

PART 301—PROCEDURE AND ADMINISTRATION

Par. 4. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 5. Section 301.6011-2 is amended by revising paragraphs (a)(1), (b) (1) and (2), (c)(1) (i) and (iii), (c)(2), (f) and (g)(2), and by adding (c)(1)(iv), and by removing paragraphs (c) (3) and (4) and the last sentence of paragraph (e). The revisions and additions read as follows:

§ 301.6011-2 Required use of magnetic media.

[The text of paragraphs (a)(1), (b)(1) and (2), (c)(1) (i), (iii), and (iv), (c)(2), (f), and (g)(2) as proposed is the same as the text in § 301.6011-2T(a)(1), (b) (1) and (2), (c)(1) (i), (iii), and (iv), (c)(2), (f), and the first sentence of (g)(2) published elsewhere in this issue of the Federal Register].

Margaret Milner Richardson,
Commissioner of Internal Revenue.

[FR Doc. 96-25541 Filed 10-9-96; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AK12-7100; FRL-5634-1]

Approval and Promulgation of Air Quality Implementation Plans; Alaska: Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed interim rule.

SUMMARY: EPA is proposing an interim approval of a State Implementation Plan (SIP) revision submitted by the State of Alaska. This revision requires the continued implementation of an inspection and maintenance (I/M) program in the Municipality of Anchorage (MOA) and the Fairbanks North Star Borough (FNSB). Alaska's current program was reviewed and approved by EPA in a SIP action that became effective on June 5, 1995. The intended effect of this action is to propose interim approval for a revised I/M program credit claim proposed by the State, based upon the state's good faith estimate, which asserts that the state's claimed network design credits are appropriate and the revision is otherwise in compliance with the Clean Air Act (CAA). This action is being taken under section 348 of the National

Highway System Designation Act of 1995 (NHSDA) and section 110 of the CAA.

DATES: Comments must be received in writing and postmarked on or before November 12, 1996.

ADDRESSES: Comments may be mailed to: Montel Livingston, SIP Manager, Office of Air Quality (OAQ 107), Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington, 98101. Copies of the documents relevant to this action are available for public inspection during normal business hours at: EPA Region 10, Office of Air Quality, 1200 Sixth Avenue, Seattle, Washington, 98101, and the Alaska Department of Environmental Conservation, 410 Willoughby, Suite 105, Juneau, Alaska, 99801-1795.

FOR FURTHER INFORMATION CONTACT: Ed Jones, EPA, Office of Air Quality (OA-107), 1200 Sixth Avenue, Seattle, Washington, 98101, (206) 553-1743.

SUPPLEMENTARY INFORMATION:

I. Background

A. Impact of the National Highway System Designation Act on the Design and Implementation of Inspection & Maintenance Programs Under the Clean Air Act

The National Highway System Designation Act of 1995 (NHSDA) establishes two key changes to the I/M rule requirements previously developed by EPA. Under the NHSDA, EPA cannot require states to adopt or implement centralized, test-only IM240 enhanced vehicle inspection and maintenance programs as a means of compliance with section 182, 184 or 187 of the CAA. Also under the NHSDA, EPA cannot disapprove a State SIP revision, nor apply an automatic discount to a State SIP revision under section 182, 184 or 187 of the CAA, because the I/M program in such plan revision is decentralized, or a test-and-repair program. Accordingly, the so-called 50% credit discount that was established by the EPA's I/M Program Requirements Final Rule, (published November 5, 1992, and herein referred to as the I/M Rule) has been effectively replaced with a presumptive equivalency criteria, which places the emission reductions credits for decentralized networks on par with credit assumptions for centralized networks, based upon a state's good faith estimate of reductions as provided by the NHSDA and explained below in this section.

EPA's I/M Rule established many other criteria unrelated to network

design or test type for states to use in designing I/M programs. All other elements of the I/M Rule, and the statutory requirements established in the CAA continue to be required of those states submitting I/M SIP revisions under the NHSDA, and the NHSDA specifically requires that these submittals must otherwise comply in all respects with the I/M Rule and the CAA.

Submission criteria described under the NHSDA allows for a State to submit proposed regulations for this interim program, provided that the State has all of the statutory authority necessary to carry out the program. Also, in proposing the interim credits for this program, states are required to make good faith estimates regarding the performance of their I/M program. Since these estimates are expected to be difficult to quantify, the state need only provide that the proposed credits claimed for the submission have a basis in fact. A good faith estimate of a State's program may be an estimate that is based on any of the following: the performance of any previous I/M program; the results of remote sensing or other roadside testing techniques; fleet and vehicle miles traveled (VMT) profiles; demographic studies; or other evidence which has relevance to the effectiveness or emissions reducing capabilities of an I/M program.

This action is being taken under the authority of both the NHSDA and section 110 of the CAA. Section 348 of the NHSDA expressly directs EPA to issue this interim approval for a period of 18 months, at which time the interim program will be evaluated in concert with the appropriate state agencies and EPA. At that time, the Conference Report on section 348 of the NHSDA states that it is expected that the proposed credits claimed by the State in its submittal, and the emissions reductions demonstrated through the program data may not match exactly. Therefore, the Conference Report suggests that EPA use the program data to appropriately adjust these credits on a program basis as demonstrated by the program data.

B. Interim Approvals Under the NHSDA

The NHSDA directs EPA to grant interim approval for a period of 18 months to approvable I/M submittals under this Act. This Act also directs EPA and the states to review the interim program results at the end of 18 months, and to make a determination as to the effectiveness of the interim program. Following this demonstration, EPA will adjust any credit claims made by the state in its good faith effort to reflect the emissions reductions actually measured

by the state during the program evaluation period. The NHSDA is clear that the interim approval shall last for only 18 months, and that the program evaluation is due to EPA at the end of that period. Evaluation periods must begin such that at least 6 months of operational program data can be collected to demonstrate the effectiveness of the interim program.

The program evaluation to be used by the State during the 18 month interim period must be acceptable to EPA. EPA anticipates that such a program evaluation process will be developed by the Environmental Council of State (ECOS) group that is convening now and that was organized for this purpose. In addition to this interim evaluation, EPA further encourages the State to conduct a longer term, ongoing evaluation of its I/M program.

C. Process for Full Approvals of This Program under the CAA

As per the NHSDA requirements, this interim rulemaking will expire within 18 months of the final interim approval, or the date of final approval. A full approval of the state's final I/M SIP revision (which will include the state's program evaluation and final adopted state regulations) is still necessary under section 110 and under section 182, 184 or 187 of the CAA. After EPA reviews the State's submitted program evaluation, final rulemaking on the State's SIP revision will occur.

II. EPA's Analysis of Alaska's Submittal

On March 26, 1996, the Alaska Department of Environmental Conservation (ADEC) submitted a revision to its State Implementation Plan (SIP) for an I/M program to qualify under the NHSDA. The revision consists of enabling legislation that will allow the state to continue implementing the I/M program, proposed regulations, a description of the I/M program (including a modeling analysis and detailed description of program features), and a good faith estimate that includes the state's basis in fact for emission reductions claims of the program. The state's credit assumptions should be based upon the removal of the 50% credit discount for all portions of the program that are based on a test-and-repair network, and the application of the State's own estimate of the effectiveness of its decentralized test and repair program.

A. Analysis of the NHSDA Submittal Criteria

Transmittal Letter

On March 26, 1996, Alaska submitted an I/M SIP revision to EPA, requesting action under the NHSDA of 1995 and the CAA of 1990. The official submittal was made by the appropriate state official, Michele Brown, Commissioner of ADEC, and was addressed to the appropriate EPA official in the Region.

Enabling Legislation

The State of Alaska has regulations at 18 AAC 52, enabling the implementation of a basic I/M program.

Proposed Regulations

On April 5, 1995, the state of Alaska was granted EPA approval for their basic I/M program (60 FR 17232). The approval became effective on June 5, 1995. On March 26, 1996 the state proposed amendments to the approved program. The state anticipates fully adopting amended regulations by November 1996.

Program Description

Alaska currently operates an approved basic I/M program. Amendments to the program submitted on March 26, 1996, and acted upon in this notice, do not modify the operation of the program in any manner.

Emission Reduction Claim and Basis for the Claim

Alaska has approved basic I/M programs in the Fairbanks North Star Borough (FNSB) and the Municipality of Anchorage (MOA). Currently, to comply with national policy related to the efficacy of test-and-repair I/M operations, the SIP discounts these programs by 50% (in relation to centralized I/M programs). The SIP revision submitted by the state establishes a level of credit for Alaska's basic, de-centralized I/M program at 85% of the credit applied to centralized programs. Alaska's claim is based on: (1) an estimation of approximate equivalency with California's "Smog Check" I/M program; (2) the California I/M Review Committee's 1993 evaluation of the Smog Check program (entitled "Evaluation of the California Smog Check Program and Recommendations for Program Improvements, Fourth Report to the Legislature") and the Report's conclusions about the program's effectiveness; and, (3) an assertion that the carbon monoxide emission reduction effectiveness claimed for the California program should be

translatable into at least 85% of the credit applied to test-only programs.

Although the evidence submitted in support of Alaska's claim that their I/M program is at least 85% as effective as a centralized, test-only program is insufficient by itself to gain full approval of the credit claim, EPA believes that the state's assertion may be borne out by a well-designed demonstration study. It is also the Agency's position that this preliminary credit estimate, however speculative at this time, is based on a factual argument that has been prepared in good faith. EPA, therefore, proposes to conclude that Alaska's 85% estimate for I/M effectiveness merits interim approval for the eighteen month evaluation period.

B. Analysis of the EPA I/M Regulation and CAA Requirements

As previously stated, the NHSDA left those elements of the 1992 I/M Rule that do not pertain to network design and test type intact. Based upon EPA's review of Alaska's submittal, and the lack of any actual modification to the approved program, EPA believes the state has complied with all aspects of the NHSDA, the CAA and the 1992 I/M Rule.

Alaska's currently approved SIP includes provisions that assure that applicable federal regulations contained in 40 CFR 51.350 through 51.373 are met. As part of this Federal Register action, no modifications to these SIP provisions are acted upon.

III. Explanation of the Interim Approval

At the end of the 18 month interim period, pursuant to the NHSDA, the approval status for this program will automatically lapse. It is expected that the state will at that time be able to make a demonstration of the program's effectiveness using an appropriate evaluation criteria. EPA expects that the state will have at least 6 months of program data that can be used for the demonstration. If the state fails to provide a demonstration of the program's effectiveness to EPA within 18 months of the final interim rulemaking, the interim approval will lapse, and EPA will be forced to disapprove the state's permanent I/M SIP revision. If the state's program evaluation demonstrates that a lesser amount of emission reductions were actually realized than were claimed in the state's March 26, 1996 submittal, EPA will adjust the state's credits accordingly, and use this information to act on the state's permanent I/M program.

IV. Requirements for Permanent I/M SIP Approval

At the end of the 18 month period, final approval of the state's full SIP revision will be granted based upon the following criteria:

1. EPA's review of the state's program evaluation confirms that the appropriate amount of program credit was claimed by the state and achieved with the interim program,

2. Final program regulations are submitted to EPA, and

3. The state I/M program continues to meet all of the requirements of EPA's I/M Rule.

V. EPA's Evaluation of the Interim Submittal

EPA's review of this material indicates that a credit claim of 85% of test-only credit was prepared in good faith and is based in fact. EPA is therefore proposing an interim approval of the Alaska SIP revision for I/M program credit claims, which was submitted on March 26, 1996. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the ADDRESSES section of this document.

VI. Proposed Action

This action proposes to modify sections III.A, III.B, and III.C of the Alaska SIP, and add an appendix to Section III.B entitled "Estimating the Emission Reductions from the Alaska I/M Programs." The proposal is for interim approval of these modifications and additions. Not all the revisions submitted on March 26 have been acted upon and proposed for interim approval, however. Pages proposed for interim approval by this action include:

- (1) Page III.A.2-5.
- (2) Page III.A.2-6, Table A.2-1.
- (3) Page III.A.2-30, Milestone Table, with the exception of revisions calling for biennial testing.
- (4) Page III.B.3-1, second paragraph.
- (5) Page III.B.5-13, fourth paragraph revisions prior to the new section entitled "Level of Proposed Credit," except for sentence related to biennial testing.
- (6) Page III.B.5-13, section entitled "Level of Proposed Credit."
- (7) Page III.B.5-14, Table B.5-1.
- (8) Page III.C.3-1, second paragraph.
- (9) Page III.C.5-6, first paragraph revisions prior to the new section

entitled "Level of Proposed Credit," except for sentence related to biennial testing.

(10) Page III.C.5-6, section entitled "Level of Proposed Credit."

(11) Page III.C.5-7, Table C.5-1.

(12) Appendix to Section III.B entitled "Estimating the Emission Reductions from the Alaska I/M Programs."

Pages submitted by the state as revisions, but not acted upon, and therefore not proposed for interim approval include:

- (1) Page III.B.3-1, last partial paragraph.
- (2) Page III.B.3-3, Table B.3-2.
- (3) Page III.B.6-5.
- (4) Page III.B.6-6, Figure B.6-1.
- (5) Page III.B.8-6.
- (6) Page III.B.8-7, Figure B.8-1 and the section entitled "State Oxygenated Fuels Program."
- (7) Page III.B.8-8, Figure 8-2.
- (8) Page III.B.8-9.
- (9) Page III.B.8-10.
- (10) Page III.C.3-1, after the second paragraph (reference to Table III.C.3-2).
- (11) Page III.C.3-3, Table C.3-2.
- (12) Page III.C.3-7, Table C.3-3.
- (13) Page III.C.3-7 and 3-8.
- (14) Page III.C.5-4.
- (15) Page III.C.5-5, Figure C.5-1.
- (16) Page III.C.8-2.
- (17) Page III.C.8-3 and 8-4.
- (18) Page III.C.8-3, Figure III.C.8-1.
- (19) appendix to Section III.A entitled "Mobile Source CO Emissions Inventory Update #3."

This latter group of revisions relates to: the effectiveness of the I/M program in the context of total carbon monoxide emission reductions in Anchorage and Fairbanks; state oxyfuel programs; and/or, future biennial I/M testing. Since these topics have not been considered appropriate for inclusion within an action leading to interim approval, the respective revisions will be reviewed, together with other separate state submittals, in a future SIP action by EPA.

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

VII. Administrative Requirements

Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the

procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Regulatory Flexibility Act

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

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2). The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of section 110(a)(2)(A)-(K) and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any

small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Reporting and recordkeeping requirements.

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

Dated: September 13, 1996.

Chuck Clarke,

Regional Administrator.

[FR Doc. 96-25981 Filed 10-9-96; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

[DC031-2004; DC032-2005; FRL-5617-1]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed disapproval.

SUMMARY: EPA is proposing disapproval of a State Implementation Plan (SIP) revision submitted by the District of Columbia on July 13, 1995 and supplemented on March 27, 1996. This revision amends the District's motor vehicle inspection and maintenance (I/M) program required to be enhanced under the Clean Air Act. The intended effect of this action is to propose disapproval of the enhanced I/M program proposed by the District. This action is being taken under section 348 of the National Highway System Designation Act of 1995 (NHSDA) and section 110 of the Clean Air Act (CAA). EPA is proposing disapproval of the District's enhanced I/M SIP revision because it is deficient with respect to the requirements of the CAA and EPA's enhanced I/M program regulatory requirements.

In taking action under section 110 of the CAA it is appropriate to propose disapproval of the District's enhanced I/M

submittal because there are so many deficiencies with respect to CAA statutory and regulatory requirements described in more detail below.

DATES: Comments must be submitted by November 12, 1996.

ADDRESSES: Comments may be mailed to David L. Arnold (mailcode 3AT21), Chief, Ozone and Mobile Sources Section, United States Environmental Protection Agency—Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection by appointment during normal business hours at the U.S. EPA, 841 Chestnut Building, Philadelphia, Pennsylvania 19107.

FOR FURTHER INFORMATION CONTACT: Kelly A. Sheckler (215) 566-2178.

SUPPLEMENTARY INFORMATION:

I. Background

A. Impact of the National Highway System Designation Act on the Design and Implementation of Enhanced Inspection and Maintenance Programs Under the Clean Air Act

The National Highway System Designation Act of 1995 (NHSDA) establishes two key changes to the enhanced I/M rule requirements previously developed by EPA. First, under the NHSDA, EPA cannot require States to adopt or implement centralized, test-only IM240 enhanced vehicle inspection and maintenance programs as a means of compliance with section 182, 184 or 187 of the CAA. Second, under the NHSDA, EPA cannot disapprove a State's SIP revision, nor apply an automatic discount to a State's SIP revision under section 182, 184 or 187 of the CAA, because the I/M program in such plan revision is decentralized, or a test-and-repair program. Accordingly, the so-called "50% credit discount" that was established by the EPA's I/M Program Requirements Final Rule, (published November 5, 1992, and herein referred to as the I/M Rule) has been effectively replaced with a presumptive equivalency criteria, which places the emission reductions credits for decentralized networks on par with credit assumptions for centralized networks, based upon a State's good faith estimate of reductions as provided by the NHSDA and explained below in this section.

EPA's I/M Rule established many other criteria unrelated to network design or test types for states to satisfy in designing enhanced I/M programs. All other elements of the I/M Rule, and

the statutory requirements established in the CAA, continue to be required of those States submitting I/M SIP revisions under the NHSDA. The NHSDA specifically requires that I/M program submittals must otherwise comply in all respects with the I/M Rule and the CAA.

The NHSDA also requires states to swiftly develop, submit, and begin implementation of these enhanced I/M programs, since the anticipated start-up dates developed under the CAA and EPA's rules have already been delayed. In requiring states to submit these plans within 120 days of the NHSDA passage, allowing these states to submit proposed regulations for this plan (which can be finalized and submitted to EPA during the interim period) and by providing expiration of interim approval after 18 months of data collected during operation of program, it is clear that Congress intended for states to begin testing vehicles as soon as practicable.

Submission criteria described under the NHSDA allow for a state to submit proposed regulations for this interim program, provided that the state has all of the statutory authority necessary to carry out the program. Also, in proposing the interim credits for this program, states are required to make good faith estimates regarding the performance of their enhanced I/M program. Since these estimates are expected to be difficult to quantify, the state need only provide that the proposed credits claimed for the submission have a basis in fact. A good faith estimate of a state's program may be an estimate that is based on any of the following: the performance of any previous I/M program; the results of remote sensing or other roadside testing techniques; fleet and vehicle miles traveled (VMT) profiles; demographic studies; or other evidence which has relevance to the effectiveness or emissions reducing capabilities of an I/M program.

This action is being taken under the authority of both the NHSDA and section 110 of the CAA. Section 348 of the NHSDA expressly directs EPA to interim rulemaking for a period of 18 months. The Conference Report for section 348 of the NHSDA states that it is expected that the proposed credits claimed by the State in its submittal, and the emissions reductions demonstrated through the program data, may not match exactly. Therefore, the Conference Report suggests that EPA use the program data to appropriately adjust these credits on a program basis as demonstrated by the program data.