

for the full implementation of the minimum expenditure required to be eligible for a waiver for both basic and enhanced I/M programs until January 1998. This will allow states additional time to phase-in the higher expenditures required by the Act and the I/M rule. In the interim, a state can establish any minimum expenditure it chooses, as long as it accounts for the higher waiver rates that will occur between now and 1998 in its emission inventory forecasts in the Reasonable Further Progress plan.

EPA is proposing to allow states to include qualified repair cost expenditures that occur within 60 days of the initial test toward meeting the minimum waiver expenditure. EPA also proposes to delete language from the November 5, 1992 I/M rule barring motorists from qualifying for more than one hardship exemption during the lifetime of a vehicle.

Pursuant to the opinion of the Court of Appeals for the District of Columbia Circuit, *Natural Resource Defense Council v. EPA*, 22 F.3d 1125 (D.C. Cir. 1994), EPA is proposing today to revise the enhanced I/M performance standard to correct the omission of a visual check on pre-1984 vehicles in the high enhanced performance standard. EPA is proposing to include in the high enhanced performance standard a visual inspection of the positive crankcase ventilation (PCV) valve on all light-duty vehicles and light-duty trucks of model year 1968 through 1971, inclusive, and of the exhaust gas recirculation (EGR) valve on all light-duty vehicles and light-duty trucks of model year 1972 through 1983, inclusive. According to EPA's current guidance for estimating emission reductions from I/M programs, this change should not significantly increase the overall emission reduction requirements that must be met by states as they design programs to meet the enhanced I/M performance standard.

EPA is also requesting comment on whether or not it should change the minimum population cutoff for basic I/M programs. Currently, for areas outside an ozone transport region, basic I/M programs are required in moderate ozone and carbon monoxide nonattainment areas with 1990 Census-defined population of 50,000 or more. EPA is considering the possibility of including revised regulatory language in the final rulemaking that would increase this minimum threshold for basic I/M programs to 200,000 or more. If adopted, this proposed change would mark a return to the policy in effect prior to the 1990 Clean Air Act Amendments on minimum population requirements for basic I/M and would provide states

further flexibility in meeting their Clean Air Act goals.

At the I/M Stakeholders meetings of January 24 and 31, 1995, EPA indicated its intent to establish additional I/M credits for the use of remote sensing. These credits will be published in a guidance document, similar to the one in which credits for retest-based hybrid programs, ASM2 testing, and mechanic training and certification were published. EPA intends to base these credits on data from the California I/M Pilot Program in Sacramento, since this is the most comprehensive study on remote sensing to date. The agency is interested in obtaining all available information on remote sensing. Therefore, EPA is requesting comments from anyone with data on the effectiveness remote sensing and on ways it might be used to supplement I/M programs.

Finally, EPA is proposing to clarify the requirements for basic I/M areas that are eligible for redesignation to attainment. On January 5, 1995, EPA published a final amendment to the I/M rule to address this issue (60 FR 1738). The rule was not completely clear with regard to EPA's intent in the event that an area that has been redesignated to attainment experiences a violation of the standard. EPA does not believe that a violation automatically requires the implementation or upgrade of an I/M program. EPA believes that, in the event of a violation, a state should have the flexibility to select whichever contingency measures are best suited to correcting the problem to bring the area to attainment as quickly as possible. The rule would continue to require, however, that such an upgraded basic I/M program be among the contingency measures from which the state will choose. Changes to remove extraneous language related to the requirements for an implementation schedule are being proposed, as well.

### III. Authority

Authority for the action 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.*).

### IV. Background of the Proposed Amendments

The features of the enhanced I/M performance standard model program are used to generate the minimum performance target that a state must meet. When programmed into the most current version of EPA's mobile source emission factor model (hereafter referred to as the MOBILE model), these features produce a target emission factor

(emissions per mile of vehicle travel) which a state's proposed program must not exceed to be deemed minimally acceptable for purposes of state implementation plan (SIP) approval. This combination of features, however, does not constitute a recommended program design. For example, while the enhanced I/M performance standard, as required by the Act, includes annual vehicle inspections, EPA does not require or even recommend that state programs actually adopt annual testing. In fact, EPA has found biennial testing to be significantly less expensive while only marginally less effective at reducing fleet-wide vehicle emissions. This marginal loss in benefit can be easily accommodated by strengthening some other aspects of the program, for example, by increasing vehicle coverage, or increasing the number or stringency of the tests conducted on selected classes of vehicles. The use of the performance standard approach allows EPA to meet Congress's dual statutory requirements that the EPA develop a performance standard based on certain statutory features and that the standard provide states with maximum flexibility to design I/M programs to meet local needs.

#### A. Visual Inspections

During the Fall of 1992, the National Resources Defense Council (NRDC) filed three separate lawsuits against EPA in the Court of Appeals for the District of Columbia Circuit, challenging various aspects of EPA's policy on committal-based State Implementation Plans (SIP) and the I/M rule. Among other things, NRDC maintained that the enhanced I/M performance standard had been purposely weakened to justify a shift away from the statutory presumption of annual testing to EPA's preferred alternative, biennial testing. NRDC maintained that this was achieved by exempting older vehicles from the high-tech tailpipe test known as the IM240, visual inspections, and evaporative system checks. In responding to NRDC's claims, EPA maintained that it set the enhanced performance standard strict enough to net significant emission reductions while also being lenient enough to provide states with "continued reasonable flexibility to fashion effective, reasonable, and fair programs for the affected consumer," as required by section 182(a)(2)(B)(ii) of the Act.

In its May 6, 1994 ruling, the Court of Appeals found that, "each of the parties wins some and loses some on this issue." *NRDC v. EPA*, 22 F.3d 1125 (D.C. Cir. 1994). Agreeing with EPA, the court found that the Act did not require