

EPA to set the most stringent annual performance standard possible. Nevertheless, the Court also agreed with NRDC's contention that the Act required EPA to establish an enhanced I/M performance standard that is "the product of two different kinds of testing," including a visual and an emission test. Since EPA's current enhanced I/M performance standard only includes one test, a steady-state, idle-based tailpipe test, on vehicle model years 1968 through 1983 and does not require a visual inspection of those cars, the Court found that the current standard falls short of complying with the letter of the Act for those model years.

To correct this oversight, EPA is today proposing to amend the high enhanced I/M performance standard to include a minimum of two inspections per subject vehicle. Currently, the only vehicles included in the high enhanced I/M performance standard that are not covered by both tests are light-duty vehicles and light-duty trucks from model years 1968 through 1983. EPA therefore proposes to amend the current high enhanced I/M performance standard to include a visual inspection for the PCV valve on 1968 through 1971 light-duty vehicles and light-duty trucks up to 8,500 pounds Gross Vehicle Weight Rating (GVWR) and a visual inspection of the EGR valve on model year 1972 through 1983 light-duty vehicles and light-duty trucks. Tampering surveys have shown that these emission control devices are tampered or inadequately maintained. A visual check can identify such problems and emission reductions can occur on individual cars as a result of repairs to these devices.

B. Enhanced Performance Standards

The Court of Appeals ruling on the issue of performance standard stringency also clarifies EPA's authority to establish any enhanced I/M performance standard it deems reasonable, provided it incorporates the minimally required elements set forth by Congress in the Act. By requiring enhanced I/M, Congress gave states one mechanism to meet the required 15% reduction of VOC emissions and demonstrate attainment. Today, EPA is proposing to give states greater flexibility in choosing the enhanced I/M program which will work best with the 15% VOC emission reduction plan. States may elect to implement low enhanced I/M, or any program between low and high enhanced I/M, if that is all they need to meet the 15% VOC emission reduction requirement and attainment demonstration. EPA believes

it is reasonable to require lower reductions from enhanced I/M where greater reductions are not needed to reduce VOC emissions by 15% or for attainment.

EPA maintains that the Act in no way bars it from establishing more than one enhanced I/M performance standard. EPA believes that precedent exists for the adoption of multiple enhanced I/M performance standards, tailored to the unique needs of certain areas, and points to the case of El Paso, Texas, for which a separate, enhanced I/M performance standard already exists [40 CFR Part 51.351(e)], as evidence of this interpretation. Today, EPA proposes to repeal § 51.351(e) which establishes the El Paso performance standard because the new low enhanced performance standard eliminates the need for that special enhanced performance standard.

C. Waivers

EPA also believes Section 182 (3)(C) of the Act provides flexibility in its waiver requirement, by not specifying a deadline by which such limits are to be fully implemented and determinative in the granting of waivers. To get the full emission reduction potential of an I/M program element, the statutory waiver requirement must be in full effect at least one full inspection cycle prior to evaluation (so that all subject vehicles will be held to that standard and found to comply). Since compliance with the performance standard is based on a modeling demonstration comparing the state's program to the performance standard using an initial evaluation date of January 1, 2000 for ozone nonattainment areas, and January 1, 2001 for carbon monoxide (CO) nonattainment areas, EPA believes it is possible to postpone full implementation of the enhanced I/M waiver requirements at least January 1, 1998 without jeopardizing the ability of states to meet the relevant enhanced I/M performance standards. EPA requests comment on whether this or a later date would be appropriate. EPA also requests comments as to the timing of application of the CPI adjustment in relation to the phase-in of the full waiver requirements.

Adoption of a January 1, 1998 date for full implementation of the waiver requirement would provide states with the continued flexibility necessary to allow for biennial testing. Furthermore, postponing full implementation of the waiver requirement provides the short term regulatory relief states have been requesting since passage of the Act, while at the same time allowing states to meet the long-term Clean Air Act goals. As mentioned previously, EPA

requests comments on the need for and implications of postponing full implementation of the waiver requirements to a date beyond January 1, 1998. EPA hopes that states will use any additional time to develop programs to assist vehicle owners in fully repairing their vehicles; for example, by subsidizing or co-funding repairs out of revenues collected in any of a number of possible ways.

Today's proposed action would also allow motorists to apply the cost of pre-inspection repair of primary emission control devices toward meeting the minimum waiver expenditure requirement provided the repairs were made within 60 days of the inspection. When repairs correct obvious emission control problems, EPA believes it is appropriate to credit repair costs toward minimum waiver expenditures, provided the repairs occur shortly prior to testing.

Today's proposed action would limit the non-technician repairs that can be applied toward waiver limits to repairs of primary emission control components only. However, today's action also removes the language limiting application of non-technician repairs toward waiver expenditure requirements to pre-1980 model year vehicles. The result is that a non-technician repair to a primary emission control component may be applied toward the waiver expenditure requirement for any model year vehicle. EPA does not believe there is reason to distinguish between model years for non-technician repairs to primary emission controls. EPA believes it is appropriate to maintain the distinction for other types of repairs since these are not easily diagnosed or performed the way a missing catalyst, for example, may be diagnosed and repaired.

Today's action proposes to remove the language from the I/M rule which limits hardship extensions to one time in the lifetime of a vehicle. EPA believes it is in the interest of fairness to remove this limitation, especially in the case of used car buyers who may otherwise be deprived of the opportunity for such an extension because this "right" was already exercised by a previous owner. Instead, the proposed action would allow a vehicle that has already received a time extension and subsequently passed the applicable test standards to be eligible for another time extension. While EPA acknowledges that there is a potential for minuscule emission reduction losses as a result of changing this limitation, EPA believes that any potential abuses will be accounted for by the existing requirements that all such extensions be tracked by the state,