

#### IV. Procedural Determinations

##### *Executive Order 12866*

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

##### *Executive Order 12988*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

##### *National Environmental Policy Act*

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

##### *Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

##### *Regulatory Flexibility Act*

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that

existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

##### *Unfunded Mandates*

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

##### **List of Subjects in 30 CFR Part 946**

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 12, 1999.

**Allen D. Klein,**

*Regional Director, Appalachian Regional Coordinating Center.*

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#### **ENVIRONMENTAL PROTECTION AGENCY**

##### **40 CFR Part 51**

[FRL-6421-1]

##### **Additional Flexibility Amendments to Vehicle Inspection Maintenance Program Requirements; Proposed Amendment to the Final Rule**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document proposes several substantive and minor revisions to the Motor Vehicle Inspection/Maintenance (I/M) requirements to provide additional flexibility to state I/M programs, both in response to the I/M provisions of the National Highway System Designation Act of 1995 (NHSDA), and in compliance with the Clean Air Act requirement that EPA's guidance for such programs be "from time to time revised." The proposed amendments would: modify the current I/M performance standard modeling requirements to reflect delays caused by the NHSDA, and to provide states greater flexibility in how they meet the performance standard; also in response to the NHSDA, remove the I/M rule provision establishing the decentralized, test-and-repair credit discount; revise certain test procedure, standard, and equipment requirements to better accommodate alternative test types and program designs. This revision also entails changing the data collection, analysis, and reporting requirements to

make them consistent with various alternative test and program types; as well as minor revisions to the inspector training requirements; revise the requirements for consumer protection and improving repair effectiveness to limit the current requirement to provide diagnostic information to those programs and test types capable of producing such information, reliably and practically; expand the options for complying with the on-road testing requirement to accommodate more recent variations, such as clean screening and non-tailpipe based, roadside tests.

**DATES:** Written comments on this proposal must be received no later than September 20, 1999. No public hearing will be held unless a request is received in writing by September 7, 1999.

**ADDRESSES:** Interested parties may submit written comments (in duplicate if possible) to Public Docket No. A-99-19. It is requested that a duplicate copy be submitted to David Sosnowski at the address in the **FOR FURTHER INFORMATION CONTACT** section below. The docket is located at the Air Docket, Room M-1500 (6102), Waterside Mall SW, Washington, DC 20460. The docket may be inspected between 8:30 a.m. and 12 noon and between 1:30 p.m. until 3:30 p.m. on weekdays. A reasonable fee may be charged for copying docket material.

**FOR FURTHER INFORMATION CONTACT:** David Sosnowski, Office of Mobile Sources, Regional and State Programs Division, 2000 Traverwood, Ann Arbor, Michigan, 48105. Telephone (734) 214-4823.

##### **SUPPLEMENTARY INFORMATION:**

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## II. Summary of Proposal

Under the Clean Air Act as amended in 1990 (CAA), 42 U.S.C. 7401 *et seq.*, the U.S. Environmental Protection Agency (EPA) published in the **Federal Register** on November 5, 1992, (40 CFR part 51, subpart S) a rule related to state air quality implementation plans for Motor Vehicle Inspection and Maintenance (I/M) programs (hereafter referred to as the I/M rule; see 57 FR 52950). EPA is proposing today to further amend this rule to provide greater flexibility to states to tailor their I/M programs to better meet local needs, both now and in the future. With today's notice EPA proposes to: (1) Amend the enhanced I/M performance standard requirements at 40 CFR 51.351 to change the performance standard modeling requirement from demonstrating that the performance standard is met on 2000 and each subsequent milestone (through to and including the attainment deadline) to a requirement that the performance standard be met (within  $\pm 0.02$  grams-per-mile) on 2002, and that the same or better level of emission reduction be demonstrated for the attainment deadline, rounded to the nearest year; (2) in response to the National Highway System Designation Act of 1995 (NHSDA) and to provide greater flexibility to the states with regard to network design options: (a) Delete 40 CFR 51.353(b) which previously established the decentralized, test-and-repair credit discount, and (b) revise the definition of test-only at 40 CFR 51.353(a) to allow test-only stations to sell self-serve gasoline, pre-packaged oil, and any other items that are not directly related to automotive parts sales and/or service; (3) to better accommodate alternative test types and program designs: (a) Revise the test procedures and standards requirements at 40 CFR 51.357 to clarify that tailpipe exhaust testing is not a universal requirement for all I/M programs, that alternatives to the IM240 drive cycle are allowed under the requirements for transient testing, and that the standard for an acceptable alternative test is comparability, not necessarily equivalence, (b) revise the test equipment requirements at 40 CFR 51.358 to make the definition of "computerized analyzer" less

prescriptive and to relax the requirement for a real-time data link for those areas required to do I/M, but which do not need to claim I/M emission reductions to meet their other, non-I/M CAA requirements, and (c) revise the data collection, analysis, and reporting requirements at 40 CFR 51.365 and 40 CFR 51.366 to clarify that the specific elements to be collected and reported are only required where applicable to the test type employed, and to make the requirements less prescriptive with regard to the test types assumed; (4) revise the requirements for consumer protection at 40 CFR 51.368 and improving repair effectiveness at 40 CFR 51.369 to limit the current requirement to provide diagnostic information to those programs and test types capable of producing such information, reliably and practically, and; (5) expand the options for complying with the on-road testing requirement at 40 CFR 51.371 by: (a) Removing language suggesting that such testing must be tailpipe-based, and (b) inserting language making the out-of-cycle repair requirement optional where on-road testing is used as a clean-screen approach.

The goal of these proposed amendments is to bring the rule up-to-date with current policy decisions and statutory requirements, while also providing states the additional flexibility they need to tailor their I/M programs now to better meet their future needs. Among these future needs are: (1) The need to maximize program efficiency and customer convenience by capitalizing on newer vehicle testing options, such as on-board diagnostic (OBD) system testing; (2) the need to accommodate an in-use fleet turning over to newer, cleaner, and more durable vehicle technologies over time; and (3) the need to assess the role I/M should play in areas once they have attained the National Ambient Air Quality Standards (NAAQS).

## III. Authority

Authority for the rule change proposed in this notice is granted to EPA by section 182 of the Clean Air Act as amended (42 U.S.C. 7401, *et seq.*) and by section 348 of the National Highway System Designation Act of 1995 (23 U.S.C. 101).

## IV. Background of the Proposed Amendments

### A. Performance Standard Amendments

Section 182(c)(3)(B)(i) of the Clean Air Act as amended in 1990 requires EPA to develop a performance standard for enhanced I/M areas to meet. EPA's I/M

rule currently requires I/M programs to produce the same or better emission reductions as would be achieved by one of three possible enhanced I/M performance standards<sup>1</sup>—the high enhanced, low enhanced, and OTR low enhanced I/M performance standards. Currently, states demonstrate meeting the relevant performance standard by modeling their desired program along side the performance standard program, and comparing both to a no-I/M-program scenario, using the most current version of EPA's mobile source emission factor model, MOBILE, and assuming local conditions for fuel type, average temperature, fleet age distribution, vehicle miles traveled (VMT) accumulation, etc. The 1992 I/M rule required that enhanced I/M programs show they could meet the relevant performance standard beginning with a 2000 evaluation date (which was considered the closest modeling equivalent to the CAA's November 15, 1999 milestone date for Reasonable Further Progress) and for each CAA milestone thereafter (also rounded to the nearest evaluation year) through, to and including the relevant attainment date. EPA's policy for milestones beginning with 2003 and later was to consider the standard met if the projected emission reductions for the state's program came within  $\pm 0.02$  grams-per-mile (gpm) of the performance standard's projected reductions, due to the uncertainty of modeled benefits for evaluation years after 2001.

Today's proposal would change the current enhanced I/M performance standard requirements in three ways:

First, today's proposal would change the requirement that enhanced I/M programs demonstrate meeting the performance standard beginning with 2000 and on each subsequent milestone through to and including attainment. Due to delays in program implementation arising from EPA's own 1995 and 1996 I/M flexibility amendments and the I/M provisions of the NHSDA, EPA proposes to push back the first required evaluation date by two years, to 2002. This proposed revision recognizes that as a result many programs delayed full implementation beyond a date that would allow for

<sup>1</sup> The current I/M rule actually contains four enhanced I/M performance standards as a result of a typographical oversight when EPA introduced its original flexibility amendments in 1995. EPA intended to delete the standard described in 40 CFR 51.351(a) and replace it with the standard described in paragraph (f) of that section. Unfortunately, both standards were retained. Along with the other actions proposed today, EPA proposes to correct this oversight.

meeting the performance standard before 2002.

Second, EPA proposes to reduce the modeling burden on states by limiting the number of milestones modeled to a maximum of two: 2002 and, for those areas with post-2002 attainment deadlines, the relevant CAA attainment deadline, rounded up to the nearest year. In the latter case—the attainment deadline milestone—the grams-per-mile (gpm) or percent reduction target for comparison would be the same as that modeled for the 2002 milestone; states would not be required to model the performance standard scenario for more than one evaluation date to establish the relevant gpm or percent reduction target. Rather, states must show that in the attainment year the area continues to show compliance with the performance standard as originally modeled for the 2002 compliance date. The purpose of this proposal is to streamline the I/M rule's modeling requirements and provide additional flexibility to the states, while still insuring that state I/M programs demonstrate compliance with the relevant performance standard.

Third, today's proposal would apply the current 2003  $\pm 0.02$  gpm rounding policy one year earlier—to the 2002 milestone. The original 2003 rounding policy was developed when it was discovered that, due to uncertainties related to long-term projections, even areas adopting EPA's recommended program appeared to be having trouble demonstrating compliance with the performance standard for post-2001 milestones, once local parameters such as vehicle age distribution were taken into consideration. Under the original I/M rule, there was no 2002 milestone. Instead, the ozone-based milestones began with 2000, followed by 2003; in between these was the carbon monoxide (CO) milestone of 2001, for those enhanced I/M areas in nonattainment for CO. The original 0.02 gpm rounding policy was actually a post-2001 policy, and was applied to what was then the first post-2001 milestone (i.e., 2003). With the delays caused by the I/M flexibility amendments and the NHSDA (discussed above), a new post-2001 milestone became necessary. EPA believes it is therefore appropriate to apply the 0.02 gpm rounding policy to this new milestone, and proposes to formalize that change as part of today's proposed amendments.

#### *B. Network Requirement Amendments*

Regarding I/M program network design requirements, the Clean Air Act as amended in 1990 does not prescribe a network for basic I/M programs while,

at the same time, section 182(c)(3)(C)(vi) of the Act requires that enhanced I/M programs shall be operated "on a centralized basis, unless the State demonstrates to the satisfaction of the Administrator that a decentralized program will be equally effective." In response to this provision, the 1992 I/M rule defined a decentralized network design that EPA deemed presumptively equivalent to a centralized program. The core difference between traditional centralized versus decentralized I/M programs—EPA then maintained—was the conflict-of-interest the latter were assumed to suffer from, because most such programs allowed the same individuals who tested the vehicle to also perform repairs and then retest the vehicle to determine the effectiveness of those repairs. It was therefore concluded that a decentralized program that separated these functions (i.e., a so-called "test-only" program) would be presumptively equivalent to a centralized program. In May 1994, EPA issued a policy document entitled, "EPA Policy on Decentralized, Test-Only Stations," which interpreted the 1992 I/M rule as further barring decentralized, test-only stations from engaging in virtually all other for-profit activities other than testing, prohibiting (for example) the sale of convenience store type items. This prohibition was based upon the further assumption that decentralized stations would otherwise use the guarantee of a passing test as a way to attract customers to their other sales and services.

In 1995, the substance of the Clean Air Act's enhanced I/M network requirement was amended by implication by Section 348(b) of the National Highway System Designation Act which specified that "[t]he Administrator shall not disapprove or apply an automatic discount to a State implementation plan revision under section 182 or 187 of the Clean Air Act (42 U.S.C. 7511a; 7512a) on the basis of a policy, regulation, or guidance providing for a discount of emissions credits because the inspection and maintenance program in such plan revision is decentralized or a test-and-repair program." States opting for the NHSDA's flexibility were allowed to claim prospective emission reduction credit for their I/M SIPs based upon a "good faith estimate," and were to be granted an interim approval which would lapse after 18 months if the credit claims were not substantiated by way of a program effectiveness demonstration. While states were given a limited time during which they could apply for interim approval under the NHSDA (i.e.,

by March 28, 1996), the Highway Act's prohibition against automatic, decentralized or test-and-repair discounts has no such expiration date and therefore remains in effect permanently.

Today's proposal would amend the program network requirements at 40 CFR 51.353 in two ways:

First, the proposal would delete 40 CFR 51.353(b) which first established the automatic credit discount for decentralized, test-and-repair I/M programs. This amendment is proposed in recognition of and compliance with the requirements of the National Highway System Designation Act of 1995.

Second, the proposal would explicitly extend the definition of decentralized test-only to allow such stations to engage in the full range of sales not directly related to automotive parts sales or service, including but not limited to the sale of self-serve gasoline, pre-packaged oil, and other, non-automotive, convenience store items. This proposal is based upon EPA's determination that a literal reading of the 1992 I/M rule's definition does not support the broader prohibitions set by the subsequent, 1994 policy. Such prohibitions have been deemed irrelevant, post-NHSDA.

#### *C. Test Procedure and Related Amendments*

Section 182(c)(3)(C)(i) of the 1990 Clean Air Act established the minimum requirements for enhanced I/M programs regarding test equipment by stating that such programs must include "(c)omputerized emission analyzers, including on-road testing devices." The 1992 I/M rule, in interpreting this requirement, was driven by the assumption that all enhanced I/M programs would include IM240 tailpipe emission testing and most (i.e., those required for ozone nonattainment or transport areas) would also include evaporative system purge and pressure testing. As a result, the 1992 I/M rule's requirements for test procedures and standards at 40 CFR 51.357 and test equipment at 40 CFR 51.358 (as well as other, related requirements throughout the 1992 I/M rule) tend to be prescriptive to the point of excluding valid, alternative, non-IM240 test methodologies. This is especially the case since EPA promulgated the I/M flexibility amendments in 1995 and 1996, and since passage of the National Highway System Designation Act of 1995, which, taken together, provided states the opportunity to explore a wide range of alternative test type and network design combinations not

anticipated under the 1992 I/M rule. For example, it is currently possible for some areas to design programs that meet the required enhanced I/M performance standard without any tailpipe testing at all, using, instead, a combination of alternative evaporative system pressure testing methods, onboard diagnostic system checks, and visual antitampering inspections. The problem is that the I/M rule, as currently written, includes several provisions effecting test procedures which assume tailpipe testing as a given, thus unnecessarily discouraging areas from pursuing a design option which otherwise meets the areas' needs and local conditions.

In response to the above dilemma, today's proposal would revise the I/M rule in three areas:

First, the proposal would revise the test procedure and standard requirements at 40 CFR 51.357 to clarify that tailpipe exhaust testing is not a universal requirement for all I/M programs and that alternatives to the IM240 drive cycle are allowed under the requirements for transient testing. These revisions would be achieved largely by deleting the words "tailpipe" and "IM240," and inserting the caveat "where applicable," as needed. Similar amendments would be made elsewhere in the regulatory text, to the extent that the existing text creates the impression that IM240 or tailpipe testing are absolute requirements, or that alternative test methods are otherwise barred.

The proposal would also clarify that the standard for an acceptable alternative test is comparability, not necessarily equivalence. Establishing "equivalence" as the standard for acceptability has the effect of requiring that alternative tests individually get the same level of reductions as the test being replaced. EPA believes that this is an unnecessarily strict standard, and somewhat arbitrary if other program parameters can be adjusted so the overall performance standard is still met. That is, a slightly less effective test could still be acceptable if performed more frequently or on a larger number of vehicles to offset potential emission reduction losses due to the alternative test's being comparable, but not strictly equivalent.

Second, the proposal would revise the test equipment requirements at 40 CFR 51.358 to make the regulatory definition of "computerized analyzer" less prescriptive to allow evaporative emission testing devices and onboard diagnostic computer (OBD) scanners to qualify as "computerized analyzers" under the Act. The current regulatory definition of "computerized analyzers"

focuses on a system centered on a traditional, personal computer, with keyboard input, etc. EPA believes this is no longer appropriate under the Clean Air Act, given the recent changes under the NHTSA discussed above. Under the broader definition proposed, the focus would concentrate on the existence of a central processing unit, and whether or not the criteria for making pass/fail decisions are automated. EPA also proposes to relax the requirement for a real-time data link for those areas required to do I/M, but which do not need to claim I/M emission reductions to meet their other, non-I/M CAA requirements. This is proposed to provide flexibility to those areas which are not relying on I/M to meet their CAA goals and that have opted to employ stand-alone test equipment that is not readily connected to a centralized, real-time database. EPA believes a real-time data link is not necessary for these types of programs.

Third, the proposal would revise the data collection, analysis, and reporting requirements at 40 CFR 51.365 and 40 CFR 51.366 to clarify that the elements to be collected and reported are only required where applicable to the program type in use in the area, and to make the requirements less prescriptive with regard to the test types assumed. These proposed revisions would also have the effect of streamlining this portion of the rule and would likely reduce the paperwork burden these reporting requirements place on states without compromising overall program effectiveness.

#### *D. Consumer Protection and Repair Effectiveness Amendments*

Section 51.368(a) of the I/M rule currently requires that enhanced I/M programs provide motorists that fail the inspection with "software-generated, interpretive diagnostic information based on the particular portions of the test that were failed." Section 51.369(c) of the I/M rule requires that repair technicians receive training in diagnostic theory related to transient and evaporative emission test failures. In both cases, these requirements were developed based upon the assumption that enhanced I/M programs would be built around the IM240 test and would produce second-by-second emissions data that could be used as an important diagnostic tool, with certain component failures producing characteristic speed versus emission traces. Since the 1992 rule was promulgated, however, a wide-range of non-transient, alternative I/M tests have been approved for use in enhanced I/M programs. These tests do not produce the detailed kind of

diagnostic information that is possible with a transient test like the IM240, though they are certainly capable of producing generic diagnostic information, based upon which tests and/or standards are failed. Therefore, today's proposal would revise the diagnostic information provisions at 40 CFR 51.368 and 40 CFR 51.369 to make the requirement to provide diagnostic information more generic and only required where applicable to the test type employed.

#### *E. On-Road Testing Amendments*

Section 182(c)(3)(C)(i) of the 1990 Clean Air Act requires that enhanced I/M programs include "on-road testing devices." In its 1992 I/M rule, EPA indicated that this requirement could be met by either using remote sensing devices (RSD) or by conducting road-side pull-over, tailpipe testing. In either case, vehicles which failed the test were required to get out-of-cycle repairs, the presumption being that the purpose of such testing was to identify dirty vehicles in need of such repairs.

Today's proposal would revise the on-road testing requirements at 40 CFR 51.371 in two ways:

First, the proposal would remove language suggesting that the road-side pull-over test must be a tailpipe test. The purpose of this change is to open up this requirement so that it can be met using alternative evaporative system pressure testing and/or OBD conducted at the roadside, consistent with changes in I/M program design discussed above.

Second, the proposal would remove the requirement for out-of-cycle repairs where on-road testing is used as a pre-test clean screen method. The purpose of this change is to allow states to use alternative applications for RSD that have been developed since the 1992 I/M rule was promulgated. These alternatives include an approach known as "clean screening," where the goal is not to identify high polluting vehicles for out-of-cycle repairs, but rather to identify especially clean vehicles which can be exempted from the routine test. Since such clean screening programs do not generate emission reductions so much as run the risk of losing those reductions by falsely identifying (and therefore exempting) vehicles needing repairs as "clean," the proposal would also clarify that only on-road programs requiring out-of-cycle repairs are eligible to claim additional emission reduction credit for such pre-screening on-road testing.

## V. Discussion of Major Issues

### A. Emission Impact of the Proposed Amendments

Today's proposal introduces additional flexibilities which EPA believes are needed to allow states to adopt and/or revise their I/M programs in a way which helps them to meet local needs as smoothly as possible. Today's proposal is also aimed at removing certain restrictions in the 1992 I/M rule that would impede transition to the I/M of the future, which EPA believes will focus largely on OBD-based testing technologies available on 1996 and later model-year vehicles, as opposed to today's traditional tailpipe tests. Although today's proposal does have the potential for allowing some states to implement more modest I/M programs than would otherwise be the case, nothing in this notice should be construed as requiring or compelling states to downsize their programs. Furthermore, nothing in this notice changes the Clean Air Act's other requirements with regard to 15%, Reasonable Further Progress, or Attainment plans. Instead, this proposal is aimed at allowing states greater flexibility in deciding how to apportion the emission reductions they need, reflecting local needs and conditions to the best extent possible. In that regard, the intention of this proposal is to take the focus off "I/M for the sake of I/M" and return it where it belongs—on cleaning the air by whatever method makes the most sense.

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

Only states that choose to utilize the additional flexibilities discussed in this notice will be affected by today's proposal to change the I/M rule. Modifications to a state's I/M program as a result of this rule change may require a SIP revision, if a plan has already been submitted and approved. Each case is likely to be different, depending upon the magnitude and direction of the change. It is important to note that today's proposal in no way increases the existing burden on states. States that currently comply, or are in the process of complying, with the existing I/M rule would only be affected by today's rule revisions if they so choose. Today's proposed amendments represent options (not obligations or requirements) for those states that choose to take advantage of the flexibilities proposed in today's notice.

Should a state with an approved I/M program for which credit is being claimed as part of an approved Reasonable Further Progress (RFP) and/

or Attainment SIP choose to revise its I/M program in such a way as to lower the emission reductions attributable to the I/M program, then such state will need to not only revise its I/M SIP but also its affected RFP and Attainment SIPs to address this shortfall. Specifically, the emission reduction losses due to the state's changes to its I/M program will have to be made up through the adoption and implementation of additional measures which will need to be incorporated as revisions to the affected RFP and Attainment SIPs. Such revisions will be subject to notice-and-comment rulemaking, and must be approved by the Administrator.

## VI. Economic Costs and Benefits

Today's proposed revisions provide states additional flexibility that lessens rather than increases the potential economic burden on states. Furthermore, states are under no obligation, legal or otherwise, to modify existing plans meeting the previously applicable requirements as a result of today's 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. A-99-19.

## VIII. Administrative Requirements

### A. Administrative Designation

It has been determined that these proposed amendments to the I/M rule do not constitute a significant regulatory action under the terms of Executive Order 12866 and this action is therefore not subject to OMB review. Any impacts associated with these revisions do not constitute additional burdens when compared to the existing I/M requirements published in the **Federal Register** on November 5, 1992 (57 FR 52950) as amended. Nor does the proposed amendment create an annual effect on the economy of \$100 million or more or otherwise adversely affect the economy or the environment. It is not inconsistent with nor does it interfere with actions by other agencies. It does not alter budgetary impacts of entitlements or other programs, and it does not raise any new or unusual legal or policy issues.

### B. Reporting and Recordkeeping Requirement

There are no additional information requirements in this supplemental proposed 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 either 100,000 or 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 Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule where the estimated costs to State, local, or tribal governments, or to the private sector, will be \$100 million or more. Under § 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objective of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly impacted by the rule. To the extent that the rules being proposed by this action would impose any mandate at all as defined in § 101 of the Unfunded Mandates Act upon the state, local, or tribal governments, or the private sector, as explained above, this proposed rule is not estimated to impose costs in excess of \$100 million. Therefore, EPA has not prepared a statement with respect to budgetary impacts. As noted above, this rule offers opportunities to states that would enable them to lower economic burdens

from those resulting from the currently existing I/M rule.

*E. Executive Order 12875: Enhancing the Intergovernmental Partnership*

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates. Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

*F. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal

governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Today's rule does not create a mandate on tribal governments or create any additional burden or requirements for tribal government. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

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

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be economically significant as defined under E.O. 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. EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. This rule is not subject to E.O. 13045 because it is not economically significant under E.O. 12866 and because it is based on technology performance and not on health or safety risks.

*H. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) directs all Federal agencies to use voluntary consensus standards instead of government-unique standards in their regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling and analytical procedures, business practices, etc.) that are developed or adopted by one or more voluntary consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials

(ASTM), the National Fire Protection Association (NFPA), and the Society of Automotive Engineers (SAE). The NTTAA requires Federal agencies like EPA to provide Congress, through OMB, with explanations when an agency decides not to use available and applicable voluntary consensus standards.

These proposed amendments do not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

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

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

Dated: August 6, 1999.

**Carol M. Browner,**  
Administrator.

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

**PART 51—[AMENDED]**

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

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

2. Section 51.350 is amended by revising paragraph (c) to read as follows:

**§ 51.350 Applicability.**

\* \* \* \* \*

(c) *Requirements after attainment.* All I/M programs shall provide that the program will remain effective, even if the area is redesignated to attainment status or the standard is otherwise rendered no longer applicable, until the State submits and EPA approves a SIP revision which convincingly demonstrates that the area can maintain the relevant standard(s) without benefit of the emission reductions attributable to the I/M program. The State shall commit to fully implement and enforce the program until such a demonstration can be made and approved by EPA. At a minimum, for the purposes of SIP approval, legislation authorizing the program shall not sunset prior to the attainment deadline for the applicable National Ambient Air Quality Standards (NAAQS).

\* \* \* \* \*

3. Section 51.351 is amended by removing and reserving paragraphs (a), revising (b), (f) introductory text, (f)(13), (g)(13) and (h)(11) to read as follows:

**§ 51.351 Enhanced I/M performance standard.**

(a) [Reserved]

(b) *On-road testing.* The performance standard shall include on-road testing (including out-of-cycle repairs in the case of confirmed failures) of at least 0.5% of the subject vehicle population, or 20,000 vehicles whichever is less, as a supplement to the periodic inspection required in paragraphs (f), (g), and (h) of this section. Specific requirements are listed in § 51.371 of this subpart.

\* \* \* \* \*

(f) *High Enhanced Performance Standard.* Enhanced I/M programs shall be designed and implemented to meet or exceed a minimum performance standard, which is expressed as emission levels in area-wide average grams per mile (gpm), achieved from highway mobile sources as a result of the program. The emission levels achieved by the State's program design shall be calculated using the most current version, at the time of submittal, of the EPA mobile source emission factor model or an alternative model approved by the Administrator, and shall meet the minimum performance standard both in operation and for SIP approval. Areas shall meet the performance standard for the pollutants which cause them to be subject to enhanced I/M requirements. In the case of ozone nonattainment areas subject to enhanced I/M and subject areas in the Ozone Transport Region, the performance standard must be met for both oxides of nitrogen (NOx) and volatile organic compounds (VOCs), except as provided in paragraph (d) of this section. Except as provided in paragraphs (g) and (h) of this section, the model program elements for the enhanced I/M performance standard shall be as follows:

\* \* \* \* \*

(13) *Evaluation date.* Enhanced I/M program areas subject to the provisions of this paragraph shall be shown to obtain the same or lower emission levels as the model program described in this paragraph by January 1, 2002 to within  $\pm 0.02$  gpm. Subject programs shall demonstrate through modeling the ability to maintain this level of emission reduction (or better) through their attainment deadline for the applicable NAAQS standard(s).

(g) \* \* \*

(13) *Evaluation date.* Enhanced I/M program areas subject to the provisions of this paragraph shall be shown to obtain the same or lower emission levels as the model program described in this paragraph by January 1, 2002 to within  $\pm 0.02$  gpm. Subject programs shall

demonstrate through modeling the ability to maintain this level of emission reduction (or better) through their attainment deadline for the applicable NAAQS standard(s).

(h) \* \* \*

(11) *Evaluation date.* Enhanced I/M program areas subject to the provisions of this paragraph shall be shown to obtain the same or lower VOC and NOx emission levels as the model program described in this paragraph by January 1, 2002 to within  $\pm 0.02$  gpm. Subject programs shall demonstrate through modeling the ability to maintain this level of emission reduction (or better) through their attainment deadline for the applicable NAAQS standard(s). Equality of substituted emission reductions to the benefits of the low enhanced performance standard must be demonstrated for the same evaluation date.

4. Section 51.353 is amended by revising the introductory text and paragraph (a) and by removing and reserving (b) to read as follows:

**§ 51.353 Network type and program evaluation.**

Basic and enhanced I/M programs can be centralized, decentralized, or a hybrid of the two at the State's discretion, but shall be demonstrated to achieve the same (or better) level of emission reduction as the applicable performance standard described in either § 51.351 or § 51.352 of this subpart. For decentralized programs other than those meeting the design characteristics described in paragraph (a) of this section, the State must demonstrate that the program is achieving the level of effectiveness claimed in the plan within 12 months of the plan's approval. The adequacy of these demonstrations will be judged by the Administrator on a case-by-case basis through notice-and-comment rulemaking.

(a) *Presumptive equivalency.* A decentralized network consisting of stations that only perform official I/M testing (which may include safety-related inspections) and in which owners and employees of those stations, or companies owning those stations, are contractually or legally barred from engaging in motor vehicle repair or service, motor vehicle parts sales, and motor vehicle sale and leasing, either directly or indirectly, and are barred from referring vehicle owners to particular providers of motor vehicle repair services (except as provided in § 51.369(b)(1) of this subpart) shall be considered presumptively equivalent to a centralized, test-only system including comparable test elements. States may

allow such stations to engage in the full range of sales not covered by the above prohibition, including self-serve gasoline, pre-packaged oil, or other, non-automotive, convenience store items. At the State's discretion, such stations may also fulfill other functions typically carried out by the State such as renewal of vehicle registration and driver's licenses, or tax and fee collections. Decentralized networks designed around these restrictions need not provide any additional demonstration to substantiate their I/M SIP emission reduction credit claims, with the exception of the biennial program evaluation required of all enhanced I/M programs and described in paragraph (c) of this section.

(b) [Reserved]

\* \* \* \* \*

5. Section 51.357 is amended by revising paragraphs (a)(3), (a)(4), (a)(6), (a)(11), and (a)(13) to read as follows:

**§ 51.357 Test procedures and standards.**

\* \* \* \* \*

(a) \* \* \*

(3) An official test, once initiated, shall be performed in its entirety regardless of intermediate outcomes except in the case of invalid test condition, unsafe conditions, fast pass/fail algorithms, or, in the case of the on-board diagnostic (OBD) system check, unset readiness codes.

(4) Tests involving measurement shall be performed with program-approved equipment that has been calibrated according to the quality procedures contained in appendix A to this subpart.

\* \* \* \* \*

(6) Vehicles shall be retested after repair for any portion of the inspection that is failed on the previous test to determine if repairs were effective. To the extent that repair to correct a previous failure could lead to failure of another portion of the test, that portion shall also be retested. Evaporative system repairs shall trigger an exhaust emissions retest (in programs which conduct an exhaust emission test as part of the initial inspection).

\* \* \* \* \*

(11) *Transient emission test.* The transient emission test shall consist of mass emission measurement using a constant volume sampler (or an Administrator-approved alternative methodology for accounting for exhaust volume) while the vehicle is driven through a computer-monitored driving cycle on a dynamometer. The driving cycle shall include acceleration, deceleration, and idle operating modes as specified in appendix E to this subpart (or an approved alternative).



The driving cycle may be ended earlier using approved fast pass or fast fail algorithms and multiple pass/fail algorithms may be used during the test cycle to eliminate false failures. The transient test procedure, including algorithms and other procedural details, shall be approved by the Administrator prior to use in an I/M program.

\* \* \* \* \*

(13) Approval of alternative tests. Alternative test procedures may be approved if the Administrator finds that such procedures would produce comparable emission reductions from the I/M program as a whole, in combination with other program elements.

\* \* \* \* \*

6. Section 51.358 is amended by revising the introductory text, paragraphs (a) introductory text, (a)(2)(i), (a)(2)(ii), (a)(2)(iv), (a)(3) introductory text, (a)(3)(iv), (a)(3)(vi), (a)(3)(ix), (b) introductory text, (b)(2) and (c) and by removing and reserving (b)(1) and (3) to read as follows:

**§ 51.358 Test equipment.**

Computerized test systems are required for performing an official emissions test on subject vehicles.

(a) Performance features of computerized test systems. With the exception of test procedures relying upon a vehicle's onboard diagnostic (OBD) system (which is certified as part of the overall vehicle certification process), the test equipment shall be certified by the program, and newly acquired systems shall be subjected to acceptance test procedures to ensure compliance with program specifications.

(2) \* \* \*

(i) Shall be automated;

(ii) Shall be secured from tampering and/or abuse;

(iii) \* \* \*

(iv) Shall be capable of simultaneously sampling dual exhaust vehicles in the case of tailpipe-based emission test equipment.

(3) The vehicle owner or driver shall be provided with a record of test results, including all of the items listed in 40 CFR part 85, subpart W as being required on the test record (as applicable). The test report shall include:

\* \* \* \* \*

(iv) The type(s) of test(s) performed;

\* \* \* \* \*

(vi) The test results, by test, and, where applicable, by pollutant;

\* \* \* \* \*

(ix) For vehicles that fail the emission test, information on the possible cause(s) of the failure.

(b) Functional characteristics of computerized test systems. The test system is composed of motor vehicle test equipment controlled by a computerized processor and shall make automatic pass/fail decisions.

(1) [Reserved]

(2) Test systems in enhanced I/M programs shall include a real-time data link to a host computer that prevents unauthorized multiple initial tests on the same vehicle in a test cycle and to insure test record accuracy. For areas which have demonstrated the ability to meet their other, non-I/M Clean Air Act requirements without relying on emission reductions from the I/M program (and which have also elected to employ stand-alone test equipment as part of the I/M program), such areas may adopt alternative methods for preventing multiple initial tests, subject to approval by the Administrator.

(3) [Reserved]

\* \* \* \* \*

(c) *SIP requirements.* The SIP shall include written technical specifications for all test equipment used in the program and shall address each of the above requirements (as applicable). The specifications shall describe the testing process, the necessary test equipment, the required features, and written acceptance testing criteria and procedures.

7. Section 51.359 is amended by revising the introductory text, and paragraph (a)(1), removing and reserving (a)(3) and revising (c) and (d) to read as follows:

**§ 51.359 Quality control.**

Quality control measures shall insure that emission testing equipment is calibrated and maintained properly, and that inspection, calibration records, and control charts are accurately created, recorded and maintained (where applicable).

(a) \* \* \* (1) The practices described in this section and in appendix A to this subpart shall be followed for those tests (or portions of tests) which fall into the testing categories identified. Alternatives or exceptions to these procedures or frequencies may be approved by the Administrator based on a demonstration of comparable performance.

(2) \* \* \*

(3) [Reserved]

\* \* \* \* \*

(c) Requirements for transient exhaust emission test equipment. Equipment shall be maintained according to demonstrated good engineering practices to assure test accuracy. Computer control of quality assurance

checks and quality control charts shall be used whenever possible. Exceptions to the procedures and the frequency of the checks described in appendix A of this subpart may be approved by the Administrator based on a demonstration of comparable performance.

(d) Requirements for evaporative system functional test equipment. Equipment shall be maintained according to demonstrated good engineering practices to assure test accuracy. Computer control of quality assurance checks and quality control charts shall be used whenever possible. Exceptions to the procedures and the frequency of the checks described in appendix A of this subpart may be approved by the Administrator based on a demonstration of comparable performance.

\* \* \* \* \*

8. Section 51.362 is amended by revising paragraphs (a)(2) and (b)(4) to read as follows:

**§ 51.362 Motorist compliance enforcement program oversight.**

\* \* \* \* \*

(a) \* \* \*

(2) Facilitation of accurate critical test data and vehicle identifier collection through the use of automatic data capture systems such as bar-code scanners or optical character readers, or through redundant data entry (where applicable);

\* \* \* \* \*

(b) \* \* \*

(4) Maintain and ensure the accuracy of the testing database through periodic internal and/or third-party review;

\* \* \* \* \*

9. Section 51.363 is amended by revising paragraphs (a)(4)(vii), (b)(1), (c)(10), (d)(1)(i) to read as follows:

**§ 51.363 Quality assurance.**

\* \* \* \* \*

(a) \* \* \*

(4) \* \* \*

(vii) Where applicable, access to on-line inspection databases by State personnel to permit the creation and maintenance of covert vehicle records.

(b) \* \* \*

(1) Automated record analysis to identify statistical inconsistencies, unusual patterns, and other discrepancies;

\* \* \* \* \*

(c) \* \* \*

(10) A check of the pressure monitoring devices used to perform the evaporative canister pressure test(s); and

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*



(i) The use of test equipment and/or procedures;

\* \* \* \* \*

10. Section 51.365 is amended by revising the introductory text, paragraphs (a)(3), (a)(23), (a)(24), (a)(25), and (b) to read as follows:

**§ 51.365 Data collection.**

Accurate data collection is essential to the management, evaluation, and enforcement of an I/M program. The program shall gather test data on individual vehicles, as well as quality control data on test equipment (with the exception of test procedures for which either no testing equipment is required or those test procedures relying upon a vehicle's OBD system).

(a) \* \* \*

(3) Test system number (where applicable);

\* \* \* \* \*

(23) Results of the evaporative system pressure test(s) expressed as a pass or fail;

(24) Results of the evaporative system purge test expressed as a pass or fail along with the total purge flow in liters achieved during the test (where applicable); and

(25) Results of the on-board diagnostic check expressed as a pass or fail along with the diagnostic trouble codes revealed (where applicable).

(b) Quality control data. At a minimum, the program shall gather and report the results of the quality control checks required under § 51.359 of this subpart, identifying each check by station number, system number, date, and start time. The data report shall also contain the concentration values of the calibration gases used to perform the gas characterization portion of the quality control checks (where applicable).

11. Section 51.366 is amended by revising paragraphs (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(2)(iv), (a)(2)(v), (a)(2)(vi), (b)(3)(i), (b)(3)(ii), (b)(3)(iii) and (b)(3)(iv) to read as follows:

**§ 51.366 Data analysis and reporting.**

\* \* \* \* \*

(a) \* \* \*

(2) \* \* \*

(i) Failing initially, per test type;

(ii) Failing the first retest per test type;

(iii) Passing the first retest per test type;

(iv) Initially failed vehicles passing the second or subsequent retest per test type;

(v) Initially failed vehicles receiving a waiver; and

(vi) Vehicles with no known final outcome (regardless of reason).

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(i) Conducted with the vehicle set to fail per test type;

(ii) Conducted with the vehicle set to fail any combination of two or more test types;

(iii) Resulting in a false pass per test type;

(iv) Resulting in a false pass for any combination of two or more test types;

\* \* \* \* \*

12. Section 51.367 is amended by revising paragraphs (a)(1)(vi) and (a)(3) to read as follows:

**§ 51.367 Inspector training and licensing or certification.**

\* \* \* \* \*

(a) \* \* \* (1) \* \* \*

(vi) Test equipment operation, calibration, and maintenance (with the exception of test procedures which either do not require the use of special equipment or which rely upon a vehicle's OBD system);

\* \* \* \* \*

(3) In order to complete the training requirement, a trainee shall pass (i.e., a minimum of 80% of correct responses or lower if an occupational analysis justifies it) a written test covering all aspects of the training. In addition, a hands-on test shall be administered in which the trainee demonstrates without assistance the ability to conduct a proper inspection and to follow other required procedures. Inability to properly conduct all test procedures shall constitute failure of the test. The program shall take appropriate steps to insure the security and integrity of the testing process.

\* \* \* \* \*

13. Section 51.368 is amended by revising paragraph (a) to read as follows:

**§ 51.368 Public information and consumer protection.**

(a) *Public awareness.* The SIP shall include a plan for informing the public on an ongoing basis throughout the life of the I/M program of the air quality problem, the requirements of Federal and State law, the role of motor vehicles in the air quality problem, the need for and benefits of an inspection program, how to maintain a vehicle in a low-emission condition, how to find a qualified repair technician, and the requirements of the I/M program. Motorists that fail the I/M test in enhanced I/M areas shall be offered a list of repair facilities in the area and information on the results of repairs performed by repair facilities in the area, as described in § 51.369(b)(1) of this subpart. Motorists that fail the I/M test shall also be provided with

information concerning the possible cause(s) for failing the particular portions of the test that were failed.

\* \* \* \* \*

14. Section 51.369 is amended by revising paragraphs (c)(2) and (c)(3) to read as follows:

**§ 51.369 Improving repair effectiveness.**

\* \* \* \* \*

(c) \* \* \*

(2) The application of emission control theory and diagnostic data to the diagnosis and repair of failures on the transient emission test and the evaporative system functional checks (where applicable);

(3) Utilization of diagnostic information on systematic or repeated failures observed in the transient emission test and the evaporative system functional checks (where applicable); and

\* \* \* \* \*

15. Section 51.371 is amended by revising the introductory text, paragraphs (a)(2), (a)(3), (b)(2) and (b)(3) to read as follows:

**§ 51.371 On-road testing.**

On-road testing is defined as testing of vehicles for conditions directly impacting the emission of HC, CO, NO<sub>x</sub> and/or CO<sub>2</sub> emissions on any road or roadside in the nonattainment area or the I/M program area. On-road testing is required in enhanced I/M areas and is an option for basic I/M areas.

(a) \* \* \*

(2) On-road testing is not required in every season or on every vehicle but shall evaluate the emission performance of 0.5% of the subject fleet statewide or 20,000 vehicles, whichever is less, per inspection cycle.

(3) The on-road testing program shall provide information about the performance of in-use vehicles, by measuring on-road emissions through the use of remote sensing devices or by assessing vehicle emission performance through roadside pullovers including onboard diagnostic (OBD) system testing or other emission testing. The program shall collect, analyze and report on-road testing data.

\* \* \* \* \*

(b) \* \* \*

(2) The SIP shall include the legal authority necessary to implement the on-road testing program, including the authority to enforce off-cycle inspection and repair requirements (where applicable).

(3) Emission reduction credit for on-road testing programs shall be granted for a program designed to obtain significant emission reductions over and

above those already predicted to be achieved by other aspects of the I/M program. Emission reduction credit will only be granted to those programs which require out-of-cycle repairs for confirmed high-emitting vehicles identified under the on-road testing program. The SIP shall include technical support for the claimed additional emission reductions.

[FR Doc. 99-21661 Filed 8-19-99; 8:45 am]

BILLING CODE 6560-50-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[MM Docket No. 99-269, RM-9698]

#### Digital Television Broadcast Service; Salinas, CA

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Hearst-Argyle Stations, Inc., licensee of station KSBW (TV), NTSC Channel 8, Salinas, California, requesting the substitution of DTV Channel 10 for station KSBW (TV)'s assigned DTV Channel 43. DTV Channel 10 can be allotted to Salinas, California, in compliance with the principle community coverage requirements of section 73.625(a) at reference coordinates 36-45-23 N and 121-30-05 W. As requested, we propose to modify station KSBW (TV)'s authorization to specify operation on DTV Channel 10 at Salinas, California, with a power of 24.2 (kW) and a height above average terrain (HAAT) of 692 meters.

**DATES:** Comments must be filed on or before September 27, 1999, and reply comments on or before October 12, 1999.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, S.W., Room TW-A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Mark J. Prak, Esq., Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P., Post Office Box 1800, Raleigh, North Carolina 27602 (Counsel for Hearst-Argyle Stations, Inc.).

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418-1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of

Proposed Rule Making, MM Docket No. 99-269, adopted August 10, 1999, and released August 13, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Digital Television Broadcasting.

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Services Division, Mass Media Bureau.*

[FR Doc. 99-21723 Filed 8-19-99; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[MM Docket No. 99-268, RM-9691]

#### Digital Television Broadcast Service; Chattanooga, TN

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Sarkes Tarzian, Inc., licensee of station WRCB-TV, NTSC Channel 3, Chattanooga, Tennessee, proposing the substitution of DTV Channel 13 for station WRCB-TV's assigned DTV Channel 55. DTV Channel 3 can be allotted to Chattanooga, Tennessee, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 35-09-40 N and 85-18-52 W. As requested, we propose to modify station WRCB-TV's authorization to specify operation on DTV Channel 13 at Chattanooga,

Tennessee, with a power of 37 (kW) and a height above average terrain (HAAT) of 325 meters.

**DATES:** Comments must be filed on or before September 27, 1999, and reply comments on or before October 12, 1999.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, S.W., Room TW-A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Brian M Madden, Esq., Leventhal, Senter & Lerman, 2000 K Street, NW, Suite 600 Washington, DC 20006-1809 (Counsel for Sarkes Tarzian, Inc.).

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418-1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99-268, adopted August 10, 1999, and released August 13, 1999. The full text of this Commission's decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, S.W., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Digital television broadcasting.

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Services Division, Mass Media Bureau.*

[FR Doc. 99-21722 Filed 8-19-99; 8:45 am]

BILLING CODE 6712-01-P