

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS-FRL-7416-7]

RIN 2060-A123

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 clarify and revise certain provisions of the Tier 2/Gasoline Sulfur regulations (hereinafter referred to as the Tier 2 rule). Today's action makes minor revisions to clarify the regulations governing compliance with the Tier 2 rule, and it modifies the Tier 2 program to provide for the certification of cleaner diesel engines than were anticipated during the interim Tier 2 program (through the 2006 model year).

DATES: This direct final rule is effective on March 6, 2003, without further notice, unless we receive adverse comments by January 6, 2003, or if we receive a request for a public hearing by December 23, 2002. 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: *Comments:* All comments and materials relevant to today's action should be submitted to Public Docket No. A-97-10 at the following address: Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

Docket: Materials relevant to this rulemaking are contained in Public

Docket Number A-97-10 at the following address: EPA Docket Center (EPA/DC), Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, except on government holidays. You can reach the Reading Room by telephone at (202) 566-1742, and by facsimile at (202) 566-1741. The telephone number for the Air Docket is (202) 566-1742. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

FOR FURTHER INFORMATION CONTACT: Roberts French, U.S. EPA, National Vehicle and Fuel Emissions Laboratory, Assessment and Standards Division, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone (734) 214-4380, fax (734) 214-4050, e-mail french.roberts@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 March 6, 2003, without further notice unless we receive adverse comment by January 6, 2003, or a request for a public hearing by December 23, 2002. 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/docs/fedrgstr/epa-air/> (either select a desired date or use the Search feature).

Please note that due to differences between the software used to develop the documents and the software into which the documents may be downloaded, changes in format, page length, etc., may occur.

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 ^a	SIC codes ^b	Examples of potentially regulated entities
Industry	336111 336112	3711	Automobile and light truck manufacturers.

^a North American Industry Classification System (NAICS).
^b Standard Industrial Classification (SIC) system code.

I. Overview of Technical Amendments

The technical 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. Although we

attempt to provide some context in the following discussions, the emission control program that we are amending is very complex and detailed and cannot be described completely in this direct final rule. Readers are advised to consult the documents associated with this rulemaking if they require more

information than is provided in this direct final rule. Information regarding the Tier 2 rule that readers may be interested in consulting may be found on the EPA Web site at <http://www.epa.gov/otaq/tr2home.htm>.

The Tier 2/Gasoline Sulfur program is 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 begins 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). The program will bring about major reductions in annual emissions responsible for ozone and particulate matter problems.

A. Light-duty Diesel Provisions Under the Interim Tier 2 Program

The Tier 2 rule when fully phased in contains eight emission standards "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_x standard. Two additional bins—bins 9 and 10—are available only during the interim program (2004 through the 2006 model year for light-duty vehicles (LDVs) and light light-duty trucks (LLDTs), and through the 2008 model year for heavy light-duty trucks (HLDTs) and medium-duty passenger vehicles (MDPVs)).^{1 2} This direct final rule clarifies some aspects of the interim program requirements for light-duty diesel vehicles certifying to bins 9 and 10.

¹ One additional temporary bin (bin 11) is available that applies only to MDPVs through the 2008 model year.

² "Light-duty vehicle" means a passenger car or a derivative of a passenger car, seating 12 persons or less. "Light-duty truck" means a vehicle with a gross vehicle weight rating of up to 8500 pounds and a curb weight of up to 6000 pounds that is designed primarily for transportation of property or more than 12 persons, or that has off-road capabilities. "Light light-duty truck" means a light-duty truck with a gross vehicle weight rating of 6000 pounds, and a "heavy light-duty truck" is a light-duty truck with a gross vehicle weight rating of more than 6000 pounds. A "medium-duty passenger vehicle" is a new class of vehicle introduced in the Tier 2 program that includes sport-utility vehicles and passenger vans rated at between 8500 and 10,000 pounds gross vehicle weight rating.

In addition to bins of exhaust emission standards for the Federal Test Procedure (FTP), the Tier 2 rule also established exhaust emission standards for the Supplemental Federal Test Procedure (SFTP). The SFTP procedures are intended to control emissions that occur during types of driving that are not well-represented on the FTP, including rapid accelerations and decelerations, high speed driving, and driving with the air conditioner operating.

With the exception of some adjustments to the interim program to account for the lack of availability of low sulfur diesel fuel, an overarching principle of the Tier 2 program is the applicability of the same Tier 2 standards to all LDVs and LDTs, regardless of the fuel they are designed to use. Diesel powered LDVs and LDTs tend to be used in the same applications as their gasoline counterparts, and we believe that they should therefore meet the same standards. We stated in the Tier 2 final rule that major technological innovations will not be required for gasoline vehicles to meet the Tier 2 standards, but that the standards will be especially challenging for diesel vehicles and will likely require the application of advanced aftertreatment technologies. These aftertreatment technologies are dependent on the availability of clean diesel fuel, without which they are not effective and may be susceptible to damage. For this reason, we included some provisions in the initial years of the Tier 2 program to enable diesels to meet the interim requirements without the availability of low sulfur diesel fuel. We also allowed manufacturers to certify vehicles to an interim bin 10 during the initial years of the program. We stated that we believed diesel engines could meet the full useful life requirements in bin 10 without the need for low sulfur diesel fuel (65 FR 6739). Beyond the interim program, however, we have provided for the availability of clean diesel fuel starting in mid-2006 (66 FR 5001, January 18, 2001), and thus the program was structured so that diesels will be treated no differently than gasoline vehicles when the final Tier 2 program is effective and applicable to the entire fleet.

Section IV.B.4.a of the Tier 2 rule preamble (65 FR 6740) briefly explains the bin 10 provisions as they relate to diesel vehicles. Specifically, we stated that diesel vehicles "may opt not to meet the intermediate life standards associated with this bin." In addition, a footnote to the table of Tier 2 intermediate useful life standards for the Federal Test Procedure (FTP) reads

"Intermediate life standards are optional for diesels certified to bin 10" (65 FR 6741). Although not specifically stated in this language, it was EPA's intent to exempt diesel vehicles from the intermediate life standards of both the FTP and SFTP. As was noted in the Tier 2 rule, low sulfur diesel fuel may be needed for diesels to meet the intermediate useful life standards of the interim Tier 2 program, yet low sulfur diesel fuel will not be widely available during the time frame of the interim program (65 FR 6740). This exemption was intended to apply only for the temporary duration of bin 10. The Tier 2 rule provided the option for diesels of opting out of the intermediate life standards of bin 10 in order to enable light-duty diesels to continue to be manufactured in the absence of low sulfur fuel, while their gasoline-fueled counterparts will already be able to enjoy the advantages of clean low sulfur fuel in meeting the interim standards. Further, the intermediate useful life standards for diesels certifying to bin 10 during the interim program are not necessary because diesel engine-out emissions (e.g., emissions from diesel vehicles not equipped with aftertreatment emission control devices) are typically stable or decreasing as mileage is accumulated.

Although we intended to make optional for diesels the FTP intermediate useful life standards, the SFTP 4,000-mile standards, and the SFTP intermediate useful life standards during the interim program, the regulatory language does not capture this intent and requires diesel vehicles certifying to bin 10 to comply with full useful life SFTP standards and either the 4,000-mile or intermediate life SFTP standards. Specifically, the regulations currently require that all vehicles subject to SFTP standards must meet a 4,000-mile standard and a full useful life standard. The regulations currently provide that diesel vehicles have the option of complying with an intermediate useful life standard instead of the 4,000-mile standard through the 2006 model year.

In this direct final rule, we are amending the regulations to be consistent with the original intent that for diesel vehicles certifying to bin 10, compliance with the intermediate useful life standards of both the FTP and the SFTP be optional. This optional compliance will only be available as long as bin 10 is available. In the case of the SFTP standards, this means that, like the FTP, diesel vehicles will only be required to meet a full useful life standard. This change primarily applies to NO_x emissions, as there is no

intermediate useful life standard for particulate matter (PM) on either the FTP or SFTP.³

This direct final rule also revises the regulations applicable to diesel vehicles certified to bin 9 so that the intermediate useful life FTP and SFTP standards will also be optional for bin 9 diesel vehicles. When the Tier 2 rule was finalized more than two years ago, we limited the diesel intermediate life option to bin 10 because the information available at the time suggested that it would be challenging for diesel vehicles to meet the bin 10 standards in the absence of low sulfur diesel fuel, and no vehicle manufacturers were predicting that diesels would be able to meet the standards of more stringent bins during the interim program. However, in the time since the finalization of the Tier 2 rule we have learned that light-duty diesel vehicles are under development that are capable of meeting the bin 9 exhaust emission standards and could be introduced during the interim Tier 2 program. One manufacturer of these vehicles has therefore requested that the regulations be modified such that the bin 9 requirements for diesels mirror those of bin 10 by providing diesels the option of opting out of meeting the intermediate useful life standards. Certification to the bin 9 standards would be a significant achievement in the advancement of light-duty diesel technology in the initial years of the Tier 2 program, as the NO_x standard is one-half that of the bin 10 NO_x standard (0.3 grams per mile for bin 9 and 0.6 grams per mile for bin 10). Further, the PM standard for bin 9 is 0.06 grams per mile, whereas the bin 10 PM standard is 0.08 grams per mile. If we had anticipated at the time of finalizing the Tier 2 rule that diesels would be capable of meeting the bin 9 standards in the absence of low sulfur diesel fuel, we would have extended the intermediate life opt-out option to diesels certifying to both bin 9 and bin 10 standards.

Therefore, in this direct final rule we are modifying the provisions of the Tier 2 interim program such that the bin 9 provisions are consistent with bin 10. We are doing this by extending the intermediate life opt-out option to diesels certifying to bin 10 or bin 9. Diesel vehicles require this additional flexibility for bin 9 during the interim period for the same reasons that this option was provided for bin 10, as discussed above (*i.e.*, the lack of availability of low sulfur diesel fuel). As

discussed, this option would allow diesel light-duty vehicles to comply with only the full useful life standards of both the FTP and SFTP during the interim program. This change will likely result in the introduction of cleaner diesels than otherwise would be the case (during the interim period), and furthermore, we view the possibility of diesels being able to certify to the bin 9 standards as a great success story for clean diesels that will facilitate the transition of diesel vehicles to successfully meeting the Tier 2 standards. We believe this revision will encourage development and application of diesel engines with engine-out emissions even lower than initially expected when the Tier 2 rule was promulgated. This could stimulate implementation of technological advances that may reduce diesel emissions in future years.

B. Definition of Small Volume Manufacturer

The Tier 2 rule added a new definition to 40 CFR part 86, subpart S for "U.S. Sales." This new definition specifies that the term means sales in the United States, excluding sales in California and in states that have adopted the California emissions control program for motor vehicles under section 177 of the Clean Air Act. This new definition became necessary to ensure that vehicles sold in states not subject to the federal emissions control program would not be included in the determination of a manufacturer's fleet average emissions level. However, the new definition inadvertently changed the intended use of the term in some other sections of the Tier 2 regulations. In particular, the term "U.S. sales" is used to determine the eligibility of manufacturers for provisions applicable to small volume manufacturers (see 40 CFR 86.1801-01(d), 86.1838-01(b)(1), and 86.1838-01(b)(2)). Applying the new definition of U.S. sales in these cases could result in an incorrect determination of eligibility for small volume manufacturer provisions, because the small volume provisions intended to use the term to mean sales in all U.S. states and territories, including California and the section 177 states. Therefore, this direct final rule is amending 40 CFR 86.1801-01(d), 86.1838-01(b)(1), and 86.1838-01(b)(2) such that the term "U.S. sales" is replaced with "sales in all states and territories of the United States." The word "state" is used in this context consistently with the definition of "State" in section 302(d) of the Clean Air Act, and includes the District of Columbia, Puerto Rico, and other parts

of the United States that are not formally considered to be states.

C. Supplemental Federal Test Procedure Requirements for Interim Non-Tier 2 Vehicles

40 CFR 86.1811-04(f)(4) currently states that "[i]nterim non-Tier 2 gasoline, diesel and flexible-fueled LDV/LLDTs certified to bin 10 FTP exhaust emission standards * * * may meet the gasoline Tier 1 SFTP requirements found at § 86.1811-01(b)." The effect of the language in the current regulations is to apply the Tier 1 SFTP standards for LDVs to LDT1s and LDT2s (since LLDT encompasses both LDT1s and LDT2s). However, the Tier 1 SFTP regulations applicable to LDT2s are different from the SFTP standards applicable to LDVs and LDT1s. In addition, the Tier 1 SFTP emission standards in § 86.1811-01(b) are applicable only to LDVs. The Tier 1 standards for LDT1s are in 86.1812-01, and those for LDT2s are in § 86.1813-01. The intent of paragraph 40 CFR 86.1811-04(f)(4) was to, in the specific cases noted in the paragraph, provide the option of meeting the Tier 1 SFTP standards in a manner consistent with the type and definition of the vehicle. Therefore, in this direct final rule we are amending 40 CFR 86.1811-04(f)(4) to state, in its entirety:

Interim non-Tier 2 gasoline, diesel and flexible-fueled LDV/LLDTs certified to bin 10 FTP exhaust emission standards from Table S04-1 in paragraph (c) of this section may meet the gasoline Tier 1 SFTP requirements found at §§ 86.1811-01(b), 86.1812-01(b), 86.1813-01(b), for LDVs, LDT1s, and LDT2s, respectively.

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;

³ In general, limits or emissions of other regulated pollutants (*e.g.*, HC, CO) are not as significant a challenge for diesel vehicles as are NO_x and PM standards.

- 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.

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. After considering the economic impacts of today's direct final rule on small entities, we have determined that this action will not have a significant economic impact on a substantial number of small entities. 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 will find it easier to comply with the requirements of the Tier 2 rule. More specifically, today's action makes minor revisions to clarify the regulations governing compliance with the Tier 2 rule.

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 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 revising certain provisions of 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." "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 consults 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 the Agency consults 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 revises certain provisions of earlier 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 March 6, 2003.

III. 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: November 26, 2002.

Christine Todd Whitman,
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 is revised to read as follows:

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

Subpart S—[Amended]

2. Section 86.1801-01 is amended by revising paragraph (d) to read as follows:

§ 86.1801-01 Applicability.

* * * * *

(d) *Small volume manufacturers.* Special certification procedures are available for any manufacturer whose projected or actual combined sales in all states and territories of the United States of light-duty vehicles, light-duty trucks, heavy-duty vehicles, and heavy-duty engines in its product line (including all vehicles and engines imported under the provisions of 40 CFR 85.1505 and 85.1509) are fewer than 15,000 units for the model year in which the manufacturer seeks certification. The small volume manufacturer's light-duty vehicle and light-duty truck certification procedures and described in § 86.1838-01.

* * * * *

3. Section 86.1811-04 is amended by:

- a. Revising paragraph (c)(4)(iv);
- b. Revising Table S04-2 in paragraph (c)(6);
- c. Revising paragraph (f)(4); and
- d. Adding paragraph (f)(7).

The revisions and additions read as follows:

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

* * * * *

(c) * * *

(4) * * *

(iv) For diesel vehicles certified to bin 9 or bin 10, intermediate life standards are optional regardless of whether the manufacturer certifies the test group to a full useful life of 120,000 miles or 150,000 miles.

* * * * *

(6) * * *

TABLE S04-2.—TIER 2 AND INTERIM NON-TIER 2 INTERMEDIATE USEFUL LIFE (50,000 MILE) EXHAUST MASS EMISSION STANDARDS
[grams per mile]

Bin No.	NO _x	NMOG	CO	HCHO	PM	Notes
11	0.6	0.195	5.0	0.022	.....	a c f h
10	0.4	0.125/0.160	3.4/4.4	0.015/0.018	.....	a b d f g h
9	0.2	0.075/0.140	3.4	0.015	.....	a b c f g h
8	0.14	0.100/0.125	3.4	0.015	.....	b f h i
7	0.11	0.075	3.4	0.015	.....	f h
6	0.08	0.075	3.4	0.015	.....	f h
5	0.05	0.075	3.4	0.015	.....	f h

Notes:

- ^a This bin deleted at end of 2006 model year (end of 2008 model year for HLDTs and MDPVs).
- ^b Higher NMOG, CO and HCHO values apply for HLDTs and MDPVs only.
- ^c This bin is only for MDPVs.
- ^d Optional NMOG standard of 0.195 g/mi applies for qualifying LDT4s and qualifying MDPVs only.
- ^e Optional NMOG standard of 0.100 g/mi applies for qualifying LDT2s only.
- ^f The full useful life PM standards from Table S04-1 also apply at intermediate useful life.
- ^g Intermediate life standards of this bin are optional for diesels.
- ^h Intermediate life standards are optional for vehicles certified to a useful life of 150,000 miles.
- ⁱ Higher NMOG standard deleted at end of 2008 model year.

(f) * * *

(4) Interim non-Tier 2 gasoline, diesel and flexible-fueled LDV/LLDTs certified to bin 10 FTP exhaust emission standards from Table S04-1 in paragraph (c) of this section may meet the gasoline Tier 1 SFTP requirements found at §§ 86.1811-01(b), 86.1812-01(b), 86.1813-01(b), for LDVs, LDT1s, and LDT2s, respectively.

(7) For diesel vehicles certified to the bin 9 or bin 10 standards of paragraph (c) of this section, 4000 mile SFTP and intermediate life SFTP standards are optional regardless of whether the manufacturer certifies the test group to a full useful life of 120,000 miles or 150,000 miles.

4. Section 86.1838-01 is amended by revising paragraphs (b)(1)(i), (b)(1)(ii), and (b)(2)(i) to read as follows:

§ 86.1838-01 Small volume manufacturer certification procedures.

* * * * *

(b) * * *

(1) * * *

(i) The optional small-volume manufacturers certification procedures apply to LDV/Ts and MDPVs produced by manufacturers with sales in all states and territories of the United States, including all vehicles and engines imported under provisions of 40 CFR 85.1505 and 85.1509 (for the model year in which certification is sought) of fewer than 15,000 units (LDV/Ts, MDPVs, heavy-duty vehicles and heavy-duty engines combined).

(ii) If the aggregated sales in all states and territories of the United States of the manufacturer, as determined in paragraph (b)(3) of this section are fewer than 15,000 units, the manufacturer (or each manufacturer in the case of

manufacturers in an aggregated relationship) may certify under the provisions of paragraph (c) of this section.

(2) * * *

(i) If the aggregated sales in all states and territories of the United States, as determined in paragraph (b)(3) of this section are equal to or greater than 15,000 units, then the manufacturer (or each manufacturer in the case of manufacturers in an aggregated relationship) will be allowed to certify a number of units under the small volume test group certification procedures in accordance with the criteria identified in paragraphs (b)(2)(ii) through (iv) of this section.

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