

agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit 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 United States prior to publication of the rule in the **Federal Register**.

A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 30, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 13, 2006.

**James B. Gulliford,**

*Regional Administrator, Region 7.*

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

*Authority:* 42 U.S.C. 7401 *et seq.*

#### Subpart Q—Iowa

■ 2. Section 52.833 is revised to read as follows:

##### § 52.833 Significant deterioration of air quality.

(a) The requirements of sections 160 through 165 of the Clean Air Act are met, except for sources seeking permits to locate on Indian lands in the state of Iowa; and certain sources affected by the stack height rules described in a letter from Iowa dated April 22, 1987.

(b) Regulations for preventing significant deterioration of air quality. The provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the applicable State plan for the State of Iowa for sources wishing to locate on Indian lands; and certain sources as identified in Iowa's April 22, 1987, letter.

[FR Doc. 06-3036 Filed 3-29-06; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 86

[OAR-2006-0160; FRL-8049-6]

RIN 2060-AN67

#### Control of Air Pollution From New Motor Vehicles: Amendments to the Tier 2 Motor Vehicle Emission Regulations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to make minor amendments to the existing Tier 2 motor vehicle regulations (65 FR 6698, February 10, 2000, hereinafter referred to as the Tier 2 rule). These minor amendments are consistent with our intention, under the original Tier 2 rule, to provide interim compliance flexibilities for clean diesels in the passenger car market. While the automotive industry has made rapid advancements in light-duty diesel emissions control technologies and will, as a result, be able to produce diesel vehicles that can comply with the primary regulatory requirements of the Tier 2 program, diesel vehicles still face some very limited technological challenges in meeting the full suite of Tier 2 requirements. This action will provide two voluntary, interim alternative compliance options for a very limited set of standards for oxides of nitrogen (NO<sub>x</sub>), including only high altitude and high speed/high acceleration conditions. These temporary alternative compliance options are designed to be environmentally neutral, as manufacturers choosing them would then be required to meet more stringent standards in other aspects of the Tier 2 program. The alternative compliance options will last for only three model years, during which time advancements in diesel emissions control technologies will be further developed.

**DATES:** This direct final rule is effective on June 28, 2006 without further notice,

unless we receive adverse comments by May 1, 2006 or if we receive a request for a public hearing by April 14, 2006. Should we receive any adverse comments on this direct final rule, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2006-0160. All documents in the docket are listed on the <http://www.regulations.gov> Web site. 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., 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:** Todd Sherwood, U.S. EPA, National Vehicle and Fuel Emissions Laboratory, Assessment and Standards Division, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone (734) 214-4405, fax (734) 214-4816, e-mail [sherwood.todd@epa.gov](mailto:sherwood.todd@epa.gov).

**SUPPLEMENTARY INFORMATION:** EPA is publishing this rule without a prior proposal because we view this action as noncontroversial and anticipate no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to adopt the provisions in this Direct Final Rule if adverse comments are filed. This rule will be effective on June 28, 2006 without further notice unless we receive adverse comment by May 1, 2006 or a request for a public hearing by April 14, 2006. If we receive adverse comment on one or more distinct amendments, paragraphs, or sections of this rulemaking, we will publish a timely withdrawal in the **Federal Register** indicating which provisions are being withdrawn due to adverse comment. We may address all adverse comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action.

Any parties interested in commenting must do so at this time. Any distinct amendment, paragraph, or section of today's rulemaking for which we do not receive adverse comment will become effective on the date set out above, notwithstanding any adverse comment on any other distinct amendment, paragraph, or section of today's rule.

**Access to Rulemaking Documents Through the Internet**

Today's action is available electronically on the date of publication from EPA's **Federal Register** Internet web site listed below. Electronic copies of this preamble, regulatory language,

and other documents associated with today's final rule are available from the EPA Office of Transportation and Air Quality Web site listed below shortly after the rule is signed by the Administrator. This service is free of charge, except any cost that you already incur for connecting to the Internet.

EPA **Federal Register** Web site: <http://www.epa.gov/fedrgstr/EPA-AIR/> (either select a desired date or use the Search feature).

EPA Office of Transportation and Air Quality Web site for Tier 2 Vehicle and Gasoline Sulfur Program Amendments: <http://www.epa.gov/tier2/amendments.htm>.

Please note that changes in format, page length, etc., may occur due to computer software differences.

**Regulated Entities**

Entities potentially affected by this action are those that manufacture and sell motor vehicles in the United States. The table below gives some examples of entities that may have to comply with the regulations. However, since these are only examples, you should carefully examine these and other existing regulations in 40 CFR part 80. If you have any questions, please call the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Category	NAICS codes <sup>a</sup>	SIC codes <sup>b</sup>	Examples of potentially regulated entities
Industry .....	336111 336112	3711	Automobile and light truck manufacturers.

<sup>a</sup>North American Industry Classification System (NAICS).  
<sup>b</sup>Standard Industrial Classification (SIC) system code.

**I. Overview of Voluntary Alternative Compliance Options**

The amendments described below pertain to the Tier 2/Gasoline Sulfur regulations finalized by EPA on February 10, 2000 (65 FR 6698), hereafter referred to as the Tier 2 rule, or the Tier 2 program. The Tier 2/Gasoline Sulfur program was designed to significantly reduce the emissions from new passenger cars and light trucks, including pickup trucks, vans, minivans, and sport-utility vehicles. The program is a comprehensive regulatory initiative that treats vehicles and fuels as a system, combining requirements for much cleaner vehicles with requirements for much lower levels of sulfur in gasoline. The program, which began in model year 2004, phases in a single set of exhaust emission standards that will, for the first time, apply to all passenger cars, light trucks, and larger passenger vehicles operated on any fuel. To enable the very clean Tier 2 vehicle emission control technology to be introduced and to maintain its effectiveness, the Tier 2 program also requires reduced gasoline sulfur levels nationwide. The Tier 2 program did not require similar changes for diesel fuel sulfur levels, but a separate rule mandated the reduction of highway diesel fuel sulfur levels beginning in September, 2006 (66 FR 5001, January 18, 2001). Although we provide some additional context in the following discussions, the Tier 2 program is very detailed and will not be described completely in this direct final rule. Readers are advised to consult the

documents associated with this rulemaking if they are interested in more information than is provided in this direct final rule. Information regarding the Tier 2 rule may be found on the EPA Web site at <http://www.epa.gov/tier2>.

A key component of the Tier 2 program has been an emphasis on consistent emission standards regardless of fuel type. This approach helps to ensure that our overall air quality goals are met. However, the Tier 2 program also gives some consideration to the fact that diesel vehicles must accomplish a much greater emission reduction from current levels in order to comply with the final Tier 2 program. Under the Tier 1 emissions control program, diesel-powered vehicles could be more than twice as high in emissions as gasoline vehicles for NO<sub>x</sub> and in practice were almost ten times higher in emissions of PM. Tier 2 included a number of interim measures that provide a glide path for vehicles to improve incrementally before coming into full compliance with the final Tier 2 program. Manufacturers were given several flexibility options in the Tier 2 regulations to ease their transition into meeting the final Tier 2 standards until late in the phase-in period (as late as model year 2007 for light-duty vehicles (LDVs) and light light-duty trucks (LLDTs), and model year 2009 for heavy LDTs (HLDTs)).<sup>1</sup>

<sup>1</sup>Light-duty truck (LDT) means any motor vehicle rated at 8,500 pounds gross vehicle weight rating (GVWR) or less which has a vehicle curb weight of 6,000 pounds or less and which has a basic vehicle frontal area of 45 square feet or less, which is: (1) Designed primarily for purposes of transportation of

These flexibilities were meant to give manufacturers an adequate amount of leadtime toward meeting the very stringent Tier 2 standards. Manufacturers were also permitted to certify vehicle families to less stringent bins during the phase-in, as long as the manufacturer's total fleet met the appropriate average NO<sub>x</sub> level.<sup>2</sup> There were also provisions for specific flexibilities for diesel vehicles in the early years of the program.

As EPA projected, the automotive industry has made rapid advancements in diesel emissions control technologies for NO<sub>x</sub> via NO<sub>x</sub> adsorber systems, advanced turbo chargers, and more effective exhaust gas recirculation, and for PM via particulate filters that control diesel PM to gasoline levels. These advancements mean that manufacturers will be able to produce diesel vehicles that can comply with the primary regulatory requirements of the Tier 2 program. However, diesel vehicles still face some very limited technological challenges in meeting the full suite of Tier 2 requirements. Some diesel vehicle manufacturers have approached

property or is a derivation of such a vehicle; or, (2) designed primarily for transportation of persons and has a capacity of more than 12 persons; or, (3) available with special features enabling off-street or off-highway operation and use (40 CFR 86.1803-01). A light LDT means any LDT rated up through 6,000 pounds GVWR. A heavy LDT means any LDT rated greater than 6,000 pounds GVWR.

<sup>2</sup>The Tier 2 rule when fully phased in contains eight sets of emission standards, or "bins" (bins 1 through 8). Each bin is a set of emission standards to which manufacturers can certify their vehicles, provided that each manufacturer meets a specified fleet average NO<sub>x</sub> standard. During the initial years of the program, there are an additional three bins.

EPA to express concerns with respect to a very limited set of standards for oxides of nitrogen (NO<sub>x</sub>) emissions. Specifically, some manufacturers are concerned with the 4,000 mile standards for high speed/high acceleration operating conditions (i.e., the US06 cycle and associated standards) and the NO<sub>x</sub> standards for high altitude operating conditions. These two narrow areas of operation are the most challenging for diesel vehicles due to the relatively high engine loads of the US06 test cycle and the relative lack of oxygen at high altitudes. The new technologies that have been applied to broadly bring these vehicles into Tier 2 compliance will require further fine-tuning to fully address emissions under these conditions. We are projecting that, with only a few more interim years of refinement, these technologies will be able to achieve full compliance under these narrow conditions as they already demonstrate under typical operating conditions. We discuss these existing standards, the

technical challenges faced by diesels, and our environmentally neutral interim voluntary compliance options below.

*A. High Speed/High Acceleration (US06 Cycle) Option*

1. Background on Existing Tier 2 SFTP Requirements

In addition to bins of exhaust emission standards for the Federal Test Procedure (FTP), the Tier 2 rule also includes exhaust emission standards for the Supplemental Federal Test Procedure (SFTP) for which standards were first established in 1996.<sup>3</sup> The SFTP procedures are designed to control emissions that occur during types of driving that are not well-represented on the FTP. Such “off-cycle” driving includes high speed driving and rapid accelerations and decelerations, and driving with the air conditioner operating. We have separate test cycles and associated standards for each of these operating conditions: High speed/rapid acceleration is covered by the US06 cycle and standards, and air

conditioner operation is covered by the SC03 cycle and standards. SFTP emission levels are a composite of the emission levels over these two test cycles and the FTP cycle. SFTP emissions from each vehicle test group must meet a set of SFTP emission standards in addition to the FTP standards.<sup>4</sup> The Tier 2 SFTP standard is calculated based on the Tier 1 SFTP standards, the Tier 1 FTP standards, and the standards for the Tier 2 bin to which the vehicle is being certified according to the equation:

$$SFTP_{Tier\ 2} = SFTP_{Tier\ 1} - [(0.35) \times (FTP_{Tier\ 1} - FTP_{Tier\ 2})]$$

Standards for NMHC and NO<sub>x</sub> are added together in the calculation, and Tier 2 NMOG standards are treated as NMHC in the calculation.

Beginning with the 2004 model year (i.e., with the Tier 2 program), LDVs and LDTs have been required to meet the US06 and SC03 standards at 4,000 miles and the SFTP standard at 120,000 miles.<sup>5 6</sup> These standards are shown in Table 1 for Tier 2 bins 1 through 8.

TABLE 1.—TIER 2 SFTP EXHAUST EMISSIONS STANDARDS FOR 2004 AND LATER MODEL YEARS—LDV/LDT1 ONLY  
[NO<sub>x</sub>+NMHC g/mi]

Bin	4k Mile standards		120k Mile standards <sup>a</sup>
	US06	SC03	SFTP
8	0.14	0.20	0.71
7	0.14	0.20	0.68
6	0.14	0.20	0.66
5	0.14	0.20	0.65
4	0.14	0.20	0.63
3	0.14	0.20	0.62
2	0.14	0.20	0.60
1	0.14	0.20	0.59

<sup>a</sup> 120,000 miles or 10 years, whichever occurs first.

Through model year 2006, the Tier 2 program allows diesel LDVs and diesel LDT1s to comply with an intermediate useful life SFTP standard in lieu of complying with the 4,000 mile US06 and SC03 standards.<sup>7</sup> In the Tier 2 rule preamble, we stated that we were providing this option because we lacked

certainty as to whether diesel vehicles could comply with the 4,000 mile US06 and SC03 standards that were actually established based on gasoline vehicles under the California LEV program.<sup>8</sup> Manufacturers choosing this option were required to calculate intermediate useful life SFTP standards using the

same approach described for full useful life standards by substituting the appropriate intermediate useful life values in the SFTP standard equation shown above. Table 2 shows the applicable SFTP standards for diesel LDVs/LDT1s making use of this option.

<sup>3</sup> 61 FR 54852.

<sup>4</sup> SFTP emissions are determined according to the equation  $SFTP = 0.35 \times (FTP) + 0.28 \times (US06) + 0.37 \times (SC03)$ .

<sup>5</sup> A 120,000 mile useful life is actually a 120,000 mile useful life or 10 years for LDVs and LLDTs, or 120,000 miles or 11 years for HLDTs, whichever

occurs first. A 150,000 mile useful life is actually 150,000 miles or 15 years, whichever occurs first. These time elements are implied throughout the text wherever we refer to useful life.

<sup>6</sup> Our National Low Emission Vehicle (NLEV) rulemaking (63 FR 926) required the 4,000 mile standards and 120,000 mile useful life for

manufacturers opting into the NLEV program. The Tier 2 program made these a requirement for all vehicles.

<sup>7</sup> This option was also available to all light light-duty trucks (LDT1 and LDT2), see 40 CFR 86.1811–04(f)(6).

<sup>8</sup> 65 FR 6791, section V.C.4.

TABLE 2.—EXISTING OPTIONAL TIER 2 SFTP EXHAUST EMISSIONS STANDARDS AVAILABLE THROUGH THE 2006 MODEL YEAR DIESEL LDV/LDT1 ONLY

[NO<sub>x</sub>+NMHC g/mi]

Bin	4k Mile standards		50k Mile standards <sup>a</sup>	120k Mile standards <sup>b</sup>
	US06	SC03	SFTP	SFTP
8	n/a	n/a	0.51	0.71
7	n/a	n/a	0.49	0.68
6	n/a	n/a	0.48	0.66
5	n/a	n/a	0.47	0.65
4	n/a	n/a	0.46	0.63
3	n/a	n/a	0.45	0.62
2	n/a	n/a	0.43	0.60
1	n/a	n/a	0.42	0.59

<sup>a</sup> There are no intermediate useful life FTP standards for bins 1 through 4 so the Tier 2 120,000 mile standards were used in their place according to 40 CFR 86.1811–04(f)(6)(ii).

<sup>b</sup> 120,000 miles or 10 years, whichever occurs first.

2. Voluntary Interim Compliance Option for US06 Standards

Some diesel vehicle manufacturers have approached EPA to express concerns with respect to the US06 standard for 2007 and later model years (Table 1). The concern is that the US06 standard, while generally feasible, cannot yet be met by some diesel LDVs with a sufficient compliance margin. Typically, manufacturer certification levels are 20 to 30 percent below the standards to provide some level of compliance margin. The risk associated with the low compliance margin for some diesel LDVs is such that some manufacturers may choose not to certify such vehicles for the U.S. market. These manufacturers have noted that the SFTP standards were developed based on vehicle weight classifications (i.e., LDV/LDT1, LDT2, etc.), as shown in Table 3. While capable today of meeting the LDT2 standard, manufacturers note that some LDVs need more time to achieve the LDV emissions level. They note that it makes sense since some LDVs are as heavy as some LDT2s. Vehicle weight directly impacts engine-out NO<sub>x</sub> emissions due to the increased engine load necessary to accelerate a heavier vehicle. While this issue has largely been addressed over most normal driving modes by increasing catalyst size with vehicle mass, further improvements in catalyst management (e.g., regeneration strategies and system

optimization) are needed for the heaviest diesel passenger cars. Given the rapid improvement in diesel catalyst systems to address the bulk of NO<sub>x</sub> emissions, we are confident in projecting that further system optimization will enable all diesel vehicles to address this narrow area of control with only a few more years of development.

TABLE 3.—TIER 2 US06 EXHAUST EMISSIONS STANDARDS FOR 2004 AND LATER MODEL YEARS

[NO<sub>x</sub>+NMHC g/mi]

Weight class	4k Mile US06 standard
LDV/LDT1	0.14
LDT2	0.25
LDT3	0.4
LDT4	0.6

Consistent with providing the optional SFTP standards for diesel LDVs and diesel LDTs through the 2006 model year in the current Tier 2 rule, this direct final rule provides a temporary voluntary alternative compliance option for diesel LDVs and LDT1s beginning with the 2007 model year. Manufacturers choosing this option for a given vehicle line will be allowed to comply with the LDT2 4,000 mile US06 standard of 0.25 g/mi NO<sub>x</sub>+NMHC in lieu of meeting the

current LDV/LDT1 level of 0.14 NO<sub>x</sub>+NMHC. We believe that this voluntary compliance option should be environmental neutral, reflecting the full degree of emission reduction potential achieved by diesel vehicles. To ensure environmental neutrality, vehicles for which manufacturers choose this option will be required to meet a more stringent full useful life SFTP composite standard than the base Tier 2 SFTP standards shown in Table 1. This more stringent standard will be the optional 50,000 mile standard that had been available for diesels through the 2006 model year (Table 2). For example, a bin 8 diesel vehicle will have to meet the 0.51 g/mi SFTP composite standard shown in Table 2 rather than the 0.71 g/mi SFTP composite standard shown in Table 1. Further, these vehicles will be required to meet the SFTP composite standard for a longer useful life of 150,000 miles rather than the base Tier 2 useful life of 120,000 miles.

The resultant standards for diesel LDVs/LDT1s for which manufacturers choose the alternative compliance option are shown in Table 4. The alternative compliance option will be available for model years 2007 through 2009, during which time we expect that manufacturers will be able to meet the remaining narrow challenges facing diesel technology to fully comply with the full suite of Tier 2 requirements.

TABLE 4.—OPTIONAL TIER 2 SFTP EXHAUST EMISSIONS STANDARDS AVAILABLE FOR MODEL YEARS 2007 THROUGH 2009 DIESEL LDV/LDT1 ONLY

[NO<sub>x</sub>+NMHC g/mi]

Bin	4k Mile standards		50k Mile standards	150k Mile standards <sup>a</sup>
	US06	SC03 <sup>b</sup>	SFTP	SFTP
8	0.25	0.20	0.51	0.51

TABLE 4.—OPTIONAL TIER 2 SFTP EXHAUST EMISSIONS STANDARDS AVAILABLE FOR MODEL YEARS 2007 THROUGH 2009 DIESEL LDV/LDT1 ONLY—Continued

[NO<sub>x</sub>+NMHC g/mi]

Bin	4k Mile standards		50k Mile standards	150k Mile standards <sup>a</sup>
	US06	SC03 <sup>b</sup>	SFTP	SFTP
7	0.25	0.20	0.49	0.49
6	0.25	0.20	0.48	0.48
5	0.25	0.20	0.47	0.47
4	0.25	0.20	0.46	0.46
3	0.25	0.20	0.45	0.45
2	0.25	0.20	0.43	0.43
1	0.25	0.20	0.42	0.42

<sup>a</sup> 150,000 miles or 15 years, whichever occurs first.

<sup>b</sup> The SC03 standard shown here is the same as the base Tier 2 SC03 standard. No change is made to this standard under the alternative compliance option.

We are providing this US06 alternative compliance option because diesel vehicles have developed rapidly, reducing NO<sub>x</sub> emissions by more than 80 percent from the Tier 1 level, thereby demonstrating an ability to meet the Tier 2 FTP standards. We are projecting that, with only a few more years of development, they will be able to meet the 4,000 mile US06 provisions. Further, we believe clean diesel technology can play an important role in the U.S. light-duty market. This is particularly true given the consumer interest in the increased fuel efficiency that diesels can provide. While vehicles using this option will be certified to a less stringent 4,000 mile US06 standard, they will be held to not only a more stringent full useful life SFTP standard, but also an increased useful life for that standard.

As an example, we can consider a bin 8 LDV. Under the base Tier 2 SFTP standards, a bin 8 LDV would meet a 4,000 mile US06 standard of 0.14 g/mi NO<sub>x</sub>+NMHC. Beyond 4,000 miles, the SFTP standard would be the 0.71 g/mi value shown in Table 1. That means that the vehicle could legally emit at the 0.71 g/mi level for miles 4,000 through 120,000. Under the alternative compliance option, while the 4,000 mile US06 standard will be somewhat higher (up to 0.25 g/mi NO<sub>x</sub>+NMHC), the vehicle will be required to emit no more than 0.51 g/mi of NO<sub>x</sub>+NMHC for miles 4,000 through 150,000.

**B. High Altitude Option**

Under the Tier 2 program, the emissions standards for each bin apply regardless of altitude. The significant progress to date has enabled diesel vehicles to comply with the FTP standards. However, NO<sub>x</sub> control from diesel vehicles at high altitude is particularly challenging due to the relative lack of oxygen, and hence, a

need to reduce exhaust gas recirculation (EGR) rates in order to compensate. Since EGR is a primary engine-out NO<sub>x</sub> control measure, engine-out NO<sub>x</sub> can increase at high altitude. The NO<sub>x</sub> catalysts applied to meet the broad Tier 2 emission standards for 2007 will largely offset these increased emissions under most but not all conditions. We are projecting that the NO<sub>x</sub> catalyst systems will require additional refinement in design and calibration to fully address NO<sub>x</sub> emissions under these conditions. Based on the rapid progress to broadly address NO<sub>x</sub> emissions with catalyst technologies, we are confident in projecting that further system optimization will fully address this narrow emission issue.

Some diesel vehicle manufacturers have approached EPA to express concerns that they do not yet have an adequate compliance margin to accommodate the expected emissions increase experienced at high altitude. As with the US06 issue described above, these manufacturers are concerned about the compliance margin afforded by the stringent Tier 2 standards. They have stated that, while the Tier 2 standards are technologically feasible, the risks associated with in-use compliance are such that they may choose to forego light-duty diesel certification for the U.S. market.

During the phase-in period, the Tier 2 program already includes a provision for higher in-use FTP standards. Our basis for that provision was that, as with any new technology or even with new calibrations of existing technology, there are risks of in-use compliance problems that may not appear in the certification process.<sup>9</sup> In support of the provision, we also noted that in-use compliance concerns may discourage manufacturers from applying new technologies or new

calibrations. For those reasons, we established higher in-use standards for those bins most likely to require the greatest applications of effort as a means to provide assurance to manufacturers that they would not face a recall action if they were to exceed the standards by a specified amount.<sup>10</sup>

Consistent with that rationale, and because light-duty diesel vehicles require the greatest application of effort toward meeting the Tier 2 standards, this direct final rule provides a temporary compliance option at high altitude for light-duty diesels. While operating at high altitude, vehicles using this option will be held to a standard of 1.2 times the NO<sub>x</sub> standard to which they were certified. This option will be available during model years 2007 through 2009 and for bins 7 and 8 only. This option is designed to be environmentally neutral and to reflect the full degree of emissions reductions available by light-duty diesel technology. Therefore, one condition for using this option is the requirement to meet the bin 5 FTP PM standard of 0.01 g/mi. The FTP PM standard is 0.02 g/mi for bins 7 and 8 while it is 0.01 g/mi for bins 6 and below. Therefore, we are limiting this option to bins 7 and 8. In other words, to use this option, the vehicle must be certified to a PM standard half the level of the base Tier 2 standard for their given bin. Further, vehicles for which manufacturers choose this option will have to be certified to a useful life of 150,000 miles rather than the base Tier 2 useful life of 120,000 miles. Importantly, vehicles for which manufacturers choose this option will have the same certification standards (except for PM, which will be more stringent) as in the base Tier 2 program, and these two conditions for

<sup>9</sup> 65 FR 6796, section V.I.3.

<sup>10</sup> The in-use factors applied for NO<sub>x</sub> in the Tier 2 rule ranged from 1.4 to 1.7 depending on the bin.

using the option—tighter PM standard and longer useful life—will apply to all

altitudes. Table 5 summarizes the base Tier 2 and optional standards for

manufacturers choosing this high altitude option.

TABLE 5.—TIER 2 NO<sub>x</sub> AND PM EMISSIONS STANDARDS FOR LIGHT-DUTY DIESEL VEHICLES UNDER THE OPTIONAL HIGH ALTITUDE COMPLIANCE FACTOR

[Available for model years 2007 through 2009]

Bin	Program	NO <sub>x</sub> standards (g/mi)		PM standards (g/mi)	Useful life <sup>a</sup> (miles)
		Certification and in-use at low altitude	In-use at high altitude	Certification and In-use at all altitudes	
8	Base Tier 2	0.20	0.20	0.02	120k.
	Option <sup>b</sup>	0.20	0.24	0.01	150k.
7	Base Tier 2	0.15	0.15	0.02	120k.
	Option <sup>b</sup>	0.15	0.18	0.01	150k.

<sup>a</sup> 120,000 miles or 10 years, whichever occurs first; 150,000 miles or 15 years, whichever occurs first.

<sup>b</sup> An in-use at high altitude multiplicative factor of 1.2 has been applied to the certification NO<sub>x</sub> standard; this would be available to NO<sub>x</sub> only.

Note that the optional standards shown in Table 5 carry with them a requirement to certify to a 150,000 mile useful life. There is a provision in the Tier 2 program that allows manufacturers to forego compliance with intermediate useful life standards (only bins 5 through 8 have intermediate useful life standards in the final Tier 2 program) provided they certify the vehicle to a 150,000 mile useful life.<sup>11</sup> Bins 5 through 8 vehicles using the option to forego intermediate useful life standards in favor of a 150,000 mile useful life are not permitted to generate additional NO<sub>x</sub> credits toward the fleet average NO<sub>x</sub> standard. Similarly, under this option, manufacturers choosing the option to use the high altitude compliance factor will not be allowed to generate additional NO<sub>x</sub> credits toward the fleet average NO<sub>x</sub> standard.

We are providing this high altitude alternative compliance option for the same reason stated above for the US06 option—because diesel vehicles have rapidly improved, reducing their NO<sub>x</sub> emissions by more than 80 percent, and will be able to fully comply with all of the Tier 2 provisions given only a few more years of development. We believe this option is environmentally neutral. While vehicles using the option will be allowed a compliance margin of 20 percent for NO<sub>x</sub> at high altitude, that comes with a 50 percent more stringent PM standard at all altitudes and an increased useful life for both the NO<sub>x</sub> and PM standards.

**II. Statutory and Executive Order Reviews**

*A. Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency is required to determine whether this regulatory action would be “significant” and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The order defines a “significant regulatory action” as any regulatory action that is likely to result in a rule that may:

- Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,
- Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, we have determined that this final rule is not a “significant regulatory action.”

*B. Paperwork Reduction Act*

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and implementing regulations, 5 CFR part 1320, do not apply to this action as it does not involve the collection of information as defined therein.

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*

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities.

For purposes of assessing the impacts of today’s direct final rule on small entities, small entity is defined as: (1) A motor vehicle manufacturer with fewer than 1000 employees; (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.

<sup>11</sup> 40 CFR 86.1811–04(c)(4).

After considering the economic impacts of today's final rule on small entities, EPA has concluded 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 proposed rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may conclude 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 direct final rule will not have any adverse economic impact on small entities. Today's rule revises certain provisions of the Tier 2 rule (65 FR 6698, February 10, 2000), such that regulated entities have more flexibility in complying with the requirements of the Tier 2 rule. More specifically, today's action provides alternative compliance options that relax very limited elements of the Tier 2 standards in return for greater stringency in other, broader elements of the standards.

#### *D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and the private sector. Under section 202 of the UMRA, we generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "federal mandates" that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more for any single year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and to adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative that is not the least costly, most cost-effective, or least burdensome alternative if we

provide an explanation in the final rule of why such an alternative was adopted.

Before we establish any regulatory requirement that may significantly or uniquely affect small governments, including tribal governments, we must develop a small government plan pursuant to section 203 of the UMRA. Such a plan must provide for notifying potentially affected small governments, and enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant federal intergovernmental mandates. The plan must also provide for informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule contains no federal mandates for state, local, or tribal governments as defined by the provisions of Title II of the UMRA. The rule imposes no enforceable duties on any of these governmental entities. Nothing in the rule will significantly or uniquely affect small governments.

We have determined that this rule does not contain a federal mandate that may result in estimated expenditures of more than \$100 million to the private sector in any single year. This action has the net effect of providing alternative compliance options within the Tier 2 rule. Therefore, the requirements of the UMRA do not apply to this action.

#### *E. Executive Order 13132: Federalism*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires us to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." The phrase "policies that have federalism implications" is defined in the Executive Order to include regulations that 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."

Under section 6 of Executive Order 13132, we may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or we consult with state and local officials early in the process of developing the proposed regulation. We also may not issue a regulation that has federalism implications and that preempts state

law, unless we consult with state and local officials early in the process of developing the proposed regulation.

Section 4 of the Executive Order contains additional requirements for rules that preempt state or local law, even if those rules do not have federalism implications (i.e., the rules 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). Those requirements include providing all affected state and local officials notice and an opportunity for appropriate participation in the development of the regulation. If the preemption is not based on express or implied statutory authority, we also must consult, to the extent practicable, with appropriate state and local officials regarding the conflict between state law and federally protected interests within the Agency's area of regulatory responsibility.

This 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 rule provides alternative compliance options for complying with existing rules that adopted national standards to control vehicle emissions and gasoline fuel sulfur levels. The requirements of the rule will be enforced by the federal government at the national level. Thus, the requirements of Section 6 of the Executive Order do not apply to this rule.

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in Executive Order 13175. Today's rule does not uniquely affect the communities of American Indian tribal governments since the motor vehicle requirements for private businesses in today's rule will have national applicability. Furthermore, today's rule does not impose any direct compliance costs on these communities and no circumstances specific to such

communities exist that will cause an impact on these communities beyond those discussed in the other sections of today's document. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866; and, (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, section 5-501 of the Executive Order directs us to evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rule is not subject to the Executive Order because it is not an economically significant regulatory action as defined by Executive Order 12866. Furthermore, this rule does not concern an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children.

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

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), section 12(d) of Public Law 104-113, directs us to use voluntary consensus standards in our regulatory activities unless it would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) developed or adopted by voluntary consensus standards bodies. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

This rule references technical standards adopted by us through previous rulemakings. No new technical standards are established in today's rule. The standards referenced in today's rule involve the measurement of gasoline fuel parameters and motor vehicle emissions.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to Congress and the Comptroller General of the United States. We will submit 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 United States prior to publication of the rule in the Federal Register. A Major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective June 28, 2006.

I. Statutory Provisions and Legal Authority

Statutory authority for today's final rule is found in the Clean Air Act, 42 U.S.C. 7401 et seq., in particular, section 202 of the Act, 42 U.S.C. 7521. This rule is being promulgated under the administrative and procedural provisions of Clean Air Act section 307(d), 42 U.S.C. 7607(d).

List of Subjects in 40 CFR Part 86

Environmental protection, Administrative practice and procedure, Motor vehicle pollution.

Dated: March 21, 2006.

Stephen L. Johnson, Administrator.

■ For the reasons set forth in the preamble, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 86—CONTROL OF EMISSIONS FROM NEW AND IN-USE HIGHWAY VEHICLES AND ENGINES

■ 1. The authority citation for part 86 continues to read as follows:

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

Subpart S—[Amended]

■ 2. Section 86.1811-04 is amended by adding paragraphs (f)(8) and (p)(5) to read as follows:

§ 86.1811-04 Emission standards for light-duty vehicles, light-duty trucks and medium-duty passenger vehicles.

\* \* \* \* \*

(f) \* \* \*

(8)(i) For model year 2007 through 2009 diesel LDVs and diesel LDT1s only, a manufacturer may optionally comply with the 4000 mile US06 NMHC+NOx standard shown in Table S04-4 for LDT2s (0.25 g/mile), instead of the standards for LDV/LDT1s (0.14 g/mile). A manufacturer choosing this option also must comply with intermediate life SFTP NMHC+NOx standards determined using the calculation described under paragraph (f)(6)(ii) of this section. A manufacturer choosing this option must comply with the SFTP NMHC+NOx standard determined under paragraph (f)(6)(ii) not only at intermediate life but also at full useful life and must certify such vehicles to this SFTP NMHC+NOx standard for a full useful life of 150,000 miles or 15 years, whichever occurs first.

(ii) In Part I of its certification application for model years 2007 through 2009, a manufacturer of diesel LDV/LDT1s must declare which provision it will use (the base Tier 2 provision of paragraphs (f)(1) and (f)(2) of this section or the option described in paragraph (f)(8)(i) of this section).

\* \* \* \* \*

(p) \* \* \*

(5) For diesel vehicles certified to bin 7 and bin 8 only in model years 2007 through 2009, a manufacturer may optionally comply with the bin 5 FTP PM standard shown in Table S04-1. For diesel vehicles choosing this option, separate in-use NOx standards apply at high altitude conditions as defined in § 86.1803-01. These standards are determined by multiplying the applicable NOx certification standards by a factor of 1.2. The resultant standards apply only in-use at high altitude conditions and do not apply for certification or selective enforcement auditing. A manufacturer choosing this option must certify such vehicles to the applicable FTP NOx and PM standards for a full useful life of 150,000 miles or 15 years, whichever occurs first. A manufacturer choosing this option would not be allowed to generate additional credits as described under § 86.1860-04 (g).

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