

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.

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 the NHSDA. The NHSDA also directs EPA and the states to review the program results at the end of 18 months, and to make a determination as to the effectiveness of the 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 by the end of that period. Therefore, EPA believes Congress intended for these programs to start-up as soon as possible, which EPA believes should be at the latest, 12 months after the effective date of this interim rule, November 15, 1997 so that approximately 6 months of operational program data can be collected to evaluate the interim program. EPA believes that in setting such a strict timetable for program evaluations under the NHSDA, Congress recognized and attempted to mitigate any further delay with the start-up of this program. For the purposes of this program, "start-up" is defined as a fully operational program which has begun regular, mandatory inspections and repairs, using the final test strategy and covering each of a state's required areas. If a state fails to start its program on this schedule, an interim approval granted under the provisions of the NHSDA will convert to a disapproval after a finding letter is sent to the state.

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 States (ECOS) group that is convening now and that was organized for this purpose. EPA further anticipates that in addition to the interim, short term evaluation, the state will conduct a long term, ongoing evaluation of the I/M program as required in 40 CFR 51.353 and 51.366.

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

The District must submit a SIP revision correcting the deficiencies identified herein as described below in order for EPA to withdraw this proposed disapproval action, and to move forward to propose and finalize approval of the District's enhanced I/M SIP revision under sections 110, 182, 184 or 187 of the CAA.

II. EPA'S Analysis of The District of Columbia's Submittal

On July 13, 1995, the District of Columbia Department of Consumer and Regulatory Affairs (DCRA) submitted revisions to its State Implementation Plan (SIP) for an enhanced I/M program. On March 27, 1996, the District submitted, as a supplement to the July 13, 1995 submittal, a SIP revision requesting consideration under the NHSDA. The revision consists of: enabling legislation that will allow the District to implement a biennial I/M program (legal authorities to require the operation of the program through to the attainment year and beyond as necessary for maintenance of the standard and to dedicate funding to develop and implement the program were not provided); final regulations for portions of the program, and a brief description of the I/M program. The District's SIP narrative stated that credit assumptions were based upon a pilot demonstration conducted in the State of California and data from a remote sensing prescreen demonstration in Canada, credit for a technician training program as provided by EPA and the application of the District's own estimate of the effectiveness of its overall test only program.

*A. Analysis of the NHSDA Submittal Criteria**Transmittal Letter*

On March 27, 1996, the District of Columbia submittal an enhanced I/M SIP revision to EPA, requesting action under the NHSDA and the CAA. The official submittal was made by the appropriate District official, Hampton Cross, Director of the Department of Consumer and Regulatory Affairs, and was addressed to the appropriate official in the EPA Region III Office.

Enabling Legislation

The District of Columbia has legislation at "Motor Vehicle Biennial Inspection Amendment Act of 1993", D.C. Law 10-106, D.C. Code section 40.201 et seq., effective April 26, 1994. The SIP narrative provides a statement that Title 18 DCMR has no expiration date. Enabling legal authority for a registration denial enforcement system is not clearly provided in the SIP submittal although the SIP submittal cites such an enforcement mechanism. The SIP submittal is also deficient in that it lacks enabling authority to implement other requirements of the I/M program in accordance with the CAA. A detailed description of these deficiencies is provided below in the

section by section analysis of the District's submittal.

Proposed Regulations

Copies of the District of Columbia Register were provided which indicated some of the submitted regulations had gone to public notice and hearing. Public notices for amendments to Title 18 DCMR were published on April 15, 1994 and July 1, 1994. There is no evidence that the July 13, 1995 and March 27, 1996 SIP submittals were subject to public notice and hearing.

Program Description

The District program is a centralized test only network. According to the submittal's program description, light duty vehicles and trucks and heavy duty vehicles model years 1968 and newer are covered by the program. Vehicle model year 1979 and older will be subject to an idle test. Vehicles model year 1980 and newer will be subject to a short transient test (BAR31). Vehicles will be prescreened using a remote sensing device. Vehicles failing the prescreen test will undergo the appropriate test based upon model year. Passing vehicles will be waived from the emission test. All vehicles are to be tested for gas cap integrity and a randomly selected group of vehicles will be inspected with a non-intrusive evaporative test system. A state-of-the-art technician training program will be added to the District program.

Emission Reduction Claim and Basis for the Claim

The District's SIP revision assumes that BAR31 test is equivalent to IM240. No data or any basis in fact is provided in the District's submittal to support this claim. The District's proposed program provides for a prescreen using remote sensing. A reduction in emission credit for the prescreen is provided, however, the basis for the credit claim is not provided. The District's SIP submittal does not provide good faith estimates that the program meets the performance standard. Without a basis in fact, the proposed program does not provide any assurance that the necessary emission reductions will be achieved.

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

EPA summarizes the requirements of the I/M Rule as found in 40 CFR 51.350-51.372 and its analysis to the District's submittal below. A more detailed analysis of the District's submittal is contained in a Technical Support Document (TSD) available from the Region III office, listed in the ADDRESSES section of this notice. Parties

desiring additional details on the I/M rule are referred to 40 CFR 51.350–51.372.

As previously stated, the NHSDA left those elements of the I/M Rule that do not pertain to network design or test type intact. Based upon EPA's review of the District's submittal, EPA believes the District has not complied with all aspects of the NHSDA, CAA and the I/M Rule. For those sections of the I/M Rule, or of the CAA identified below, with which the District has not fully complied, the District must submit a revision to correct said deficiency.

The District must correct these major deficiencies in order for EPA to provide approval under CAA section 110(k)(4). EPA has also identified certain minor deficiencies in the SIP, which are itemized below. EPA has determined that delayed correction of these minor deficiencies will have a de minimis impact on the District's ability to meet clean air goals. Therefore, the District need not correct these deficiencies in the short term, and EPA will not disapprove the re-submittal with respect to these deficiencies for purposes of interim approval under the NHSDA, if these are the only outstanding deficiencies. The District must correct the major deficiencies noted herein and submit a revised SIP revision for interim approval. However, even the minor deficiencies must be corrected prior to final full approval by EPA of the District's enhanced I/M SIP after the 18 month evaluation period.

Applicability—40 CFR 51.350

Sections 182(c)(3) and 184(b)(1)(A) of the CAA and 40 CFR 51.350(a) require all states in the Ozone Transport Region (OTR) which contain Metropolitan Statistical Areas (MSAs) or parts thereof with a population of 100,000 or more to implement an enhanced I/M program. The District is part of the OTR and is part of a MSA with a population of 100,000 or more. The entire District is classified as a serious ozone nonattainment area and also is required to implement an enhanced I/M program as per section 182(c)(3) of the CAA and 40 CFR 51.350(2). The District I/M regulation requires that the enhanced I/M program be implemented District wide. The District I/M legislative authority (referred to as DC Law 10–106, DC Code 40, Title 18 DCMR throughout the remainder of this notice) provides the legal authority to establish a statewide biennial vehicle emission testing program. The federal I/M regulation requires that the District's program not terminate until it is no longer necessary. A SIP revision which does not allow termination of the

program prior to the attainment deadline for each applicable area satisfies this requirement. The District's I/M enabling authority itself does not address the length of time the program will be in effect. The program must continue until the attainment dates for all applicable nonattainment areas in the District. A statement in the SIP narrative indicates that the enabling legislation has no expiration date. The SIP submittal does not provide a list of ZIP codes of all areas covered by the I/M program. Therefore, the District's SIP does not meet the applicability requirements for geographical coverage. These are minor deficiencies and must be ultimately corrected for EPA to give final full approval.

Enhanced I/M Performance Standard—40 CFR 51.351

The enhanced I/M program must be designed and implemented to meet or exceed a minimum performance standard, which is expressed as emission levels in area-wide average grams per mile (gpm) for certain pollutants. The performance standard shall be established using local characteristics, such as vehicle mix and local fuel controls, and the following model I/M program parameters: network type, start date, test frequency, model year coverage, vehicle type coverage, exhaust emission test type, emission standards, emission control device, evaporative system function checks, stringency, waiver rate, compliance rate and evaluation date. The emission levels achieved by the state's program design shall be calculated using the most current version, at the time of submittal, of the EPA mobile source emission factor model. At the time of the District's submittal, the most current version was MOBILE 5a. 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, the performance standard must be met for both nitrogen oxide (NO_x) and hydrocarbons (HC). In the case of carbon monoxide areas, the performance standard must be met for carbon monoxide (CO). The District's submittal must meet the enhanced I/M performance standard for HC, and NO_x statewide.

EPA established an alternative, low enhanced I/M performance standard to provide flexibility for nonattainment areas that are required to implement enhanced I/M but which can meet the 1990 Clean Air Act emission reduction requirements for Reasonable Further Progress and attainment from other sources without the stringency of the

high enhanced I/M performance standard (60 FR 48029). 40 CFR 51.351(g) provides that states may select the low enhanced performance standard if they have an approved SIP for reasonable further progress in 1996, commonly known as 15% plans. The District's 15% plan relies on credit from a high enhanced I/M program for 48% of the 15% reduction required. For this reason the District does not qualify for the low enhanced performance standard.

EPA also established an alternate, Ozone Transport Region (OTR) low enhanced I/M performance standard in order to provide OTR qualifying areas the flexibility to implement a broader range of I/M programs (61 FR 39039). This standard is designed for states in the OTR which are required to implement enhanced I/M in areas that are designated and classified as attainment, marginal ozone nonattainment or moderate ozone nonattainment with a population of under 200,000. The District is classified as a serious ozone nonattainment area and therefore does not qualify for the OTR low enhanced I/M performance standard.

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

Network type—Centralized

Start date—1997

Test frequency—biennial

Model year/ vehicle type coverage—1968+ LDV, LDT, HDT

Exhaust emission test type—idle on pre-1980 vehicles; transient BAR31 on 1980 and newer vehicles; all vehicles will be prescreened with remote sensing device to determine if subject to an emission test

Emission standards—8 HC, 20 CO, 2 NO_x

Emission control device—yes

Evaporative system function checks—pressure 1983 +, purge 1977 +

Stringency (pre-1981 failure rate)—20% Waiver rate—3%

Compliance rate—96%

Evaluation dates—2000, 2005, 2010

The emission levels achieved according to the District's submittal were modeled using MOBILE5a. The modeling demonstration is insufficient to make a determination that it reflects the proposed program. Numerous errors on the start date of various program elements were modeled. The District's program assumes the BAR31 test as equivalent to IM240. No test specification and procedures are provided for the BAR31 test. No data to support the credit claim of equivalency for BAR31 is provided. The District's

submittal claims it uses data provided from a California pilot study. This data is not provided in the submittal. The remote sensing device (RSD) prescreen feature of the District's program is not accounted for by the current MOBILE model. Hand calculations are provided by the District for the RSD portion of the program. However, the reductions from using RSD and the credit claims are not supported by any data. The District's submittal's demonstration uses credit from a mechanics training program to make up the reduction loss from the use of RSD as a prescreen. The credit assumed for mechanics training is inconsistent with EPA policy. Furthermore, the modeling demonstration does not provide headings or labels identifying the MOBILE5a runs making it extremely difficult to perform a definitive review of the demonstration. The summary sheets in the District's submittal are inconsistent with the MOBILE5a runs. Another summary sheet lists all the evaluated cutpoints but does not indicate which cutpoints the District plans to use. The discrepancies with the program description and regulations render the modeling insufficient to make a demonstration that the District's proposed program meets the high enhanced performance standard. The District's submittal does not meet the enhanced I/M performance standards requirements of the federal I/M rule. This major deficiency is in part the basis for EPA's proposed disapproval of the District's I/M SIP.

Network Type and Program Evaluation—40 CFR 51.353

The enhanced program must include an ongoing evaluation to quantify the emission reduction benefits of the program, and to determine if the program is meeting the requirements of the CAA and the federal I/M regulation. The SIP must include details on the program evaluation and must include a schedule for submittal of biennial evaluation reports, data from a state monitored or administered mass emission test of at least 0.1% of the vehicles subject to inspection each year, a description of the sampling methodology, the data collection and analysis system and the legal authority enabling the evaluation program.

The District has not committed to meet the program evaluation requirements of 40 CFR 51.353 and no detailed description of the biennial program evaluation, including the schedule and methodology is provided in the submittal. The Environmental Council of States (ECOS) has formed a committee to develop an evaluation

protocol to be used by states in order to evaluate program effectiveness. ECOS has recommended that the states follow the long term program evaluation found in 40 CFR 51.353. 40 CFR 51.353 requires that a mass emission transient testing (METT) be performed on 0.1% of the subject fleet each year. The District's submittal includes a commitment to provide EPA with a report two years after the program begins. However, in addition to the requirements of program evaluation under 40 CFR 51.353, the NHTSA provides that a state must submit a data analysis and revised SIP by the end of the 18 month period. The District does not commit to or provide any reference to this submittal. The District claims that data will be collected by conducting random procurement of subject vehicles and remote sensing for in-use vehicles, 2% random effectiveness of repairs on failing vehicles, RSD on minimum 10,000 vehicles per year, and covert inspections to evaluate inspectors. These methods are not consistent with the federal enhanced I/M rule and the ECOS agreement for the long term evaluation.

Although the submittal describes a test-only network type, there is no regulation in the District that specifies that the program be operated in a centralized, test-only format. Furthermore, the District's SIP submittal includes regulations at section 605 of 18 DCMR that allow for re-inspection at repair stations. It is EPA's understanding that more recent regulations have been adopted for a full test-only network (initial test and re-test). The narrative of the District's submittal describes a test-only network with no mention of re-tests at repair stations. The District must address this discrepancy by submitting the revised versions of the regulations or providing a basis in fact and effectiveness analysis for the test and repair portion of the program. No regulations have been provided in the District's submittal which prohibit owners and/or employees of official I/M stations from referring vehicle owners to particular repair service providers. A regulation must be adopted that provides for this. This is a major deficiency and in part, is the basis for proposed disapproval of the District's I/M program.

Adequate Tools and Resources—40 CFR 51.354

The federal regulation requires the District to demonstrate that adequate funding of the program is available. A portion of the test fee or separately assessed per vehicle fee shall be collected, placed in a dedicated fund

and used to finance the program. Alternative funding approaches are acceptable if it is demonstrated that the funding can be maintained. Reliance on funding from the District's general fund is not acceptable unless doing otherwise would be a violation of its constitution. The SIP submittal must include a detailed budget plan which describes the source of funds for personnel, program administration, program enforcement, and purchase of equipment. The SIP must also detail the number of personnel dedicated to the quality assurance program, data analysis, program administration, enforcement, public education and assistance and other necessary functions.

The District's submittal pending before EPA does not provide for enabling legal authority establishing a dedicated fund. No demonstration has been made that this would violate the District's authorities. Currently, the District government is undergoing a financial and administrative reorganization and many uncertainties exist. In relation to consumer protection, the SIP must provide assurance that adequate funding is available to develop and implement the program as proposed. Furthermore, funds need to be secured to implement and maintain the program through attainment. Lack of secured funding dedicated to the I/M program jeopardizes the ability of the program to meet the necessary emission reduction goals. The SIP needs to describe how the emission targets will be met, describe the resources to be used for all program operations (e.g. RSD prescreen, quality assurance checks, etc.), and include a final budget plan including description of equipment resources. The budget plan needs to provide a demonstration that the District has adequate resources to perform all program functions and insure future funding through operation of program until attainment is achieved. Therefore, the District submittal does not meet the adequate tools and resources requirements set forth in the federal I/M rule. This major deficiency in part is the basis for EPA's proposed disapproval of the District's I/M SIP.

Test Frequency and Convenience—40 CFR 51.355

The enhanced I/M performance standard assumes an annual test frequency; however, other schedules may be approved if the performance standard is achieved. The SIP shall describe the test year selection scheme, how the test frequency is integrated into the enforcement process and shall

include the legal authority, regulations or contract provisions to implement and enforce the test frequency. The program shall be designed to provide convenient service to the motorist by ensuring short wait times, short driving distances and regular testing hours.

The District's submittal provides for a program of biennial testing in a centralized network. Many of the details related to this section must still be developed by the District before EPA can determine if the requirements are satisfied. Although the District expects sufficient testing facilities using RSD as a prescreen, to provide adequate convenience, there are no provisions for additional testing if participation is lower than expected. The SIP fails to provide an evaluation of how the RSD prescreen will ensure short wait times. Furthermore, the SIP does not provide a description of the test frequency, or regulations that ensure vehicles are tested at an assumed frequency, including sufficient safeguards in the enforcement system to ensure that vehicles are tested according to schedule. These are minor deficiencies which the District must ultimately correct for EPA to give final full approval.

Vehicle Coverage—40 CFR 51.356

The performance standard for enhanced I/M programs assumes coverage of all 1968 and later model year light duty vehicles and light duty trucks and heavy duty trucks up to 26,000 pounds GVWR, and includes vehicles operating on all fuel types. Other levels of coverage may be approved if the necessary emission reductions are achieved. Vehicles registered or required to be registered within the I/M program area boundaries and fleets primarily operated within the I/M program area boundaries and belonging to the covered model years and vehicle classes comprise the subject vehicles. Fleets may be officially inspected outside of the normal I/M program test facilities, if such alternatives are approved by the program administration, but shall be subject to the same test requirements using the same quality control standards as non-fleet vehicles and shall be inspected in the same type of test network as other vehicles in the state, according to the requirements of 40 CFR 51.353(a). Vehicles which are operated on Federal installations located within an I/M program area shall be tested, regardless of whether the vehicles are registered in the state or local I/M area.

The federal I/M regulation requires that the SIP must include the legal authority or rule necessary to

implement and enforce the vehicle coverage requirement, a detailed description of the number and types of vehicles to be covered by the program and a plan for how those vehicles are to be identified including vehicles that are routinely operated in the area but may not be registered in the area, and a description of any special exemptions including the percentage and number of vehicles to be impacted by the exemption. Such exemptions shall be accounted for in the emissions reduction analysis.

The District's SIP submittal does not provide a description of the number and types (broken down by model year, fuel type, vehicle class, a weight class) of vehicles the program will cover. The regulations provide that vehicles model year 1968 and newer, up to a weight of 26,000 gross vehicle weight, must undergo an emissions test. The District states in the SIP narrative text that it will provide self testing for fleets, (testing at the fleets facilities, or during special hours at the District stations), but no regulatory or legally enforceable provisions are established to provide for this testing. Although Federal fleets are subject to meet the same requirements as all District registered vehicles, the District plan does not provide a plan for testing of Federal vehicles. The SIP needs to provide a description of the Federal fleet inspection program area. The District's SIP submittal does not account for vehicles registered or required to be registered in the programs. The SIP needs to provide an estimate of unregistered vehicles. The District's SIP submittal claims that number of vehicles that operate in the District but are not registered in the District is insignificant. The District offers no plan to inspect and certify these vehicles. Data to support the District's claim of insignificance needs to be provided. In light of the fact that the District of Columbia is a major commuting community center for vehicles from suburban Maryland and Virginia, EPA questions whether such vehicles are truly insignificant. Furthermore, the program needs to provide provisions to account for these vehicles, whether or not they are insignificant. The SIP submittal and modeling do not provide a description and accounting of vehicles registered in the District but operating primarily outside the District. These are minor deficiencies that must ultimately be corrected for EPA final full approval.

Test Procedures and Standards—40 CFR 51.357

Written test procedures and pass/fail standards shall be established and

followed for each model year and vehicle type included in the program. Test procedures and standards are detailed in 40 CFR 51.357 and in the EPA document entitled "High-Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications", EPA-AA-EPSP-IM-93-1, dated April 1994. The federal I/M rule also requires vehicles that have been altered from their original certified configuration (i.e. engine or fuel switching) to be subject to the requirements of § 51.357(d).

The District regulation Title 18 DCMR provides one set of standards for all subject vehicles model years. The standards are in a grams per mile (gpm) format, achieved with a transient test. The District proposes to use an idle test on a certain percentage of the vehicle fleet. Standards will need to be adopted in a parts per million (ppm) format to accommodate the idle test. The District's program proposes to utilize a BAR31 test, remote sensing prescreen and evaporative test. No standards exist for remote sensing or the evaporative tests. Nor does the District provide standards for switched engines. Furthermore, full test procedures for all tests need to be provided.

The District's SIP states that tests are not to be performed without prior repair, however, no regulations providing for such a requirement are provided. No provisions are provided to ensure that the vehicle owner has access to the test area to observe the entire inspection. No provision ensures that when a failure on one part of a test leads to failure on another part, the test procedure for a retest is done on the originally failed component and the second component as well. No provision is included which requires that an exhaust emission retest be required along with a retest of the evaporative system following an evaporative system failure and repair. No provisions are provided that require all criteria pollutants be measured on a retest after failure of a given pollutant. The District's submittal does not meet the Test Procedures and Standards requirements of the federal I/M rule. This major deficiency in part is the basis for EPA proposed disapproval of the District's I/M SIP.

Test Equipment—40 CFR 51.358

Computerized test systems are required for performing any measurement on subject vehicles. The federal I/M regulation requires that the state SIP submittal include written technical specifications for all test equipment used in the program. The specifications shall describe the

emission analysis process, the necessary test equipment, the required features, and written acceptance testing criteria and procedures. The District provides a draft Request for Bid (RFB) that details the test equipment specifications. Appendix 8 of the District's submittal, the draft RFB, provides for IM240 test equipment which the District proposes to use with a BAR31 test. The evaporative purge system specifications are not consistent with the requirements of EPA approved specifications for a purge system. Furthermore, no specifications exist for equipment used for the remote sensing prescreen. The District's submittal does not contain the written technical specifications for test equipment to be used in the program. These are minor deficiencies and must ultimately be corrected for EPA to give final full approval.

Quality Control—40 CFR 51.359

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

The District's submittal includes provisions which describe and establish quality control measures for the emission measurement equipment. However, the quality control procedures in Appendix 10 of the District's SIP submittal are incomplete. Specifically in section 5.1.1 several blanks need to be filled in, figure 5-1 is missing, no RSD specifications are provided. For the idle test being conducted on pre-1980 vehicles no equipment specifications are provided (e.g. housing construction requirements to protect analyzer bench and electrical components from ambient temperature and humidity fluctuations, automatic purge of system after each test). These are minor deficiencies and must be ultimately corrected for EPA final full approval.

Waivers and Compliance Via Diagnostic Inspection—40 CFR 51.360

The federal I/M regulation allows for the issuance of a waiver, which is a form of compliance with the program requirements that allows a motorist to comply without meeting the applicable test standards. For enhanced I/M programs, an expenditure of at least \$450 in repairs, adjusted annually to reflect the change in the Consumer Price Index (CPI) as compared to the CPI for 1989, is required in order to qualify for a waiver. Waivers can only be issued after a vehicle has failed a retest performed after all qualifying repairs have been made. Any available warranty coverage must be used to obtain repairs

before expenditures can be counted toward the cost limit. Tampering related repairs shall not be applied toward the cost limit. Repairs must be appropriate to the cause of the test failure. Repairs for 1980 and newer model year vehicles must be performed by a recognized repair technician. The federal regulation allows for compliance via a diagnostic inspection after failing a retest on emissions and requires quality control of waiver issuance. The SIP must set a maximum waiver rate and must describe corrective action that would be taken if the waiver rate exceeds that committed to in the SIP.

Although the District provides for the CAA waiver rate of \$450.00 plus CPI adjustment, the regulations as adopted by the District do not preclude the Mayor from changing the minimum waiver amount. At no time, can the minimum waiver amount be lowered. The District will need to amend its regulations to correct this deficiency. Time extensions are provided for in the District program; however, no criteria or procedures for issuance of these hardship waivers is provided. The District needs to provide provisions to address hardship waiver issuance criteria to support these waivers. These are minor deficiencies that ultimately must be corrected for EPA to give final full approval.

Motorist Compliance Enforcement—40 CFR 51.361

The federal rule requires that compliance shall be ensured through the denial of motor vehicle registration in enhanced I/M programs unless an exception for use of an existing alternative is approved. An enhanced I/M area may use either sticker-based enforcement programs or computer-matching programs if either of these programs were used in the existing program, which was operating prior to passage of the 1990 Clean Air Act Amendments, and it can be demonstrated that the alternative has been more effective than registration denial. The SIP must provide information concerning the enforcement process, legal authority to implement and enforce the program, and a commitment to a compliance rate to be used for modeling purposes and to be maintained in practice.

Although the District makes a statement in its SIP submittal that a registration denial system will be used, the full text of its legislative authority is not provided. No enforcement regulations or procedures are provided in the SIP submittal. The District needs to identify all agencies responsible for implementing the motorist compliance

program. A description of and accounting for all classes of exempt vehicles needs to be provided. The SIP needs to include a description of the plan for testing vehicles, rental car fleets, leased vehicles, federal fleet vehicles, state and local government vehicles, and other subject vehicles. Section 3.5 of the District's SIP claims the current compliance rate and the effect of noncompliance due to loopholes, counterfeiting, and unregistered vehicles is insignificant. The District needs to explain why this is insignificant and the rationale for such statement. The District claims a 96% compliance rate, however, no commitment is provided that the District will maintain this enforcement level, at a minimum, in practice. No penalty schedule for noncompliance is provided. There is no requirement that noncompliance cases are not to be closed until compliance is demonstrated. No procedures are provided that prevent owners or lessors of vehicles from avoiding the testing program through the manipulation of the registration or titling requirements. No mechanism is provided for certifying vehicles that have met the testing requirements and have been passed or waived. Although the District requires that license tags and window stickers be used, linkage of sticker issuance and registration denial is not provided. Procedures must be established that clearly determine when a vehicle is tested under the biennial testing schedule. These are major deficiencies. The District's submittal does not meet the Motorist Compliance Enforcement requirements of the federal I/M rules. This in part the basis for EPA's proposed disapproval of the District's I/M SIP.

Motorist Compliance Enforcement Program Oversight—40 CFR 51.362

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

Quality Assurance—40 CFR 51.363

An ongoing quality assurance program must be implemented to discover, correct and prevent fraud, waste, and abuse in the program. The program must include covert and overt performance audits of the inspectors, audits of station and inspector records, equipment audits, and formal training of all state I/M enforcement officials and auditors. A description of the quality assurance program which includes written procedure manuals on the above discussed items must be submitted as part of the SIP. The District provides some quality assurance procedures. However, the procedures on covert audits are not provided. In addition, the quality assurance procedures for equipment audits do not include the remote sensing equipment. Equipment audits on the RSD equipment need to be performed. This is a minor deficiency. In addition, the procedures manual states the District will establish a training program for auditors and a program to audit, independently, the auditors performance. The federal I/M rule requires that auditors to be audited at least once a year. Appendix 10.7.3 of the District SIP submittal provides that auditors will be audited periodically, as needed. These are minor deficiencies and must be ultimately corrected for final full EPA approval.

Enforcement Against Contractors, Stations and Inspectors—40 CFR 51.364

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

resources and sources of those resources which will support this function.

The District provides a citation of its legislative authority to enforce against contractors, inspectors and stations. However, a copy of such legal authority is not provided. The District SIP does not contain a penalty schedule for noncompliance and list the offenses. The first offense must be no less than \$100 or 5 times the inspection fee. The judicial procedures and the responsibilities of each person in the judicial process are not provided. No description of resources allocated to the judicial and enforcement process are provided. No legal authority and/or regulation exists that provides for the immediate suspension of station/inspector for a violation. The District needs regulations that (1) require inspectors to receive training or retraining where a violation or discovery of incompetence has occurred; (2) bar certified inspectors from any involvement in inspection while on penalty suspension; and, (3) provide auditors the authority to temporarily suspend station and inspectors licenses or certificates immediately upon finding a violation or equipment failure. The District SIP provides a commitment to report to EPA statistics on enforcement activities. The reports must at a minimum include all warnings, civil fines, suspensions, revocations, and violations. These are minor deficiencies and must be ultimately corrected before final full approval.

Data Collection—40 CFR 51.365

Accurate data collection is essential to the management, evaluation and enforcement of an I/M program. The federal I/M regulation requires data to be gathered on each individual test conducted and on the results of the quality control checks of test equipment required under 40 CFR 51.359.

The District provides a commitment to meet all of the data collection requirements of the federal I/M regulations. The District will need to provide these procedures upon completion to EPA as an official SIP revision. The District's SIP meets the requirements of the federal I/M rule for Data Collection.

Data Analysis and Reporting—40 CFR 51.366

Data analysis and reporting are required to allow for monitoring and evaluation of the program by the state and EPA. The federal I/M regulation requires annual reports to be submitted which provide information and statistics and summarize activities

performed for each of the following programs: testing, quality assurance, quality control and enforcement. These reports are to be submitted by July of each year and shall provide statistics for the period of January to December of the previous year. A biennial report shall be submitted to EPA which addresses changes in program design, regulations, legal authority, program procedures and any weaknesses in the program found during the two year period and how these problems will be or were corrected.

The District's SIP commits to conform to the federal I/M regulations for data analysis and reporting procedures. The District's SIP meets the requirements of the federal I/M rule for data analysis and reporting.

Inspector Training and Licensing or Certification—40 CFR 51.367

The federal I/M regulation requires all inspectors to be formally trained and licensed or certified to perform inspections. The District's narrative indicates that the requirements for inspector training and licensing or certification meet the federal I/M regulations. The District commits to maintain an inspector training program and to ensure it meets or exceeds the standards of 40 CFR 51.367 (a). The training program will cover the materials specified in the federal I/M rule and are located in the District's regulation at 18 DCMR 617.6. An adequate description of the program must be included. This is a minor deficiency and must be ultimately corrected for final full approval.

Public Information and Consumer Protection—40 CFR 51.368

The federal I/M regulation requires the SIP to include public information and consumer protection programs. The District's SIP submittal contains a public awareness plan to meet the requirements of this section.

Improving Repair Effectiveness—40 CFR 51.369

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

training center will be administered to meet the requirements of diagnostic and repair technician assistance. However, the lack of funding to support the development of the District's proposed enhanced state-of-the-art training center, remains a concern to EPA. The District's SIP submittal does not identify when the facility will be established and fully operational. The SIP submittal does not address the requirement for a technician hotline service. These are minor deficiencies and must be ultimately corrected for final full approval.

Compliance With Recall Notices—40 CFR 51.370

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

The District's submittal does not provide any recall provisions, including authority to require owners to show proof of compliance with recalls in order to complete inspections and receive registration. No commitment to submit to EPA annual reports on recall compliance is provided by the District. No quality control procedures are provided to track recall repairs. In light of EPA final regulations for recall notices, the District can commit to adopt the EPA approved recall rules upon promulgation. These are minor deficiencies and must be ultimately addressed for final full approval.

On-road Testing—40 CFR 51.371

On-road testing is required in enhanced I/M areas. The use of either remote sensing devices (RSD) or roadside pullovers including tailpipe emission testing can be used to meet the federal regulations. The program must include on-road testing of 0.5% of the subject fleet or 20,000 vehicles, whichever is less, in the nonattainment area or the I/M program area. Motorists that have passed an emission test but are found to be high emitters as a result of an on-road test shall be required to pass an out-of-cycle test. The District's SIP submittal commits to test 0.5% of fleet, however no regulations/procedures are provided. The District's submittal needs to provide an adequate description of the on-road testing program. This is a minor deficiency and must be ultimately corrected for final full approval.

State Implementation Plan Submissions/Implementation Deadlines—40 CFR 51.372–373

The submittal contains a schedule which is dependent on action by the Financial Control Board to secure funds. The general schedule has 3 Phases: Design/Build/Operate Contract, Construction of SW Inspection Station, and Program Effectiveness Evaluation. In Phase 1 which begins in March 1996 and runs through to February 1997, the District plans to issue a request for proposal (RFP), evaluate the technical content of RFP and award a contract. In Phase 2 which begins in February 1997 and ends January 1998, the District plans to transfer District inspectors from the SE inspection station to the NE inspection station to continue basic I/M and safety inspection, build and renovate a new SW inspection station, train contractor inspectors and implement contractor control/audit mechanisms. In Phase 3 which begins July 1996 and ends January 1998, the District plans to design effectiveness evaluation criteria, test vehicles on IM240 and DC36 test procedures, evaluate test procedure effectiveness and evaluate repair effectiveness. The District needs to provide a schedule of testing of vehicles (phase-in and full), explanation of what vehicles will be tested (model years/number thereof), what test will be used, and when each test and program element goes into effect (e.g. RSD prescreen, evaporative test, technician training, full stringency cutpoints, etc.). The schedule provides that phase-in of new inspection equipment will begin by September 1997. The program must be fully implemented with all enhanced program features by November 15, 1997. The performance standard modeling start years are not consistent with the schedule provided by the District in this section. These are minor deficiencies and must be ultimately corrected for final full approval.

III. Discussion for Rulemaking Action

EPA's review of the District's I/M SIP revision, which was submitted on July 13, 1995 and supplemented on March 27, 1996, finds that it does not meet all of the relevant requirements of the NHSDA or Clean Air Act, and 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 notice.

Proposed Action

EPA is proposing to disapprove this revision to the District SIP for an enhanced I/M program. EPA is proposing to disapprove this action because the District's I/M program does not meet all of the requirements of the NHSDA, the Clean Air Act and the federal I/M rule.

Today's notice proposes to disapprove the District's I/M SIP until such time as the District corrects the major elements of the SIP that EPA considers deficient.

These major elements are:

(1) The proposed I/M program does not provide for a dedicated funding mechanism to develop, implement and maintain the program through attainment of the ozone standard. The Clean Air Act requires that a dedicated fund be established. The District must demonstrate that adequate funding of the program is available. Alternative funding approaches are acceptable if it is demonstrated that the funding can be maintained. The District does not provide for enabling legislation establishing such secured funding.

(2) The District uses unapproved test types and claims credit equivalency without a clear basis for those claims. The deficiencies in the credit claims of the District's I/M program include the following:

(a) Assumes full IM240 emission reduction credit for BAR31 test without data to support this claim.

(b) Uses remote sensing as a testing prescreen without providing data to support emission reductions and credit calculation.

(c) Assumes full credit for a non-intrusive evaporative test with no data to support this assumption.

(3) The submittal contains insufficiently demonstrates that the District's program meets the high enhanced performance standard, which is necessary for the District's air quality attainment plan. The demonstration is insufficient due to the test equivalency stated in (2) above and inaccurate calculation of emission reductions detailed in the section by section analysis.

(4) The District's SIP submittal provides a citation for registration denial but the full text of the legislation is not provided. The District's program lacks regulatory requirements for a registration denial system.

(5) The District's SIP is deficient in meeting the requirements of Network Type and Program Evaluation because it contains no commitment to evaluate the program using mass emission transient

testing on 0.1% of the subject fleet each year.

(6) The SIP submittal is deficient in providing adopted regulations and procedures for each test type.

Major deficiencies must be corrected with regard to sections, 51.351, Enhanced I/M Performance Standard, 51.353, Network Type and Program Evaluation, 51.354, Adequate Tools and Resources, 51.357, Test Procedures and Standards, and 51.360, Motorist Compliance Enforcement.

In addition, the District's submittal does not meet a number of miscellaneous requirements of the I/M rule. Specifically sections: 51.350, Applicability, 51.355, Testing Frequency and Convenience, 51.356, Vehicle Coverage, 51.358, Test Equipment, 51.359, Quality Control, 51.360 Waivers and Compliance via Diagnostic Inspection, 51.362 Motorist Compliance Enforcement Program Oversight, 51.363, Quality Assurance, 51.364 Enforcement against Contractors, Stations and Inspectors, 51.365 Data Collection, 51.366, Data Analysis and Reporting, 51.367 Inspection Training and Licensing or Certification, 51.368, Public Information and Consumer Protection, 51.369, Improving Repair Technician Effectiveness, 51.370, Compliance with Recall Notices, 51.371, On-Road Testing, and 51.372, State Implementation Plan Transmittals. These deficiencies, described in more detail above in the section by section analysis, must be corrected before EPA could provide full approval for the District's I/M SIP revision.

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.

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. Sections 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.

EPA's disapproval of the District's request under Section 110 and subchapter I, part D of the CAA does not affect any existing requirements

applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements and impose any new Federal requirements.

Under Section 202 of the Unfunded Mandate 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 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 disapproval action proposed does not include a Federal mandate that may result in estimated cost of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action maintains pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional cost to State, local, or tribal governments, or to the private sector, result from this action.

Under section 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule [is/ is not] a "major rule" as defined by section 804(2) of the APA as amended.

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

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

Dated: September 19, 1996.

Michael M. McCabe,

Regional Administrator, Region III.

[FR Doc. 96-25983 Filed 10-9-96; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

[PA036-4016, PA036-4017; FRL-5633-6]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation Request, Maintenance Plan, and Emissions Inventory for the Reading Ozone Nonattainment Area; Policy Change for Ozone Redesignations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a redesignation request for the Reading ozone nonattainment area, and State Implementation Plan (SIP) revisions submitted by the Commonwealth of Pennsylvania, contingent upon Pennsylvania's correction of all deficiencies contained in the request and SIP revision. The revisions consist of a maintenance plan and 1990 base year inventories for the Reading ozone nonattainment area. EPA is also proposing to disapprove the redesignation request and SIP revisions for the Reading area, if Pennsylvania does not correct the deficiencies. In addition, for the purposes of redesignation, EPA is proposing to approve Pennsylvania's legislative authority to adopt and implement a vehicle inspection and maintenance program. These actions are being taken under sections 107 and 110 of the Clean Air Act. Furthermore, EPA is proposing a change in its policy on redesignation requirements for ozone nonattainment areas in the Ozone Transport Region (OTR). The proposed policy change makes redesignation requirements for areas in the OTR consistent with