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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[EPA-HQ-OAR-2006-0072; FRL-8539-4 RIN 2060-069]

In-Use Testing for Heavy-Duty Diesel Engines and Vehicles; Emission Measurement Accuracy Margins for Portable Emission Measurement Systems and Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: In a rule published on June 14, 2005, EPA established a manufacturer-run, in-use testing program for heavy-duty diesel vehicles. The program requires engine manufacturers to measure exhaust emissions from their diesel engines using portable emissions measurement systems during real-world operation. At the time the rule was promulgated, EPA established interim emission measurement “accuracy” margins for the requisite portable emission measurement devices pending the development of final accuracy margins through a comprehensive research program. This notice proposes to adopt the resulting final accuracy margins for gaseous pollutants. Also, this rule proposes to make several changes to the program in the early years of in-use testing. First, we are proposing to eliminate the first calendar year, i.e., 2006, of the two-year pilot program for particulate emissions (PM) in response to engine manufacturers’ concerns, which primarily relate to the availability and efficacy of the requisite portable measurement systems (PEMS) for that pollutant. Second, due to a delay in developing the final accuracy margin for PM under the aforementioned comprehensive research program, we are proposing to delay the first year of the fully enforceable PM test program from the 2008 calendar year to the 2009 calendar year. During the 2008 calendar year, there will be another year of pilot program testing for that pollutant. Third, and finally, we are proposing to extend the normal period for reporting in-use test results and allowing certain

short-term changes in how vehicles are recruited and tested. These proposed revisions are primarily intended to address delays in initiating the gaseous emission and PM pilot programs, manufacturers’ concerns regarding the schedule for initial purchases of PM measurement systems, and manufacturers’ concerns regarding potential difficulties of initially instrumenting vehicles with these units.

DATES: Written comments must be received by April 14, 2008. Request for a public hearing must be received by March 28, 2008. If we receive a request for a public hearing, we will publish information related to the timing and location of the hearing and the timing of a new deadline for public comments.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2004-0072, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* a-and-r-docket@epa.gov.
- *Fax:* (202) 566-9744.
- *Mail:* Environmental Protection Agency, Mail Code: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include two copies.
- *Hand Delivery:* U.S. Environmental Protection Agency, EPA Headquarters Library, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. Such deliveries are only accepted during the Docket’s normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OAR-2004-0072. EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov Web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the

Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA’s public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/oar/dockets.html>.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the EPA Docket Center, EPA West Building, EPA Headquarters Library, Room 3334, 1301 Constitution Avenue, N.W., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: Richard Wilcox, Assessment and Standards Division, Office of Transportation and Air Quality, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214-4390; fax number: (734) 214-4939; e-mail address: wilcox.rich@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

In the “Rules and Regulations” section of this **Federal Register**, we are making these revisions as a direct final rule without prior proposal because we view these revisions as noncontroversial and anticipate no adverse comment.

We have explained our reasons for these revisions in the preamble to the direct final rule. If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment on the rule, we will withdraw the direct final rule. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on

this action. Any parties interested in commenting must do so at this time.

II. Does This Action Apply to Me?

This action will affect companies that manufacture and certify heavy-duty

diesel engines and vehicles for use on the highway.

Category	NAICS Code ^a	Examples of potentially affected entities
Industry	336112 336120	Engine and Truck Manufacturers.
Industry	811112 81198	Independent commercial importers of vehicles and parts.

^aNorth American Industry Classification System (NAICS).

To determine whether particular activities may be affected by this action, you should carefully examine the regulations. You may direct questions regarding the applicability of this action as noted in **FOR FURTHER INFORMATION CONTACT**.

III. What Should I Consider as I Prepare My Comments for EPA?

A. Submitting CBI. Do not submit this information to EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2.

B. Tips for Preparing Your Comments. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.

- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

IV. Summary of Rule

The manufacturer-run, in-use testing program for heavy-duty diesel vehicles that are used on the highway was promulgated in 2005 to monitor the emissions performance of the engines used in those vehicles when operated under a wide range of real world driving conditions¹ The program is specifically intended to monitor compliance with the applicable Not-to-Exceed (NTE) exhaust emission standards for non-methane hydrocarbons (NMHC), oxides of nitrogen (NO_x), carbon monoxide (CO), and particulate matter (PM). It requires each manufacturer of heavy-duty highway diesel engines to assess the in-use exhaust emissions from their engines using onboard, portable emission measurement systems during typical operation while on the road.

A. Gaseous Emission Measurement Margins for Manufacturer-Run, In-Use Testing

For the purposes of the in-use testing program, it was necessary to establish emission measurement “accuracy” margins for the portable emission measurement system.² They are primarily designed to account for any differences between the accuracy of the onboard, portable emission measurement instruments and the accuracy of the instruments used during laboratory testing in the emissions certification process. When the in-use testing program was first established in 2005, there was uncertainty regarding what specific accuracy margins should

be used in the in-use testing program, since the portable measurement systems had not been rigorously tested at that time. As a result, we promulgated interim accuracy allowances for use in the pilot programs for gaseous pollutants and PM.³

Shortly before the in-use test program was promulgated, EPA entered into an memorandum of agreement (MOA) with the California Air Resources Board (CARB) and the manufacturers of heavy-duty highway diesel engines (through the Engine Manufacturers Association (EMA)) to develop “data driven” emission measurement allowances through a comprehensive research, development, and demonstration program for the enforceable programs, i.e., beginning in the 2007 calendar year for gaseous emissions and the 2008 calendar year for PM. The overall test program was designed to be completed in two phases. The first phase addressed gaseous emission accuracy margins and the second phase addressed PM emission accuracy margins. All parties agreed to support the final accuracy margins assuming that the agreed upon test program was followed and the results incorporated into a direct final rulemaking, or a subsequent final rulemaking (preceded by proposed rulemaking) if adverse comment was received on the direct final rule.

The cooperative test program and additional follow-on development work for gaseous emissions have now been completed, and a resultant set of final emission measurement accuracy margins has been identified for use in the fully enforceable program that begins in 2007. The gaseous emission measurements accuracy margins vary based on the model year of the engine and the emission calculation methodology that is used to determine the final grams/brake horsepower-hour

¹ See “Control of Emissions of Air Pollution From New Motor Vehicles: In-Use Testing for Heavy-Duty Diesel Engines and Vehicles, 70 FR 34594 (June 14, 2005).”

² The emission measurement accuracy margin added to the value of the applicable NTE standard and any in-use compliance testing margin that is already allowed by the regulations to determine the numerical compliance limit, i.e., NTE threshold, which is used in the in-use testing program.

³ The in-use testing requirements consist of a two-year pilot program for gaseous emissions (i.e., NMHC, NO_x, and CO) in calendar years 2005 and 2006, and calendar years 2006 and 2007 for PM emissions. This NPRM proposes to change the years of the PM pilot program to calendar years 2007 and 2008. The programs are fully enforceable after their respective pilot program ends.

emission. The proposed values are shown in Table 1.

TABLE 1.—FINAL MEASUREMENT ACCURACY MARGINS FOR THE ENFORCEABLE GASEOUS EMISSIONS IN-USE TESTING PROGRAM

Pollutant	Accuracy margins (g/bhp-hr)		
	2007–2009 model year engines		2010 and later model year engines
	Method 1 only	Methods 2 and 3	All methods
NMHC	0.02	0.01	0.01
CO	0.5	0.25	0.25
NO _x	0.45	0.15	0.15

B. NMHC NO_x In-Use Testing Accuracy Margins

The June 2005 final rule that implemented the in-use testing program addressed accuracy margins for each of the gaseous pollutants and their associated individual standards, i.e., NMHC, NA_x, and CO. The MOA and subsequent gaseous emissions test program also focused on identifying the final accuracy margins for these individual pollutants. In developing the original rule and subsequent test program, however, we failed to recognize that 2004 through 2006 model year engine families are actually certified to a combined NO_x plus NMHC standard under § 86.004–11(a)(l)

of the applicable regulations. Furthermore, under the “phase-in options” of § 86.007–11(g)(l) an engine manufacturer may optionally certify some of its production in model years 2007 through 2009 to the combined NO_x plus NMHC standard for 2006 model year engines under § 86.2004–11, rather than the otherwise applicable individual NO_x and NMHC standards. Therefore, we are correcting this oversight by proposing in-use testing accuracy margins for the combined NO_x plus NMHC standard.

The methodology for determining an accuracy margin for the combined NO_x plus NMHC emission standard is the same as that used to determine the numerical value of the combined

standard itself. Specifically, the individual NO_x and NMHC accuracy margins are simply added together to provide a single value. Therefore, for 2004–2007 model year engines that may be tested under the gaseous emission pilot program for the 2006 and 2007 calendar years, we propose that the combined accuracy margin is the sum of the individual NO_x and NMHC values already contained in § 86.1912, or 0.67 g/bhp-hr. For engines tested in the enforceable program that begins in the 2007 calendar year and applies to 2007 and later model year diesel engines, the combined NO_x plus NMHC accuracy margins, using the individual values from Table 1, are shown in Table 2.

TABLE 2.—FINAL COMBINED NO_x PLUS NMHC MEASUREMENT ACCURACY MARGINS FOR THE ENFORCEABLE GASEOUS EMISSIONS IN-USE TESTING PROGRAM

Pollutant	Accuracy margins 2007–2009 model year engines (g/bhp-hr)	
	Method 1 only	Methods 2 and 3
NO _x + NMHC	0.47	0.16

C. Delaying the Enforceable PM Program From 2008 to 2009

The MOA described in section IV.A. acknowledged that in order to promulgate new measurement accuracy margins with adequate lead time to begin the 2008 enforceable PM I program, certain key milestone dates in the test program had to be achieved. Contingencies for missing the final delivery date were specified in the MOA and in the June 2005 final rulemaking.⁴ Most relevant to today’s proposal was that if the final values and documentation were delayed more than three months from November 1, 2007 then the PM pilot program would

continue for calendar year 2008 in place of the fully enforceable program for that year.

Completing the PM test program on schedule required that the initial work be conducted in parallel with the ongoing gaseous emission test program. Using the same contractors and personnel from EPA, CARB, and the engine manufacturers. Due to unexpected issues in the gaseous emission test program and the lack of other resources, all work on the PM test plan and subsequent test program had to be postponed until recently. The end result of this postponement is that the final accuracy margin for PM will be delayed by approximately one year. Accordingly, the MOA and in-use test

program regulations require that the first year of the previously adopted enforceable program (calendar year 2008) be placed into abeyance and the PM pilot program continued for that year. Hence, we are proposing to modify the in-use testing regulations so that the PM pilot program extends into 2008 and the fully enforceable PM program begins in 2009.

D. Suspending the 2006 PM Pilot Program

The in-use testing program, as originally adopted in June 2005, included a two-year pilot (i.e., demonstration) program for PM emissions in calendar years 2006 and 2007. In establishing this requirement,

⁴ See 40 CFR 86.1935.

EPA noted that the onboard measurement of PM emissions was significantly more challenging than for gaseous emissions, and that further development of the requisite portable measurement systems would be needed. We also noted our expectation that engine manufacturers would use “best available” prototype systems that were capable of measuring PM emissions as required. Nonetheless, in recognition of the then remaining technical uncertainties, we added a provision to the regulations that would suspend the in-use test program as it applied to PM measurement if we discovered fundamental technical problems with portable in-use PM measurement systems that could not be resolvable in a reasonable time.

In a letter dated January 4, 2007, EMA requested that the first year of the two-year PM pilot program be held in abeyance. The principle reasons cited were associated with certain technical concerns primarily relating to the availability and efficacy of the requisite portable measurement systems for that pollutant. In a subsequent letter dated

April 11, 2007, EMA more specifically detailed its concerns with currently available portable PM measurement systems. The trade group also argued that it would be better to take the time now to develop better portable PM measurement devices in order to ensure a successful launch of the fully enforceable program in 2009. Finally, EMA noted that even with the suspension of the 2006 PM pilot program, there would still be a full two years of the PM pilot as originally called for in the regulations.

After carefully considering EMA’s concerns, we agree that it is better to eliminate the 2006 calendar year PM pilot program in order to focus our collective efforts on improving the current portable PM measurement systems and conducting the cooperative research and development program for this pollutant. Therefore, we are proposing such a delay.

E. Revised Schedules and Testing Flexibilities for the 2005 Through 2009 In-Use Test Programs

The June 2005 final rule that established the heavy-duty in-use test

program stated that EPA would typically select engine families for testing in June of each calendar year. Further, the regulations allowed 18 months from the time engine families were designated for engine manufacturers to complete all testing and report the results to EPA. Subsequent to the final rule, we concluded that certain adjustments to the test schedules were necessary in the early years of the program to address: (1) Delays in initiating certain aspects of the program, (2) manufacturers’ concerns regarding the schedule for initial purchases of PM measurement systems, and (3) manufacturers’ concerns instrumenting test vehicles for PM emission testing in the early years of the program. Our proposed adjustments for engine family designation and reporting dates are summarized in Table 3, which also reflect the other proposed programmatic revisions discussed previously.

TABLE 3.—REVISED ENGINE FAMILY DESIGNATION AND REPORTING SCHEDULES

Program	Designate families		Report due	
	Original	Revised	Original	Revised
2005 Gaseous Pilot	06/2005	Unchanged ..	11/2006	11/2007.
2006 Gaseous Pilot	06/2006	12/2006	11/2007	11/2008.
2007 Gaseous Enforceable	06/2007	12/2007	11/2008	11/2009.
2007 PM Pilot	06/2007	12/2007	11/2008	05/2010.
2008 Gaseous Enforceable	06/2008	09/2008	11/2009	03/2010.
2008 PM Pilot	06/2008	09/2008	11/2009	09/2010.
2009 Gaseous Enforceable	06/2009	Unchanged ..	11/2010	04/2011.
2009 PM Enforceable	06/2009	Unchanged ..	11/2010	04/2011.
2010 Gaseous Enforceable	06/2010	Unchanged ..	11/2011	Unchanged.
2010 PM Enforceable	06/2010	Unchanged ..	11/2011	Unchanged.

*For illustration only. The 2010 program dates are as originally promulgated.

EF. Removing the Gaseous Accuracy Test Program from the Regulations

We are proposing to delete the references in § 86.1935 that pertain to the final report for gaseous emission accuracy margins and the consequences that would ensue if the report was delayed beyond certain dates. These provisions are no longer needed because final accuracy margins for gaseous pollutants are being proposed in this rulemaking. The proposed revised section, therefore, would appropriately focus on the ongoing development of accuracy margins for PM emissions.

For additional discussion of the proposed rule changes, see the direct final rule EPA has published in the “Rules and Regulations” section of today’s **Federal Register**. This proposal

incorporates by reference all the reasoning, explanation, and regulatory text from the direct final rule.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This proposed rule is not a “significant regulatory action” under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO. This proposed rule merely replaces the interim gaseous emission measurement accuracy allowances for portable emission measurement systems with final values and delays the in-use testing implementation dates for the fully enforceable PM test program as

either envisioned or allowed for in the original final rule. This proposal also grants a request from the affected engine manufacturers for a one year delay in the start of the pilot testing program for PM. Further, here are no costs associated with this rule beyond those envisioned in the original rule.

B. Paperwork Reduction Act

This proposed rule does not include any new collection requirements, as it acts to replace interim gaseous emission measurement accuracy allowances for portable emission measurement systems with final values and delays the implementation schedule for the in-use PM testing program. There are no new paperwork requirements associated with this rule.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is, not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR Part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this proposed rule on small entities, a small entity is defined as: (1) A small business that meet the definition for business based on SBA size standards at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory

alternatives "which minimize any significant economic impact of the rule on small entities." 5 USC 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This proposed rule acts to replace interim gaseous emission measurement accuracy allowances for portable emission measurement systems with final values and delays the implementation schedule for the in-use PM testing program. We have, therefore, concluded that today's proposal will relieve regulatory burden for all small entities and will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

This proposed rule contains no federal mandates for state, local, or tribal governments as defined by the provisions of Title II of the UMRA. The proposed rule imposes no enforceable duties on any of these governmental entities. Nothing in the proposed rule would significantly or uniquely affect small governments. EPA has determined that this proposed rule contains no federal mandates that may result in expenditures of more than \$100 million to the private sector in any single year. This proposed rule acts to replace interim gaseous emission measurement accuracy allowances for portable emission measurement systems with final values and delays the implementation schedule for the in-use PM testing program. See the direct final rule EPA has published in the "Rules and Regulations" section of today's **Federal Register** for a more extensive discussion of UMRA policy.

E. Executive Order 13132: Federalism

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed rule merely replaces interim measurement accuracy allowances for portable emission measurement systems with final values as envisioned in the original rule. See the direct final rule EPA has published in the "Rules and Regulations" section of today's **Federal Register** for a more extensive discussion of Executive Order 13132.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This proposed rule does not uniquely affect the communities of Indian Tribal Governments. Further, no circumstances specific to such communities exist that would cause an impact on these communities beyond those discussed in the other sections of this rule. This proposed rule merely replaces interim gaseous emission measurement accuracy allowances for portable emission measurement systems with final values and delays the implementation schedule for the in-use PM testing program. Thus, Executive Order 13175 does not apply to this rule. See the direct final rule EPA has published in the "Rules and Regulations" section of today's **Federal Register** for a more extensive discussion of Executive Order 13132.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This proposed rule is not subject to the Executive Order because it is not economically significant, and does not involve decisions on environmental health or safety risks that may disproportionately affect children. See the direct final rule EPA has published in the "Rules and Regulations" section of today's **Federal Register** for a more extensive discussion of Executive Order 13045.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. This proposed rule merely replaces interim gaseous emission measurement accuracy allowances for portable emission measurement systems with final values and delays the implementation schedule for the in-use PM testing program.

I. National Technology Transfer and Advancement Act

This proposed rule does not involve technical standards. This proposed rule merely replaces interim gaseous emission measurement accuracy allowances for portable emission measurement systems with final values and delays the implementation schedule for the in-use PM testing program. Thus, we have determined that the requirements of the NTTAA do not apply. See the direct final rule EPA has published in the "Rules and Regulations" section of today's **Federal Register** for a more extensive discussion of NTTAA policy.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

EPA has determined that this proposed rule will not have disproportionately high and Adverse human health or environmental effects on minority or low income populations because it does not affect the level of protection provided to human health or the environment. See the direct final rule EPA has published in the "Rules and Regulations" section of today's **Federal Register** for a more extensive discussion of Executive Order 13045.

K. Statutory Authority.

The statutory authority for this action comes from 42 U.S.C. 7401-7671q. C. 7607(d).

List of Subjects in 40 CFR Part 86

Environmental protection, Administrative practice and procedure, Confidential business information, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: February 28, 2008.

Stephen L. Johnson,
Administrator.

[FR Doc. 08-1017 Filed 3-12-08; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Chapter X

[STB Ex Parte No. 676]

Rail Transportation Contracts Under 49 U.S.C. 10709

AGENCY: Surface Transportation Board, DOT.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: The Surface Transportation Board seeks public comments on a proposal to require railroads to include a disclosure statement in any document that they consider to be a rail transportation contract under 49 U.S.C. 10709.

DATES: Comments are due by May 12, 2008.

ADDRESSES: Comments may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and comply with the instructions at the E-FILING link on the Board's Web site, at: <http://www.stb.dot.gov>. Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: STB Ex Parte No. 676, 395 E Street, SW., Washington, DC 20423-0001.

Copies of written comments will be available from the Board's contractor, ASAP Document Solutions (Mailing Address: Suite 103, 9332 Annapolis Rd., Lanham, MD 20706; e-mail address: asapdc@verizon.net; telephone number: 202-306-4004). The comments will also be available for viewing and self-copying in the Board's Public Docket Room, Room 131, and will be posted to the Board's Web site at: <http://www.stb.dot.gov>.

FOR FURTHER INFORMATION CONTACT:

Timothy J. Strafford at 202-245-0356. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

SUPPLEMENTARY INFORMATION: In recent proceedings, the Board has noted that

there is often no clear distinction between regulated common carrier rates and unregulated rail transportation contracts. See, e.g., *Kansas City Power & Light Company v. Union Pacific Railroad Company*, STB Docket No. 42095 (STB served July 27, 2006); *Interpretation of the Term "Contract" in 49 U.S.C. 10709*, STB Ex Parte No. 669 (STB served Mar. 29, 2007). The Board has instituted this rulemaking proceeding to consider imposing a requirement that each rail carrier provide a full disclosure statement when it seeks to enter into a rail transportation contract under 49 U.S.C. 10709. The statement would explicitly advise the shipper that the carrier intends the document to be a rail transportation contract, and that any transportation under the document would not be subject to regulation by the Board. Moreover, it would advise the shipper that it has a statutory right to request a common carriage rate that the carrier would then have to supply promptly, and such a rate might be open to challenge before the Board. The proposal would also require that, before entering into a rail transportation contract, the carrier provide the shipper an opportunity to sign a written informed consent statement in which the shipper acknowledges, and states its willingness to forgo, its regulatory options. Interested persons are invited to comment on the proposal and the Board welcomes suggestions as to what language should be included in this full disclosure/informed consent requirement.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Authority: 49 U.S.C. 721, 49 U.S.C. 10709.

Decided: March 6, 2008.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Anne K. Quinlan,
Acting Secretary.

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