

**List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

**PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS**

■ 1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233, Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 100.35-T11-075 to read as follows:

**§ 100.35-T11-075 2006 San Francisco Giants' Opening Night Fireworks Display, San Francisco Bay, CA.**

(a) *Regulated Area.* A regulated area is established for the waters of San Francisco Bay surrounding a barge used as the launch platform for a fireworks display to be held at the conclusion of the 2006 San Francisco Giants' Opening Night baseball game. During the loading of the fireworks barge, during the transit of the fireworks barge to the display location, and until the start of the fireworks display, the regulated area encompasses the navigable waters around and under the fireworks barge within a radius of 100 feet. During the 15 minutes preceding the fireworks display and during the 15-minute fireworks display itself, the regulated area increases in size to encompass the navigable waters around and under the fireworks launch barge within a radius of 1,000 feet. Loading of the pyrotechnics onto the fireworks barge is scheduled to commence at 1 p.m. on April 7, 2006, and will take place at Pier 50 in San Francisco. Towing of the barge from Pier 50 to the display location is scheduled to take place between 5:30 p.m. and 7:30 p.m. on April 7, 2006. During the fireworks display, scheduled to start at approximately 9:30 p.m. on April 7, 2006, the barge will be located approximately 1,000 feet off of San Francisco Pier 48 in position 37°46'57.2" N., 122°23'58.0" W.

(b) *Definitions.* (1) Coast Guard Patrol Commander means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector San Francisco.

(2) Official Patrol means any vessel assigned or approved by Commander, Coast Guard Sector San Francisco with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(c) *Special Local Regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any Official Patrol.

(ii) Proceed as directed by an Official Patrol.

(d) *Enforcement Period.* This section will be enforced from 1 p.m. to 10 p.m. on April 7, 2006. If the event concludes prior to the scheduled termination time, the Coast Guard will cease enforcement of the special local regulations and will announce that fact via Broadcast Notice to Mariners.

Dated: March 29, 2006.

**K.J. Eldridge,**

*Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.*

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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 51**

[EPA-HQ-OAR-2004-0095; FRL-8054-3]

**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.

**ACTION:** Final rule.

**SUMMARY:** Today's action revises 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 Standard (NAAQS) for ozone. This action 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 through application of the Clean Air Act's anti-backsliding provisions.

**DATES:** This rule is effective May 8, 2006.

**ADDRESSES:** EPA has established a docket for this action under Docket ID

No. OAR-2004-0095. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the EPA Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC 20004. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744.

**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.

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**II. Summary of Action**

When the I/M rule was first published in November 1992, some of the deadlines were expressed relatively (e.g., "within X years of Y \* \* \*")

while others were set as explicit dates (e.g., “no later than November 15, 1993 \* \* \*”). Several of those explicit deadlines have since passed or otherwise been rendered irrelevant due to actions such as the revocation of the 1-hour ozone standard (the majority of deadlines contained in the original 1992 I/M rule were linked to the 1-hour standard and its associated milestones for attainment and interim progress). Today’s action finalizes the revisions to the I/M rule that were proposed January 6, 2005 (70 FR 1314). These revisions are aimed at such timing-related references as submission dates, start dates, evaluation dates, and other milestones and/or deadlines and are being made to make the I/M rule 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.

This action does not revise or establish new requirements for existing I/M programs that were established in response to the 1-hour ozone standard. In general, if an existing I/M area was 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 is required to continue implementing an I/M program until it has attained the 8-hour ozone standard under EPA’s anti-backsliding regulations promulgated to facilitate transition from planning for the 1-hour to the 8-hour ozone standard. Readers interested in learning more about how the Clean Air Act’s (Act or CAA) anti-backsliding provisions apply to I/M under the 8-hour standard should consult 40 CFR 51.905 (“Transition from the 1-hour NAAQS to the 8-hour NAAQS and anti-backsliding”) as well as the May 12, 2004 memorandum 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 rulemaking.

Upon becoming effective, today’s action will: (1) Revise §§ 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 § 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 § 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 § 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 today’s action or 1 year after the effective date of designation and classification under the 8-hour standard (whichever is later); (5) update § 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 § 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 being made as a result of today’s action 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. Public Participation

Written comments on the January 6, 2005 Notice of Proposed Rulemaking (NPRM) were received from three sources prior to the close of the public comment period on February 7, 2005. The commenters included two state environmental agencies and one I/M testing contractor. Several of the comments received fell well outside the scope of the January 6, 2005 proposal and often requested additional flexibility for existing I/M programs which EPA does not have the legal authority to grant under the Clean Air Act as it is currently written. These comments, while noted, will not be addressed in today’s action. No comments were received on the proposed amendments to the basic I/M waiver requirements or implementation deadlines, and these amendments will

therefore be finalized as proposed. (For more information on these amendments, please see the January 6, 2005 proposal, section IV(C), “Amendments to the Basic I/M Waiver Requirements,” and section IV(E), “Amendments to Update Implementation Deadlines.”) The remaining comments are summarized and responded to below, under the proposed revision(s) to which they apply.

#### A. Amendments to the I/M Performance Standards

##### 1. Summary of Proposal

EPA proposed to revise 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 under the 8-hour ozone NAAQS as follows: (1) Start date: Four years after the effective date of designation and classification under the 8-hour ozone standard;<sup>1</sup> (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 remain 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 under the 8-hour ozone NAAQS, EPA proposed establishing an 8-hour ozone enhanced I/M performance standard which assumes 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 (as defined under 40 CFR 51.903), also rounded to the nearest July.

Per the proposal, a state’s program would be considered in compliance with the relevant 8-hour ozone I/M performance standard if it can

<sup>1</sup> For those 8-hour ozone nonattainment areas required to implement I/M for the first time as a result of being designated and classified on April 30, 2004 (with an effective date of June 15, 2004) this translates into a start date of no later than June 15, 2008.

demonstrate through modeling that the proposed program will achieve the same (or better) percent reduction in HC (and, for enhanced programs, NO<sub>x</sub>) as achieved by the performance standard model 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. Areas required to implement enhanced I/M as a result of being designated and classified under the 8-hour ozone standard also must demonstrate through modeling that the same (or better) percent reduction as achieved under the six-year anniversary milestone above is still being achieved as of the first July following the area's applicable attainment date under the 8-hour ozone standard. The intent of these proposed amendments was to tie the performance standard deadlines to the date of an area's designation and classification under the 8-hour ozone standard and to provide areas newly required to implement I/M under that standard a level of flexibility comparable to that currently available to areas required to do I/M under the 1-hour ozone standard.

## 2. Summary of Comments

Both state commenters supported those elements of the proposal aimed at providing I/M areas flexibility to adopt I/M programs that rely primarily or wholly upon OBD-only testing of the OBD-equipped in-use fleet. One I/M contractor objected to the proposed revisions to the I/M rule's performance standard requirements. In their comments, the contractor claimed that EPA's proposed revisions would essentially eliminate the difference between basic and enhanced I/M. According to this commenter, as a result of EPA's proposal, the primary difference between the basic and enhanced performance standards would be that the basic performance standard would actually be more rigorous with regard to compliance and waiver rates—a difference which seemingly contradicts the clear meaning of the words "basic" and "enhanced," and runs contrary to Congressional intent. According to this commenter, the enhanced performance standard (as proposed) would include only two enhancements relative to the basic performance standard: (1) The inclusion of on-road testing, as required by the CAA, and (2) the inclusion of visual inspections that are largely redundant for OBD-equipped vehicles. According to this commenter, the CAA requires all I/M programs (and, by implication, all

I/M performance standards) to include OBD testing of OBD-equipped vehicles from MY 1996 and newer. Therefore, EPA's proposal to limit OBD testing coverage in the basic and enhanced performance standards to MY 2001 and newer vehicles is in direct contradiction of the clear language of the Act. The commenter concluded that EPA's proposed changes would artificially and unreasonably lower existing I/M performance standards.

## 3. Response to Comments

EPA does not agree with the characterization that it's proposal essentially eliminates the difference between basic and enhanced I/M. Omitted from the differences cited in the comments provided is perhaps the most significant statutory difference between basic and enhanced I/M: The fact that enhanced I/M programs are required to include the testing of light-duty trucks while basic I/M programs are not. This is an important difference, especially in light of the significant growth in the light-duty truck and Sport Utility Vehicle (SUV) markets since passage of the Clean Air Act Amendments of 1990. It is because of this difference that the proposed enhanced I/M performance standard for 8-hour ozone non-attainment areas is and will continue to be significantly more stringent than the proposed basic I/M performance standard, even as the inclusion of OBD testing narrows the previous gap between I/M tailpipe test types.

EPA also does not agree with the claim that the CAA requires all I/M programs (and, by implication, all I/M performance standards) to include OBD testing of MY 1996 and newer, OBD-equipped vehicles. While the CAA does require all I/M programs to include OBD testing and the repair of vehicles that fail the OBD test, it does not specify model year coverage, nor does it suggest that I/M programs test all such vehicles without exception. Further, the statute does not explicitly require the inclusion of OBD testing as part of the performance standards. In fact, to require such comprehensive testing coverage in the performance standards would effectively bar states from exempting the newest such vehicles from testing, even though the statistical likelihood that such vehicles will fail the test and require repair is exceedingly small. Such a requirement would also all but eliminate the states' ability to otherwise tailor I/M programs to meet local needs. Lastly, suggesting that the CAA requires EPA to adopt the most rigorous performance standards possible ignores the Act's mandate that

states be allowed flexibility in designing their I/M programs and also contradicts a DC Circuit Court's ruling in which the court found "\* \* \* it clear that the statute does not mandate that the EPA set the most stringent possible annual performance standard. With its repeated emphasis on state flexibility, echoed in the legislative history, see S. Rep. No. 101-228, 101st Cong., 2d Sess. 39, reprinted in 1990 U.S.C.C.A.N. 3425, the statute appears to place a premium on state ability to shuffle aspects of the program to meet the EPA's requirements and individual state needs \* \* \*". Implicitly, at least, Congress thus appears to have contemplated considerable EPA discretion in standard-setting" (*Natural Resource Defense Council, Inc. v. EPA*, 92-1535—DC Cir. 1994).

Given EPA's conclusion that the only objections raised with regard to this portion of EPA's proposal were inaccurate in both their substance and conclusions, today's action finalizes the January 6, 2005 I/M performance standard revisions as proposed.

## B. Amendments to Program Evaluation Requirements

### 1. Summary of Proposal

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, § 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," which EPA proposed to change to "no later than 1 year after program start-up."

### 2. Summary of Comments

Although EPA did not receive comment on the specific amendment proposed for this section of the I/M rule, one commenter did comment on program evaluation in general, requesting that EPA provide "\* \* \* [c]larification of program evaluation and program evaluation sampling requirements, particularly as applied to programs utilizing test procedures

specified in applicable performance standards (i.e. IM240 and/or OBD). Illinois is currently collecting mass emissions data (full-term IM240) on 0.1% of 1981 and newer vehicles, including 1996 and newer vehicles subject to OBD. This evaluation testing (particularly on OBD-equipped vehicles) has proven to be somewhat controversial and unpopular with vehicle owners.”

### 3. Response to Comments

Given that the comment in question does not address the proposal under consideration, today's action will finalize the amendment as proposed. Concerning the request for additional guidance and clarification with regard to the program evaluation requirements in general—and with regard to OBD-equipped vehicles in particular—EPA will take this request into consideration in its development of future I/M guidance.

### C. Amendments to Update SIP Submission Deadlines

#### 1. Summary of Proposal

EPA proposed to update § 51.372 (State Implementation Plan submissions) to clarify that areas newly required to implement I/M as a result of being designated and classified under the 8-hour ozone standard are required to submit their I/M SIPs, whether basic or enhanced, within 1 year after the effective date of today's action, i.e., May 8, 2007. For areas newly designated as non-attainment under the 8-hour ozone standard after the effective date of today's action, EPA proposed that those areas submit their I/M SIPs within 1 year of the effective date of their designation and classification.

#### 2. Summary of Comments

One state commenter objected to the proposed SIP submission deadlines, maintaining that EPA's publication schedule and the State's own administrative procedures requirements will make it all but impossible to promulgate the necessary regulations before the summer of 2007.

#### 3. Response to Comments

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 considers the proposed 1 year timeframe 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. EPA will therefore finalize this section of the January 6, 2005 notice as proposed.

### V. Discussion of Major Issues

#### A. Impact on Existing I/M Programs

Today's action does not change the requirements that currently apply to existing I/M programs adopted as a result of an area being classified under the 1-hour ozone standard. 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 40 CFR 51.905 (“Transition from the 1-hour NAAQS to the 8-hour NAAQS and anti-backsliding”).<sup>2</sup>

#### B. Impact on Future I/M Programs

Today's action is 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. Upon becoming effective, 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.

### VI. Economic Costs and Benefits

Today's action provides areas new to I/M under the 8-hour ozone standard the ability to adopt more cost effective and efficient programs than would otherwise be the case. This action will therefore lessen rather than increase the potential economic burden on states of implementing such programs. Furthermore, this rule does not affect existing state programs meeting the previously applicable requirements.

### VII. Statutory and Executive Order Review

#### 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, it has been determined that this final rule is 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

This action does not impose any new information collection burden because it does not change the pre-existing information collection requirements for I/M programs. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations (40 CFR part 51, subpart S) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control number 2060-0252, EPA ICR number 1613.02. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566-1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and

<sup>2</sup> Additional guidance on anti-backsliding under the 8-hour standard and how it applies to certain basic I/M programs can be found in the May 12, 2004 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 rulemaking.

maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

### C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an Agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the Agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards. (See 13 CFR 121.); (2) a governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This rule will not impose any requirements on small entities. This action will impact States, not small entities. Furthermore, the action will lessen rather than increase the potential economic burden on the States of implementing such programs. In addition, States are under no obligation, legal or otherwise, to modify existing plans meeting the previously applicable requirements as a result of today's action.

### 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 action 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 action 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 action explains how I/M 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 action 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 amendments impose any additional burdens beyond that already imposed by applicable federal law; thus, today's action 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, entitled "Federalism" (64 FR 43255, August 10, 1999), 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."

This final rule does not have federalism implications. It 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 action merely provides areas newly designated as non-attainment under the 8-hour ozone standard additional flexibility with regard to meeting their existing statutory obligations. Thus, Executive Order 13132 does not apply to this 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." The phrase "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, today's action incorporates 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 do 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 action.

*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.

Today's action 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 action 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 No.

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.

Today's action does not involve technical standards. Therefore, the use of voluntary consensus standards does not apply to this action.

*J. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit this final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the final rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective on May 8, 2006.

*K. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 6, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such a rule or action. This action may not be challenged later in proceeding to enforce its requirements. (See section 307(b)(2) of the Administrative Procedures Act.)

**List of Subjects in 40 CFR Part 51**

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

Dated: March 31, 2006.

**Stephen L. Johnson,**  
*Administrator.*

■ For the reasons set out in the preamble, part 51 of chapter I, title 40 of the Code of Federal Regulations is 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 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<sub>x</sub> emission reductions achieved by the model program defined as follows:

- (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 this subpart) 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<sub>x</sub> 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 applicable attainment date for the 8-hour ozone standard, also rounded to the nearest July.

■ 3. Section 51.352 is 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 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 this subpart) 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 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 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 amended by removing and reserving paragraphs (b)(1) and (b)(3) and by revising paragraph (b)(2) to read as follows:

**§ 51.372 State implementation plan submissions.**

\* \* \* \* \*

(b) \* \* \*

(1) [Reserved]

(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 May 8, 2007 or 1 year after the effective date of designation and classification under the 8-hour ozone National Ambient Air Quality Standard, whichever is later.

(3) [Reserved]

\* \* \* \* \*

■ 7. Section 51.373 is amended by revising paragraphs (b) and (d), by removing and reserving paragraph (e),



and by adding a new paragraph (h) 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.

(e) [Reserved]

\* \* \* \* \*

(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.

\* \* \* \* \*

[FR Doc. 06-3317 Filed 4-6-06; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 63**

[EPA-HQ-OAR-2003-0197, FRL-8054-6]

RIN 2060-AK09

**Ethylene Oxide Emissions Standards for Sterilization Facilities**

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

**ACTION:** Final decision.

**SUMMARY:** This action finalizes our decision not to revise the Ethylene Oxide Emission Standards for Sterilization Facilities, originally promulgated on December 6, 1994. Within 8 years of promulgating these standards, the Clean Air Act directs us to assess the risk and to promulgate more stringent standards if necessary to protect public health with an ample margin of safety and to prevent adverse environmental effects. Also, within 8 years of promulgating the national emission standards, the Clean Air Act requires us to review and revise the standards as necessary, taking into account developments in practices, processes, and control technologies. Today's action reflects our findings that after conducting these risk and technology reviews, no additional control requirements are warranted.

**DATES:** *Effective Date:* April 7, 2006.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2003-0197. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is

restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room B-102, 1301 Constitution Ave., NW., Washington, DC. The Public Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air and Radiation Docket is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** *General and Technical Information.* Mr. David Markwordt, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E-143-01), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-0837, facsimile number (919) 685-3195, electronic mail (e-mail) address: [markwordt.david@epa.gov](mailto:markwordt.david@epa.gov).

*Residual Risk Assessment Information.* Mr. Mark Morris, Office of Air Quality Planning and Standards, Health and Environmental Impacts Division, Sector Based Assessment Group (C539-02), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5470, facsimile number (919) 541-0840, electronic mail (e-mail) address: [morris.mark@epa.gov](mailto:morris.mark@epa.gov).

**SUPPLEMENTARY INFORMATION:** *Regulated Entities.* The regulated categories and entities affected by the national emission standards include:

Category	NAICS <sup>a</sup>	(SIC <sup>b</sup> )	Examples of regulated entities
Industry .....	329112 339113 325412 311942 311423	(3841) (3842) (2834) (2099) (2034)	Operations at major and area sources that sterilize or fumigate medical supplies, pharmaceuticals, and spice.
Federal/State/ local/tribal governments.			

<sup>a</sup>North American Industry Classification System.

<sup>b</sup>Standard Industrial Classification.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by the national emission standards. To determine whether your facility would be affected by the national emission standards, you should examine the applicability criteria in 40 CFR 63.360. If you have any questions regarding the applicability of the

national emission standards to a particular entity, consult either the air permit authority for the entity or your EPA regional representative as listed in 40 CFR 63.13.

*Worldwide Web (WWW).* In addition to being available in the docket, an electronic copy of today's final decision will also be available on the WWW through the Technology Transfer

Network (TTN). Following signature, a copy of the final decision will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: <http://www.epa.gov/ttn/oarpg/>. The TTN provides information and technology exchange in various areas of air pollution control.