C. Cir. 1994). Because existing pre-1990 I/M policy was adequate for a state to develop and submit a basic I/M SIP, the court ruled that EPA's attempt to extend the basic I/M SIP submittal deadline was unjustified in that case. In the case of enhanced I/M programs, however, existing pre-1990 I/M policy was not adequate and enhanced I/M areas could not proceed with SIP development until after EPA published its revised guidance. In this latter case, therefore, the court ruled that although 110(k)(4) should not have been used, extending the SIP submittal deadline for enhanced I/M SIPs was justified, given that EPA's guidance was not published until 10 days before those SIPs were due.

Unlike 1990 when basic and enhanced I/M programs differed with regard to the availability of adequate existing EPA guidance from which to proceed with SIP development, under the 8-hour ozone standard newly required I/M programs of either variety are equally dependent upon EPA's

[4] A ''committal SIP'' consisted of a commitment from a state's governor or his/her designee to meet a list of milestones leading to the submittal of a full SIP within 1 year.

revising its existing I/M regulations. As previously discussed, many of the timing-related requirements of the I/M rule are no longer relevant within the context of the 8-hour ozone standard and must therefore be revised before states can proceed with I/M SIP development. For example, if we were to apply the existing basic I/M performance standard (as written) to a newly required, basic I/M program area under the new standards, that area would be required to demonstrate that back in 1996 (when it had no I/M program in place) it was nevertheless achieving the same or better emission reductions from that non-existent program as it would have achieved if the performance standard program had been in place. Clearly, this would be an absurd requirement, and that is why EPA is proposing to adopt a more rational approach, as discussed below. Thus EPA believes that consistent with the NRDC case, it is appropriate to interpret the I/M SIP submittal requirement of the CAA to allow areas subject to that requirement to have a reasonable time after promulgation of EPA's revised I/M rulemaking to adopt and submit such programs. EPA concludes that any other interpretation of the statute would produce absurd results.

2. What Regulatory Change Does EPA Propose?

Because areas newly required to adopt either basic or enhanced I/M programs under the 8-hour ozone standard are unable to produce a complete and approvable SIP until EPA has revised its existing I/M regulations, EPA proposes to update section 51.372 (state implementation plan submissions) to clarify that such areas are required to submit their I/M SIPs, whether basic or enhanced, within 1 year after the effective date of EPA's taking final action on the I/M rule revisions proposed here today. For areas newly designated as non-attainment under the 8-hour ozone standard after finalization of this proposal, we propose that those areas submit their I/M SIPs within 1 year of the effective date of their designation and classification. Based upon its experience with the submission of I/M SIPs in response to the 1990 Act's requirements for 1-hour I/M programs, EPA deems this to be a reasonable amount of time in which to develop and submit an I/M SIP, given the states' need to secure legal authority, develop implementing regulations, provide notice-and-comment opportunity, etc. As noted by EPA both in its general preamble published after the 1990 amendments to the Act and in the 1992 I/M rules, 57 FR 13498, 13517 and 57 FR 52950, 52970, respectively, EPA has long believed that one year is an appropriate time period for states to obtain necessary legislative authority to adopt and submit an I/M program.

E. Amendments To Update Implementation Deadlines

1. What Are the Current Implementation Deadlines?

Under section 51.373 of the 1992 I/M rule, non-attainment areas required to begin (or upgrade) basic I/M programs as a result of their classification under the 1990 CAA were given until January 1994 to begin implementing if a decentralized program was adopted, or July 1994, if a centralized program was adopted. Areas newly required to adopt basic I/M as a result of being designated and classified after promulgation of the 1992 I/M rule were required to begin implementation one year after obtaining legal authority (if a decentralized program was adopted) or two years after obtaining legal authority (if a centralized program was adopted). Enhanced I/M program areas required as a result of being designated and classified under the 1990 CAA were allowed to phase-in implementation of the enhanced I/M program between January 1, 1995 and January 1, 1996, provided at least 30% of the I/M vehicle population was subject to the full requirements of the program as of January 1, 1995. Areas newly required to adopt enhanced I/M as a result of being designated and classified after promulgation of the 1992 I/M rule were required to begin implementation two years after obtaining legal authority. Separately, section 51.373 of the I/M rule established a range of deadline options for implementation of the OBD checks required of all I/M programs under the 1990 CAA. While the deadline for requiring repairs based upon the OBD test varied depending upon the phase-in option chosen by the program, all I/M programs required as a result of being designated and classified under the 1-hour ozone standard were required to begin some form of OBD testing no later than January 1, 2003.

2. What Regulatory Change Does EPA Propose?

EPA proposes to revise section 51.373 (implementation deadlines) to replace the current fixed implementation deadlines for I/M programs required as a result of designation and classification after 1992 with a new, relative implementation deadline for areas newly subject to I/M as a result of being designated non-attainment under the 8-hour ozone standard and classified as moderate non-attainment or higher. Specifically, EPA proposes that all I/M programs newly required based upon their designation and classification under the 8-hour ozone standard—whether basic or enhanced—begin full implementation of the required program within 4 years after the effective date of designation and classification under the 8-hour ozone standard. EPA believes that the proposed implementation deadline is reasonable and necessary to allow for sufficient time to construct and start-up a program after program adoption following EPA promulgation of final guidance, as well as to provide a minimum of one full, biennial test cycle prior to the first milestone date for newly required I/M programs under the 8-hour ozone standard (*i.e.*, the attainment deadline for moderate 8-hour ozone non-attainment areas, which is 6 years after the effective date of designation and classification, as described below).

Additionally, EPA proposes to clarify that the deadline for beginning pass-fail OBD checks for areas newly required to perform I/M testing as a result of being designated and classified under the 8-hour ozone standard is coincident with implementation of all other program elements, *i.e.*, within 4 years after the effective date of designation and classification. Since current model year vehicles are all OBD equipped and viable OBD test methods have been available for a number of years EPA sees no reason to delay start up of OBD testing beyond the start date of the program as a whole.

V. Discussion of Major Issues

A. Impact on Existing I/M Programs

The proposed amendments to the I/M rule do not change the requirements that currently apply to existing I/M programs required as a result of being classified under the 1-hour ozone standard. The proposed amendments are directed specifically at those areas that will be newly required to implement I/M as a result of being designated and classified under the 8-hour ozone standard. The intention of these proposed amendments is to ensure that these new program areas are afforded generally the same level of flexibility in program design and implementation as is currently available to existing, 1-hour I/M programs. Readers interested in learning the conditions under which an existing 1-hour I/M program must continue operation under the 8-hour standard should consult the anti-backsliding provisions of the April 30, 2004 final rulemaking which

established several key requirements for implementing the 8-hour ozone standard (69 FR 23931).[5]

B. Impact on Future I/M Programs

The proposed amendments are intended specifically for those areas which currently do not perform I/M testing, but will be required to do so as a result of being designated and classified under the 8-hour ozone standard. Should they be made final, these amendments will allow future I/M program areas the flexibility necessary to design from the ground up reasonable, cost effective, motorist-friendly I/M programs that take full advantage of advances in vehicle and vehicle-testing technology, as well as fleet turnover. The level of flexibility proposed to be provided for these new program areas is comparable to the level of flexibility already available to existing 1-hour I/M programs.

VI. Economic Costs and Benefits

Today's proposed revisions provide states with an incentive to increase the cost effectiveness and efficiency of future I/M programs. The proposal, if finalized, will lessen rather than increase the potential economic burden on states of implementing such programs. Furthermore, states are under no obligation, legal or otherwise, to modify existing plans meeting the previously applicable requirements as a result of today's proposal.

VII. Public Participation

EPA desires full public participation in arriving at final decisions in this rulemaking action. EPA solicits comments on all aspects of this proposal from all parties. Wherever applicable, full supporting data and detailed analysis should also be submitted to allow EPA to make maximum use of the comments. All comments should be directed to the Air Docket, Docket No. OAR–2004–0095.

VIII. Administrative Requirement

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735; October 4, 1993) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines significant ''regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or otherwise adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof;

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a ''significant regulatory action'' within the meaning of the Executive Order. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

There are no additional information requirements in this proposed rule beyond those already imposed by the existing I/M rule 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 proposal 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 the proposed 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 basic and enhanced I/M requirements only apply to urbanized areas with population in excess of 200,000 depending on location. Furthermore, the impact created by the proposed action does not increase the preexisting burden of the existing rules which this proposal seeks to amend.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this proposed rule itself does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The primary purpose of this proposed rule is to amend the existing federal I/M regulations to provide flexibility in how the regulations cover areas newly designated non-attainment under the 8-hour ozone ambient air quality standards. Clean Air Act sections 182(b)(4) and 182(c)(3) require the applicability of I/M to such areas. Thus, although this rule explains how I/M

[5] Additional guidance on anti-backsliding under the 8-hour standard and how it applies to I/M programs can be found in the May 12, 2004 policy memo signed by Tom Helms, Ozone Policy and Strategies Group, and Leila Cook, State Measures and Conformity Group, entitled ''1-Hour Ozone Maintenance Plans Containing Basic I/M Programs,'' a copy of which is contained in the docket for this proposed rulemaking.

should be conducted, it merely implements already established law that imposes I/M requirements and does not itself impose requirements that may result in expenditures of $100 million or more in any year. The intention of this proposal is to improve the I/M regulation by implementing the rule in a more practicable manner and/or to clarify I/M requirements that already exist. None of these proposed amendments impose any additional burdens beyond that already imposed by applicable federal law; thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA and EPA has not prepared a statement with respect to budgetary impacts.

E. Executive Order 13132: Federalism

Executive Order 13132, Federalism (64 FR 43255, August 10, 1999), revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the Office of Management and Budget (OMB), in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the Agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the Agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This proposed rule, that amends a regulation that is required by statute, will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The Clean Air Act requires I/M to apply in certain non-attainment areas as a matter of law, and this proposed rule merely provides areas newly designated as non-attainment under the 8-hour ozone standard additional flexibility with regard to meeting their existing statutory obligations.

In summary, this proposed rule is required primarily by the statutory requirements imposed by the Clean Air Act, and the proposed rule by itself will not have a substantial impact on States. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175: ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000) requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

Today's amendments to the I/M rule do not significantly or uniquely affect the communities of Indian tribal governments. Specifically, this proposed rule would incorporate into the I/M rule flexible provisions addressing newly designated 8-hour ozone non-attainment areas subject to I/M requirements under the Act, and these provisions would not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Accordingly, the requirements of Executive Order 13175 are not applicable to this proposal.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to Executive Order 13045 because it is not economically significant within the meaning of Executive Order 12866 and does not involve the consideration of relative environmental health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

This rule is not subject to Executive Order 13211, ''Action Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355; May 22, 2001) because it will not have a significant adverse effect on the supply, distribution, or use of energy. Further, we have determined that this proposed rule is not likely to have any significant adverse effects on energy supply.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and

business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, the use of voluntary consensus standards does not apply to this proposed rule.

List of Subjects in 40 CFR Part 51

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

Dated: December 22, 2004.

Michael O. Leavitt,

Administrator.

For the reasons set out in the preamble, part 51 of chapter I, title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 51—[AMENDED]

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

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

2. Section 51.351 is proposed to be amended by revising paragraph (c) and adding a new paragraph (i) to read as follows:

§ 51.351 Enhanced I/M performance standard.

* * * * *

(c) *On-board diagnostics (OBD).* For those areas required to implement an enhanced I/M program prior to the effective date of designation and classifications under the 8-hour ozone standard, the performance standard shall include inspection of all model year 1996 and later light-duty vehicles and light-duty trucks equipped with certified on-board diagnostic systems, and repair of malfunctions or system deterioration identified by or affecting OBD systems as specified in § 51.357, and assuming a start date of 2002 for such testing. For areas required to implement enhanced I/M as a result of designation and classification under the 8-hour ozone standard, the performance standard defined in paragraph (i) of this section shall include inspection of all model year 2001 and later light-duty vehicles and light-duty trucks equipped with certified on-board diagnostic systems, and repair of malfunctions or system deterioration identified by or affecting OBD systems as specified in § 51.357, and assuming a start date of 4 years after the effective date of designation and classification under the 8-hour ozone standard.

* * * * *

(i) *Enhanced performance standard for areas designated and classified under the 8-hour ozone standard.* Areas required to implement an enhanced I/M program as a result of being designated and classified under the 8-hour ozone standard, must meet or exceed the HC and NO_X emission reductions achieved by the model program defined below:

(1) *Network type.* Centralized testing.

(2) *Start date.* 4 years after the effective date of designation and classification under the 8-hour ozone standard.

(3) *Test frequency.* Annual testing.

(4) *Model year coverage.* Testing of 1968 and newer vehicles.

(5) *Vehicle type coverage.* Light duty vehicles, and light duty trucks, rated up to 8,500 pounds GVWR.

(6) *Emission test type.* Idle testing (as described in appendix B of subpart S) for 1968–2000 vehicles; onboard diagnostic checks on 2001 and newer vehicles.

(7) *Emission standards.* Those specified in 40 CFR part 85, subpart W.

(8) *Emission control device inspections.* Visual inspection of the positive crankcase ventilation valve on all 1968 through 1971 model year vehicles, inclusive, and of the exhaust gas recirculation valve on all 1972 and newer model year vehicles.

(9) *Evaporative system function checks.* None, with the exception of those performed by the OBD system on vehicles so-equipped and only for model year 2001 and newer vehicles.

(10) *Stringency.* A 20% emission test failure rate among pre-1981 model year vehicles.

(11) *Waiver rate.* A 3% waiver rate, as a percentage of failed vehicles.

(12) *Compliance rate.* A 96% compliance rate.

(13) *Evaluation date.* Enhanced I/M program areas subject to the provisions of this paragraph (i) shall be shown to obtain the same or lower emission levels for HC and NO_X as the model program described in this paragraph assuming an evaluation date set 6 years after the effective date of designation and classification under the 8-hour ozone standard (rounded to the nearest July) to within $+/-0.02$ gpm. Subject programs shall demonstrate through modeling the ability to maintain this percent level of emission reduction (or better) through their attainment date for the 8-hour ozone standard, also rounded to the nearest July.

* * * * *

3. Section 51.352 is proposed to be amended by revising paragraph (c) and adding a new paragraph (e) to read as follows:

§ 51.352 Basic I/M performance standard.

* * * * *

(c) *On-board diagnostics (OBD).* For those areas required to implement a basic I/M program prior to the effective date of designation and classification under the 8-hour ozone standard, the performance standard shall include inspection of all model year 1996 and later light-duty vehicles equipped with certified on-board diagnostic systems, and repair of malfunctions or system deterioration identified by or affecting OBD systems as specified in § 51.357, and assuming a start date of 2002 for such testing. For areas required to implement basic I/M as a result of designation and classification under the 8-hour ozone standard, the performance standard defined in paragraph (e) of this section shall include inspection of all model year 2001 and later light-duty vehicles equipped with certified on-board diagnostic systems, and repair of malfunctions or system deterioration identified by or affecting OBD systems as specified in § 51.357, and assuming a start date of 4 years after the effective date of designation and classification under the 8-hour ozone standard.

* * * * *

(e) *Basic performance standard for areas designated non-attainment for the 8-hour ozone standard.* Areas required to implement a basic I/M program as a result of being designated and classified under the 8-hour ozone standard, must meet or exceed the emission reductions achieved by the model program defined below for the applicable ozone precursor(s):

(1) *Network type.* Centralized testing.

(2) *Start date.* 4 years after the effective date of designation and classification under the 8-hour ozone standard.

(3) *Test frequency.* Annual testing.

(4) *Model year coverage.* Testing of 1968 and newer vehicles.

(5) *Vehicle type coverage.* Light duty vehicles.

(6) *Emission test type.* Idle testing (as described in appendix B of subpart S) for 1968–2000 vehicles; onboard diagnostic checks on 2001 and newer vehicles.

(7) *Emission standards.* Those specified in 40 CFR part 85, subpart W.

(8) *Emission control device inspections.* None.

(9) *Evaporative system function checks.* None, with the exception of those performed by the OBD system on vehicles so-equipped and only for model year 2001 and newer vehicles.

(10) *Stringency.* A 20% emission test failure rate among pre-1981 model year vehicles.

(11) *Waiver rate.* A 0% waiver rate, as a percentage of failed vehicles.

(12) *Compliance rate.* A 100% compliance rate.

(13) *Evaluation date.* Basic I/M program areas subject to the provisions of this paragraph (e) shall be shown to obtain the same or lower emission levels as the model program described in this paragraph by an evaluation date set 6 years after the effective date of designation and classification under the 8-hour ozone standard (rounded to the nearest July) for the applicable ozone precursor(s).

* * * * *

4. Section 51.353 is proposed to be amended by revising paragraph (c)(4) to read as follows:

§ 51.353 Network type and program evaluation.

* * * * *

(c) * * *

(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 1 year after program start-up.

* * * * *

5. Section 51.360 is proposed to be amended by revising paragraph (a)(6) to read as follows:

§ 51.360 Waivers and compliance via diagnostic inspection.

* * * * *

(a) * * *

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

* * * * *

6. Section 51.372 is proposed to be amended by removing and reserving paragraph (b)(1) and (b)(3) and by revising paragraph (b)(2) to read as follows:

§ 51.372 State implementation plan submissions.

* * * * *

(b) * * *

(2) A SIP revision required as a result of designation for a National Ambient Air Quality Standard in place prior to implementation of the 8-hour ozone standard and including all necessary legal authority and the items specified in paragraphs (a)(1) through (a)(8) of this section, shall be submitted no later than November 15, 1993. For non-attainment areas designated and classified under the 8-hour ozone standard, a SIP revision including all necessary legal authority and the items specified in paragraphs (a)(1) through (a)(8) of this section, shall be submitted by [insert date 12 months after the effective date of EPA's final action on this proposal] or 1 year after the effective date of designation and classification under the 8-hour ozone National Ambient Air Quality Standard, whichever is later.

* * * * *

7. Section 51.373 is proposed to be amended by removing and reserving paragraph (e), by revising paragraphs (b), and (d), and by adding a new paragraph (h), all to read as follows:

§ 51.373 Implementation deadlines.

* * * * *

(b) For areas newly required to implement basic I/M as a result of designation under the 8-hour ozone standard, the required program shall be fully implemented no later than 4 years after the effective date of designation and classification under the 8-hour ozone standard.

* * * * *

(d) For areas newly required to implement enhanced I/M as a result of designation under the 8-hour ozone standard, the required program shall be fully implemented no later than 4 years after the effective date of designation and classification under the 8-hour ozone standard.

* * * * *

(h) For areas newly required to implement either a basic or enhanced I/M program as a result of being designated and classified under the 8-hour ozone standard, such programs shall begin OBD testing on subject OBD-equipped vehicles coincident with program start-up.

* * * * *

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