EPA Decision: EPA has determined that recalibrations are information covered under section 202(m)(5) if they are provided to dealerships to reprogram vehicles. EPA recognizes that this information is not visible to the dealerships and is provided for the purpose of allowing dealers to perform reprogramming. EPA believes that allowing manufacturers to provide similar reprogramming capabilities to independent technicians (and not the recalibrations themselves) comports with the language and intent of section 202(m)(5).

Effective December 1, 1997, manufacturers are required to:

(1) make available to independent technicians all emission-related reprogramming events (including driveability reprogramming events that may affect emissions) that were issued prior to December 1, 1997, by manufacturers and made available to dealerships for MYs 1994 through 1997; and

(2) for reprogramming events that are issued on or after December 1, 1997, make available to independent technicians all emission-related reprogramming events (including driveability reprogramming events that may affect emissions) issued by manufacturers for 1994 and later MY vehicles at the same time they are made available to dealerships.

For each MY, reprogramming need not be provided for recalibrations performed prior to vehicles entering the stream of commerce (i.e., sale to first purchaser).

If a manufacturer can demonstrate, to the satisfaction of the Administrator, that hardware would have to be retroactively installed on vehicles to meet security measures implemented by the manufacturer, the manufacturer may request a waiver from the reprogramming requirements for model years 1994 through 1996.

EPA is providing manufacturers until December 1, 1997, to adopt and implement security measures, such as encryption or other measures, that address tampering concerns and concerns regarding proprietary information. This leadtime will also allow manufacturers to work out logistical issues related to making reprogramming available to the potentially large numbers of independent facilities that may be interested in receiving this capability. Though EPA is allowing security measures to be implemented by manufacturers, such measures are not being required by these regulations. EPA believes that manufacturers are best able to determine the extent to which the

release of this information will endanger K. Regulatory Flexibility Analysis the proprietary nature of the underlying information and/or potentially lead to tampering.

Any method adopted by a manufacturer by which reprogramming will be made available to independent technicians cannot impose a significant burden on independent technicians beyond that experienced by dealerships. For example, manufacturers can sell reprogramming tools directly to independent technicians or enter into agreements with aftermarket tool companies whereby the manufacturers provide the tool companies with the information necessary to build reprogramming tools. In conjunction with one of these options, manufacturers could transmit reprogramming events directly to independent technicians by modem from a main frame or provide them with CD ROMs. The use of a main frame to make reprogramming available would enable manufacturers to monitor certain data, such as who is performing reprogramming and the type of reprogramming that is being requested. In formulating its method of making reprogramming available to independent technicians. a manufacturer may request to meet with EPA to discuss whether the method comports with the requirements of this rule. In the context of avoiding a significant burden on independent technicians, EPA notes that a manufacturer reprogramming-only tool should be compatible with generic portable computers (PCs), or other technology in widespread use in the future, so that independent technicians are not required to purchase numerous types of PCs to access each manufacturer's reprogramming tools.

EPA is concerned that there may be a risk of increased tampering with the OBD system once it is integrated with the I/M test. However, EPA believes that the manufacturers have sufficient incentives to adopt measures that maximize security and protect the OBD system from tampering. At this time, therefore, EPA is not requiring that manufacturers adopt security measures. If there is evidence of tampering that can't be prevented through EPA's enforcement authority, EPA may find it necessary to promulgate more stringent regulations to ensure that the integrity of OBD systems is maintained. Such regulations could include various options, such as mandatory aftermarket parts certification, banning eraseable computer chips, or security measures.

Summary of Proposal: The Regulatory Flexibility Act of 1980 requires Federal agencies to identify potentially adverse impacts of Federal regulations upon small entities. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to perform a **Regulatory Analysis. EPA has** determined that the regulations finalized today will not have a significant impact on a substantial number of small entities. This regulation will primarily affect manufacturers of motor vehicles and motor vehicle engines, a group which does not contain a substantial number of small entities.

Summary of Comments: Chrysler commented that EPA's conclusion that an RIA is not required is fatally flawed. Chrysler asserted that the proposed regulations will impact over twenty thousand small businesses, i.e., dealers, through major effects on their future business and profitability. Chrysler stated that dealerships carry costs and overhead which are not faced by aftermarket repair shops. Chrysler believes that any regulation which diminishes the ability of dealerships to effectively compete, by lessening their ability to meet costs imposed by the nature of the business, clearly constitutes a significant impact on those businesses, required to be assessed by the Administrator by law.

NADA also commented that EPA's regulatory impact analysis appears to have failed to take into account the significant potential impact its proposed regulations will have on franchised dealership service operations. NADA asserted that several provisions in the proposed rule will result in potentially costly anti-competitive impacts on dealerships. NADA stated its member dealerships are very concerned that the EPA proposal will serve to undermine the franchise relationship that exists between dealers and manufacturers. The proposal as written threatens the huge investments NADA dealerships have made in equipment, technician training, and information systems by putting dealers at a competitive disadvantage with those segments of the vehicle maintenance industry who have not made similar investments. As required by the Regulatory Flexibility Act, NADA argued it is incumbent upon EPA to consider these impacts during the development of its final OBD rule. NADA submitted that this is of particular importance considering the currently dire economic condition of a