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Environmental Protection Agency

40 CFR Part 86

Motor Vehicle and Engine Compliance Program Fees for: Light-Duty Vehicles and Trucks; Heavy-Duty Vehicles and Engines; and Motorcycles; Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS-FRL-4143-8]

RIN 2060-AD35

Motor Vehicle and Engine Compliance Program Fees for: Light-Duty Vehicles; Light-Duty Trucks; Heavy-Duty Vehicles and Engines; and Motorcycles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule establishes provisions for the EPA to collect fees to recover Agency costs incurred for activities associated with the Motor Vehicle and Engine Compliance Program (MVECP). The MVECP includes all compliance and enforcement activities performed by EPA which are associated with certification, fuel economy, Selective Enforcement Auditing (SEA), and in-use compliance activities. The fees will recover those compliance costs which the government incurs in providing manufacturers or Independent Commercial Importers (ICIs) with Certificates of Conformity, compliance monitoring, fuel economy labels, and Corporate Average Fuel Economy (CAFE) calculations necessary to market vehicles in the U.S. and to meet requirements otherwise imposed by statute. This program will apply to all manufacturers and ICIs of light-duty vehicles (LDVs), light-duty trucks (LDTs), heavy-duty vehicles (HDVs), heavy-duty engines (HDEs), and motorcycles (MCs).

EFFECTIVE DATE: The final rule is effective August 6, 1992.

ADDRESSES: Materials relevant to this rulemaking are contained in Docket No. A-91-15. The docket is located at The Air Docket, 401 M Street SW., Washington, DC 20460 and may be viewed in Room M-1500 from 8 a.m. until noon and from 1:30 p.m. until 3:30 p.m. Monday through Friday. As provided in 40 CFR part 2, a reasonable fee may be charged by EPA for photocopying.

FOR FURTHER INFORMATION CONTACT: Daniel L. Harrison or Cheryl Adelman, Certification Division, U.S. EPA, 2565 Plymouth Road, Ann Arbor, Michigan 48105, Telephone (313) 668-4281.

SUPPLEMENTARY INFORMATION:

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I. Introduction

On July 1, 1991, EPA published (56 FR 30230) a Notice of Proposed Rulemaking (NPRM) proposing regulations to establish fees to recover all reasonable costs associated with the MVECP.

On July 23, 1991, EPA held a public hearing concerning the proposed regulations. Comments from that hearing and written comments were considered in developing this final rule and are included in the public docket.

This final rule amends 40 CFR part 86 to add provisions which will authorize EPA to collect fees for certain activities required of the Agency pursuant to the Clean Air Act (CAA) (42 U.S.C. 7401 *et seq.*), as amended by Public Law 101-549, the Energy Policy and Conservation Act (EPCA) (42 U.S.C. 6201 *et seq.*), and the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2001 *et seq.*). Authority to collect fees for the MVECP is provided by the Independent Offices Appropriations Act (IOAA) (31 U.S.C. 9701), and section 217 of the CAA, as amended.

Today's action will establish a fee program to recover those costs incurred by EPA in administering the MVECP, including manufacturer [1] certification, SEA, certification compliance audits and investigations, in-use compliance monitoring, fuel economy labeling, and CAFE calculations. This fee program will be based on all recoverable direct and indirect costs associated with administering these activities.

The event which triggers EPA costs is the certification request.[2] Certification requests can be divided into three types corresponding to the three major divisions of regulated mobile sources: LDVs and LDTs; HDVs and HDEs; and MCs. Within each certification request type, all activities associated with the MVECP (certification, fuel economy, SEA, and in-use compliance programs) can be grouped together. By determining the costs and events associated with the MVECP, a fee has been calculated for each certification request type.

A fair and equitable method of calculating costs is to determine the average cost to EPA of responding to each type of certification request, including all related activities. Today's regulation will make the MVECP self-sustaining to the extent possible. Those manufacturers benefiting from the services provided will bear the government's cost of administering the program on their behalf.

II. Background

A. Legal Authority

EPA is authorized under section 217 of the CAA, as amended by Pub. L. 101-549, section 225, to establish fees for specific services it provides to vehicle manufacturers. The CAA provides in pertinent part:

Consistent with section 9701 of title 31, United States Code, the Administrator may promulgate * * * regulations establishing fees to recover all reasonable costs to the Administrator associated with—

(1) New vehicle or engine certification under section 206(a) or part C,

(2) New vehicle or engine compliance monitoring and testing under section 206(b) or part C,[3] and

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[1] Manufacturer, as used in this NPRM, means all entities or individuals requesting certification, including, but not limited to, Original Equipment Manufacturers (OEMs) and ICIs.

[2] A certification request is defined as a manufacturer's request for certification evidenced by the submission of an application for certification, engine system information data sheet, or ICI Carry-Over data sheet.

[3] Part C of the CAA, as amended, pertains to Clean Fuel Vehicles.

(3) In-use vehicle or engine compliance monitoring and testing under section 207(c) or part C.

The Omnibus Budget Reconciliation Act (OBRA) of 1990, Public Law 101-508, section 6501, requires EPA to assess and collect fees for services and activities carried out pursuant to laws administered by the EPA. OBRA also requires that EPA collect, in aggregate, fees of not less than $38,000,000 in fiscal years 1992, 1993, 1994, and 1995. The MVECP fees will represent part of the aggregate EPA fees collected in each of these fiscal years.

EPA as an independent regulatory agency, is also authorized under the IOAA to establish fees for other services and benefits it provides. This provision, originally designated as 31 U.S.C. 483(a), was codified into law on September 13, 1982, at 31 U.S.C. 9701. This provision encourages federal regulatory agencies to recover, to the fullest extent possible, costs for services provided to identifiable recipients. The relevant text states:

It is the sense of Congress that each service or thing of value provided by an agency * * * to a person * * * is to be self-sustaining to the extent possible. The head of an agency may prescribe regulations establishing the charge for a service or thing of value provided by the agency. * * * Each charge shall be fair and based on costs to the Government, the value of the service or thing to the recipient, and other relevant facts.

B. Motor Vehicle and Engine Compliance Program Description

The CAA requires that motor vehicles, prior to being distributed or offered for sale in the U.S., be covered by a Certificate of Conformity indicating compliance with the emission standards set forth in the Act. Each model year (MY), EPA receives approximately 575 certification requests for LDVs/LDTs engine-system combinations, 135 for heavy-duty (HD) engine-system combinations, and 85 for MC engine-system combinations. EPA processes these applications and makes a determination of conformance with the CAA and related regulations. If the vehicle or engine satisfies the prescribed emission standards, EPA issues a Certificate of Conformity for the relevant engine-system combination.[4]

The certification process includes, but is not limited to, application for certification review, durability justification review, emission-data vehicle approval and processing, and certification request processing and computer support. Other activities related to the certification process include auditing the applicant's testing and data collection procedures, laboratory correlation, and EPA confirmatory testing and compliance inspections and investigations related to certification.

EPA further ensures compliance with the CAA through activities such as investigations to prevent the sale of uncertified new vehicles and engines; ICI review, processing and approval for final importation of vehicles and engines; and SEA and in-use compliance programs. SEA activities include the selection and testing of vehicles and engines off the assembly line at various production plants around the world to determine compliance with emission standards. In-use compliance activities ensure that vehicles and engines continue to meet emission standards throughout their useful life.[5]

Based on the above activities, EPA determines whether a manufacturer meets the CAA requirements, issues a Certificate of Conformity, and ensures compliance. A manufacturer is thereby permitted to market vehicles for sale in the U.S.

C. Fuel Economy Program Description

For LDVs/LDTs, EPA also administers several aspects of the fuel economy program, including fuel economy labeling requirements and CAFE calculations. These activities require EPA to do confirmatory testing of vehicles; review and audit manufacturers' vehicle and engine tests, calculations, and labels; furnish computer processing and computer programming support; and calculate fuel economy values.

Fuel economy labeling activities provide fuel economy values and other labeling information. These labels are used by automotive manufacturers both to market their product and meet the requirements of the EPCA, 42 U.S.C. 6201. EPA also oversees CAFE testing and calculations which are used to determine each manufacturer's compliance with the corporate average fuel economy standards specified in EPCA. Annually, EPA processes approximately 1,250 fuel economy label requests and 500 CAFE calculations.

The fuel economy program is intertwined with the certification process of the MVECP for LDVs and LDTs. EPCA itself requires that fuel economy testing be conducted using CAA certification test procedures to the extent possible. 15 U.S.C. 2003(d)(1). The program's interrelationship in practice is demonstrated by the fact that both programs collect fuel economy and emissions data. Emission-data vehicles provide both emissions and fuel economy data.

Further, fuel economy-data vehicles are tested for emissions and must comply with the emission standards. Only then can the fuel economy data be used in the fuel economy program. Thus, each program generates data to support the other and to support decisions on both certification and fuel economy calculations. This interrelationship has allowed EPA to streamline the certification program and procedures, thereby minimizing costs directly incurred by the industry as well as by EPA.

D. Combined Certification and Fuel Economy Program Fee

Since EPA costs for fuel economy are interrelated with those of certification, EPA has combined the costs per certificate and costs per fuel economy basic engine [6] and will assess a fee only on a certification request basis. The fee encompasses the costs from both the certification and fuel economy activities associated with the request for certification.

A combined fee for certification and fuel economy activities is also justified by the process which leads to EPA activities and cost. Certification requests are made by a manufacturer for each engine-system combination. The certification request initiates EPA activities for both the certification and fuel economy programs. If a manufacturer does not request certification, neither the certification activities nor the fuel economy activities are undertaken and EPA avoids costs incurred in administering these programs.

Even though there is a combined fee, the fuel economy portion of the fee will go to the general fund of the U.S. Treasury, while the certification portion of the fee will go to a special fund as required by the CAA. These Treasury

[4] As defined in 40 CFR 86.082-2, "engine-system combination" means an engine family-exhaust emission control system combination.

[5] Definitions of vehicle and engine useful life are included in sections 202 and 207 of the CAA, as amended.

[6] A fuel economy basic engine is a unique combination of manufacturer, engine displacement, number of cylinders, fuel system, catalyst usage, and other characteristics specified by the Administrator. It differs from an engine-system combination as used to distinguish designs for certification purposes in that the engine-system combination may include more than one engine displacement but only one emission control system, while a fuel economy basic engine may include more than one emission control system but only one engine displacement.

funds are described later, in the section on fee collection.

III. Fee System Requirements

A. Activity Costs To Be Recovered Through This Rule

The fees established by this rule recover all allowable direct and indirect costs incurred for the MVECP. The direct costs associated with the MVECP involve numerous activities related to certification, fuel economy, SEA, and in-use compliance. These activities include pre-production certification; testing; confirmatory testing; certification compliance audits and investigations; laboratory correlation; in-use monitoring; fuel economy selection, testing, and labeling; CAFE calculations; and fee administration. The indirect costs associated with the MVECP include costs for facilities and supporting services.

B. Activity Costs Not Recovered Through This Rule

EPA conducts numerous activities related to certification and mobile source air pollution control, in general, for which it is not proposing to charge a fee at this time. These activities include: Regulation development, emission factor testing, air quality assessment, and inspection and maintenance programs development and oversight. Although these activities benefit manufacturers by indirectly facilitating the MVECP, EPA is still evaluating whether the costs are sufficiently "associated" with the programs specified in CAA section 217, or provide a sufficient special benefit, to be recoverable.

C. Cost Determination

EPA conducted an in-depth analysis of the resources expended on the MVECP. This analysis details all direct and indirect costs incurred by EPA to operate the MVECP. EPA calculated costs for activities which are to be included in or excluded from the fee program.

The EPA Cost Analysis, "Motor Vehicle and Engine Compliance Program Fees Cost Analysis," is available in the Docket for this rulemaking.

D. Testing Authority Retained

In keeping with section 217(d) of the CAA, as amended, nothing in the fees regulations will restrict the Administrator's authority to require testing. The Administrator retains authority to require testing under all provisions of the CAA, including sections 206 and 208.

As section 217(d) makes clear, the fee program in section 217 does not limit EPA's authority to require manufacturer testing as provided in section 208. In the case of the in-use testing and the SEA programs, the fees set under section 217 are intended to cover the base program. The base program includes testing which EPA has anticipated (at the time fees are set for a given MY) and which are covered by the fee charges to manufacturers for a given MY.

E. Fee Schedule

1. Event Which Triggers EPA Costs

The event which triggers EPA costs related to the MVECP is the certification request. By seeking certification, a manufacturer potentially becomes involved in a number of EPA activities, including those related to certification, fuel economy, SEA, and in-use compliance. The fee structure will recover EPA costs for the activities associated with the MVECP, as proposed.

2. Types of Certification Requests

Three types of certification requests initiate EPA activities:

(a) LDV/LDT
(b) HDE/HDV
(c) MCs

3. Division of Costs Within Certification Request Type

The fee for each certification request type includes the costs related to that type, as proposed. For all certification request types, the fee schedule separates the costs for federal and California-only certificates,[7] and signed and unsigned certificates.[8] Further, for the HD certification request type, the fee schedule also separates the costs for HDV evaporative certificates.

4. Fee Schedule

The fee schedule for each certification request type is as follows:

Certification request type	Fee
LDV/LDT:	
Fed signed	$23,731
Cal-only signed	9,127
Fed unsigned	2,190
Cal-only unsigned	2,190
HDE/HDV:	
Fed signed	12,584
Cal-only signed	2,145
Fed unsigned	2,145
Cal-only unsigned	2,145
All evaporative-only	2,145
MCs:	
Fed signed	840
Cal-only signed	840
Fed unsigned	840
Cal-only unsigned	840

5. Special Cases

Two special cases exist which warrant additional clarification. First, in the same MY, fees will not be collected for certification requests made for an engine-system combination which is not unique. This occurs upon receipt of a certification request which represents a previously certified engine-system combination of the same MY with either a new evaporative emission family or corrections to a previously submitted certification request for running changes or averaging. For the reasons given later in this notice, an engine-system combination which is carried-over to a new MY or carried-across from another engine-system combination is unique and will be subject to a fee.

Second, California-only certification requests will be treated as a unique engine-system combination. As such, a separate fee will be charged. As noted above, the California-only fee will be lower since it does not require EPA to incur SEA and in-use compliance costs.

F. Fee Collection

1. Procedure for Paying Fees

The following procedure will be used for payment of fees. For each certification request, evidenced by an Engine System Information (ESI) form or an application for certification, manufacturers will submit a MVECP Fee Filing Form (filing form) and the appropriate fee in the form of a corporate check, money order, bank draft, certified check, or electronic funds transfer, payable in U.S. dollars, to the order of the U.S. Environmental Protection Agency. The filing form and accompanying fee will be sent to the address designated on the filing form. EPA will not be responsible for fees received in other than the designated location. Applicants will continue to submit the ESI and/or the application for certification to the Motor Vehicle Emission Laboratory in Ann Arbor, Michigan.

To ensure proper identification and handling, the check or electronic funds transfer and the accompanying filing form will indicate the manufacturer's

[7] "California-only certificate" is a Certificate of Conformity issued by EPA which signifies compliance with only the emission standards established by California. A "federal certificate" is a Certificate of Conformity issued by EPA which signifies compliance with emission requirements in 40 CFR 86 subpart A.

[8] An unsigned certificate means a certification request which does not result in a signed Certificate of Conformity because it is either voluntarily withdrawn by the manufacturer or does not receive approval from the EPA.

corporate name, the EPA standardized engine family name, and the engine system number that identifies unique engine-system combinations. Further, to expedite the payment procedure, the ESI or application for certification will contain a place for each manufacturer to indicate when the filing form and fee were submitted and the amount paid.

The full fee is to accompany the filing form. Partial payments or installment payments will not be permitted. If a filing form is submitted with an insufficient remittance, the applicant will be notified and given the opportunity to either submit the difference or withdraw the application and receive a refund of the amount paid.

2. Fee Refund

Instances may occur in which an applicant submits a filing form with the appropriate fee, has an engine-system combination undergo the certification process, but then fails to receive a signed certificate. Where a certificate is not issued, the applicant will be eligible to receive, upon request, a refund of that portion of the fee attributable to the final level of certification and to SEA and in-use compliance. The refund for each certification request type will be the percentage of the fee payment attributable to the final stages of the certification process, SEA and in-use compliance as follows:

Certification request type	Percentage of the fee payment to be refunded	
	Federal	California-only [1]
LDV/LDT	90.8	78.0
HDE/HDV	83.0	0
HD-Evaporative only	0	0
MC	0	0

[1] The California-only fee refund percentage is lower than the Federal fee refund percentage because the portion of the full fee attributable to SEA and in-use compliance for a California-only certificate request is zero.

3. Deposit of Fees: Special and General Treasury Funds

All fees which are collected will be deposited in the U.S. Treasury. Specifically, in accordance with section 217(b) of the CAA, all fees which are collected for services specified in section 217(a) of the CAA "shall be deposited in a special fund in the United States Treasury." The OBRA also provides authority to deposit funds collected pursuant to that authority in a special fund. The "special" fund will be used to carry out the programs for which the fee is collected. Fees for services which are imposed solely pursuant to the IOAA, such as fuel economy labeling, will be deposited in the General Treasury Fund. For the LDV/LDT certification request type, this will mean that 19.6% [9] of each LDV/LDT fee collected will be deposited in the General Treasury Fund. The HD and MC certification request types do not involve fuel economy costs and as such the entire fee for these types will go into the special treasury fund.

G. Implementation Schedule

When this final rule becomes effective, some applicants will have already submitted certification requests for MY93. Applicants will not be required to pay a fee nor submit a filing form for MY93 or later certificates issued prior to the effective date. A fee will be required and a filing form must be submitted for all MY93 and later certification requests submitted after the effective date of this rule.

EPA recognizes that since an applicant has no control over when EPA may issue a certificate, it may not be fair to charge a fee for certificates not issued prior to the effective date. Therefore, where an applicant has submitted a complete application for certification, without errors, prior to the effective date, a fee will not be charged and the applicant need not submit a filing form nor pay a fee.

Normally, a fee will be paid by a manufacturer with the submission of a certification request. However, on the date this rule becomes effective, some active certification requests may have been submitted to EPA for which certificates have not yet been issued. In such cases, applicants will be required to submit a filing form and the appropriate fee prior to receiving a certificate.

To summarize:

1. A fee will not be required for certificates issued prior to the effective date of the final rule.

2. A fee will not be required where a complete application for certification, without errors, has been submitted to EPA prior to the effective date of the final rule.

3. A fee will be required for all active MY93 and later certification requests submitted to EPA prior to the effective date of the final rule, where a certificate has not been issued and a complete application for certification has not been submitted to EPA.

4. A fee will be required for all MY93 and later certification requests submitted after the effective date of the final rule.

[9] The percentage of LDV/LDT costs attributable to fuel economy is calculated by removing the fuel economy costs shown in the cost study from the total LDV/LDT costs.

H. Fee Phase-In

EPA will phase-in, over two years, recovery of the total cost associated with the MVECP. This phase-in will allow industry a period to plan and budget for the payment of fees. The amount of the total fee recovered in each of the first two years of the fee program will be as follows:

MY93 50%

MY94 100%

I. Waiver or Adjustment of Fees

To obtain a hardship waiver of a portion of the fee, an applicant will need to demonstrate that:

1. The certificate is to be used for sale of vehicles or engines within the U.S.; and

2. The full fee for a certification request for a MY exceeds 1% of the retail sales value of all vehicles or, where applicable, all engines covered by that certificate. The retail sales value will be based on projected sales of all vehicles under a certificate, including vehicles modified under the modification and test option in 40 CFR 86.1509. The applicant will be expected to demonstrate the basis of its claimed projected sales through various factors, such as prior actual sales and previous waiver requests.

As stated in the NPRM, the purpose of this hardship waiver is to alleviate the severe economic hardship that the payment of the full fee could impose on small manufacturers and ICIs without undercutting the fundamental objective of section 217 of the Clean Air Act—reimbursing the government for services provided. EPA believes that the 1% waiver achieves the appropriate balance between these two factors. As only entities that have fewer than approximately 100 vehicles of average retail sales value per certificate will be able to benefit from the waiver, only those small entities that would be severely affected by the full certification fee are potentially covered by it and the overall fees received by the government will not be reduced significantly. Moreover, because applicants will have to submit a fee of either 1% of the retail sales value of the vehicles covered by a certificate or the full certification fee, whichever is less, the benefits of the waiver to applicants will decrease as the aggregate value of the vehicles covered by a certificate increases, thereby ensuring that only those who would be the most severely affected by the full fee will benefit the most from the

waiver. The public comment received supported the 1% value proposed by EPA in the NPRM, while opposing other parts of the proposed waiver provision that as discussed in the section on public participation later in this document, have been modified in response to those comments.

A request for a waiver must be submitted to EPA prior to the certification request. The applicant will have the burden of providing all documentation which will be necessary for EPA to verify that the requirements are satisfied.

If sufficient documentation is presented and a waiver granted, the fee to be paid by the applicant will be 1% of the retail sales value of the vehicles to be covered by the certification request. The fee paid will be based on projected sales for the MY for which certification is requested.

For vehicles imported under an ICI certificate, the retail sales value will be based on the vehicle's average retail value listed in the applicable National Automobile Dealer's Association (NADA) appraisal guide. Where the NADA price guide does not provide the retail value of the vehicle, or the applicant believes the NADA values is not appropriate, the applicant for waiver must demonstrate, to the satisfaction of the Administrator, the actual market value of the vehicle in the U.S. at the time of final importation.

Applicants that are granted a waiver and subsequently fail to receive a certificate pursuant to that request will be eligible to receive a partial refund. The refund will be the same percent as that allowed for manufacturers which pay the full fee (see prior Fee Refund section).

Once a waiver is approved by EPA, the applicant is required to submit a filing form with the appropriate waiver fee based upon the applicant's projections. When the sales projection and/or market value changes for a certificate and/or the certificate expires which is under a fee waiver, the applicant is required to submit a revised filing form indicating the appropriate adjustment to the waiver fee along with payment or refund request. The total waiver fee shall not exceed the full fee amount for the applicable certification request type.

J. Fee Updating Procedure

EPA will make adjustments to the fee schedule through two updating procedures. First, fees will be adjusted automatically every year by the same percentage as the percent change in the Consumer Price Index (CPI). When automatic adjustments are made, based on the CPI, the new fee schedule will be published in the Federal Register as a technical amendment to these regulations to become effective 30 days or more after publication, as specified in the rule.

Second, the fee schedule will be revisited approximately every two years to determine whether it accurately reflects the (1) level of EPA's MVECP activities being provided at the time of review, (2) costs of conducting the MVECP, and (3) number of certification requests. Any changes based on such periodic reviews will be promulgated through notice and comment rulemaking.

IV. Public Participation

EPA published an NPRM on the MVECP fee program on July 1, 1991. On July 23, 1991, a public hearing was held on the proposal. The period for the submission of written comments closed on August 22, 1991, but EPA accepted comments submitted after that date. The comments received were from manufacturers and their associations and from state agencies. The following sections briefly summarize comments on the major issues. For the complete response to comments, see the "Response to Comments on the MVECP Fees." Copies of this document and all comments are available from the public docket (see **ADDRESSES**).

Discussion of Comments and Issues

A. Fee Phase-In and Implementation Schedule

Summary of Proposal. EPA proposed that fees be collected beginning in late 1991 for certification of all vehicle and engine MYs 1993 and beyond. The amount of the total fee proposed to be recovered was 50% for MY93 and 100% for each MY thereafter.

In the NPRM, EPA also stated that, if the final rule does not become effective until January 1, 1992, or later, manufacturers would not be required to pay a fee for MY93 certificates issued prior to the effective date of the rule. If an applicant submitted an incomplete application prior to the time the final rule becomes effective, the applicant would be billed subsequent to submitting the complete certification request and would be expected to pay the fee prior to receiving a signed certificate.

Summary of Comments. EPA received only two comments that requested a delay in the implementation schedule. The commenters stated that such a delay is needed to avoid budgetary and planning problems.

EPA Response. EPA believes that manufacturers have had adequate time to budget for the fee program. Section 217 of the CAA, which provides the specific authority to collect MVECP fees, was enacted in November 1990. Although section 217 does not itself specify an effective date for the fee program, manufacturers have long been award of EPA's intent to implement a fee program expeditiously. The NPRM was published on July 1, 1991, more than seven months ago. Moreover, in December 1990, as part of the CAAA Project Summaries, EPA notified manufacturers of its intent to implement a fee program as early as May 1991. Thus, for at least the past thirteen months, manufacturers were aware of the likelihood that a fee program would be implemented and should have allocated funds for the MVECP. Nevertheless, to assist manufacturers in planning and budgeting for fees, EPA is providing a two year phase-in for recovery of the costs associated with the MVECP.

The proposed implementation schedule was intended to establish the method by which EPA would impose fees during the initial implementation period which would occur during the 1993 MY, rather than at the beginning of the 1994 MY. This was necessary as some MY93 certification requests would be submitted and some issued prior to the effective date of the final rule.

As provided in the NPRM, certificates for MY93 issued prior to the date the final rule becomes effective will not be charged a fee. EPA recognizes, however, that an applicant does not always have control over the date on which a certificate is issued. As a result, it could, in some cases, be inequitable to charge a fee for certificates requested but not issued prior to the date the final rule becomes effective. Therefore, a fee will not be imposed where an applicant has submitted a complete application, without errors, prior to the date the final rule becomes effective. If a complete application has not been received by EPA prior to the effective date of the final rule, an applicant will be required to file a filing form and the applicable fee before a certificate will be issued.

B. Recovery of Costs Not Included in Fee Program

Summary of Proposal. EPA requested comment on whether it should recover, as part of the MVECP fees, costs for various activities it conducts related to certification and mobile source air pollution control, including regulation development, emission factor testing, air quality assessment, and inspection and maintenance activities.

Summary of Comments. EPA received several comments on whether it should recover, as part of the MVECP fee, the costs for certain activities which it conducts. The Association of International Automobile Manufacturers (AIAM), the Engine Manufacturers Association (EMA) and two manufacturers commented that the costs associated with regulation development, emission factor testing, air quality assessment, and inspection and maintenance should not be included in the fee program. They provided two reasons for their position.

First, they claimed that recovery of costs for the MVECP is limited to the programs cited in section 217 of the CAA, i.e. certification, in-use compliance monitoring, and SEA. Activities such as regulation development, emission factor testing, air quality assessment, and inspection and maintenance programs are not recoverable since they are not sufficiently associated with these programs.

Second, the commenters argued that these activities do not provide a private benefit to identifiable individuals and as a result, the costs associated with them are not recoverable under the IOAA. Mitsubishi acknowledged, however, that these programs partly benefit manufacturers by indirectly facilitating the MVECP. Nevertheless, Mitsubishi concluded that EPA should minimize cost burdens on manufacturers and not charge for these activities.

The Colorado Department of Health (CDH) requested that the fee schedule be amended to include the costs associated with high altitude in-use compliance testing. In the past, monies for this program were provided by the CDH and the federal government through funding that is outside the normal EPA budget process. To assure the continuation of this activity, CDH requested that the cost of maintaining this program be recognized as an integral part of the proposed fee structure and be factored into the fee schedule for LDVs/LDTs.

EPA Response. EPA has decided not to include the costs associated with regulation development, emission factor testing, air quality assessment, and inspection and maintenance activities in this final rule. Although, as Mitsubishi acknowledged, these activities benefit manufacturers by indirectly facilitating the MVECP, EPA has not made a final determination as to whether the costs of these activities are either sufficiently associated with the programs specified in CAA section 217 or provide a special benefit to an identifiable recipient to be recoverable. Such a determination may be made in the future when the fee schedule is revisited.

In the case of high altitude in-use testing conducted by Colorado, EPA considers the federal government portion of these costs to be recoverable as part of the MVECP. However, these costs were not included in the MVECP Cost Analysis as the funding has been outside the normal EPA budget process. In future years, it is expected that EPA will directly fund the federal government portion of these costs. Therefore, when the fee schedule is revisited and updated in the future EPA will propose to include the costs associated with high altitude in-use testing.

C. Fee Updating Procedure

Summary of Proposal. To assure that fees continue to reflect the cost of providing certification services, the NPRM provided that the fee schedule would be adjusted through two updating procedures. First, to reflect changes in operating costs, fees would be adjusted automatically every year by the same percentage as the percent change in the CPI. Second, the fee schedule would be revisited approximately every two years to determine whether it accurately reflects the (1) level of EPA's MVECP activities being provided at the time of review, (2) costs of conducting the MVECP, and (3) number of certification requests. Changes which result from this periodic review would be subject to public comment.

Summary of Comments. EPA received two comments on the fee updating procedure. Mercedes Benz of North America (MBNA) commented that the proposed rule does not contain a provision to adjust fees annually in response to changes in certain variables, such as an increased number of certification requests. If EPA's services do not increase in proportion to the number of certification requests, MBNA believes that manufacturers could end up paying more than the MVECP costs. The second commenter expressed concern over having sufficient lead time to budget for any potential cost increases in advance of their effective date.

EPA Response. Based on prior experience, EPA does not expect that there will be a significant change in the number of certification requests during any approximately two-year period. EPA does expect, however, the costs associated with the MVECP to increase over the next several years as the requirements of the CAAA are implemented. As a result, an annual update of the fee schedule is not necessary, since fees should not decrease over the next several years.

Further, revising the fee schedule annually, as suggested by MBNA, would impose a significant administrative burden on EPA. EPA believes that such a burden is unwarranted, particularly since the proposed approximately biennial adjustment may result in a savings to manufacturers. This is due to the fact that an adjustment to the fee schedule every two years or more would result in manufacturers paying for potential cost increases, as a result of expanded CAA motor vehicle compliance requirements, on a less frequent basis than they would with an annual adjustment.

In addition, the recently enacted Chief Financial Officers Act, 31 U.S.C. 101 *et seq.*, requires EPA's Chief Financial Officer to "review, on a biennial basis, the fees * * * imposed by the agency for services and things of value it provides, and make recommendations on revising those changes to reflect costs incurred by it in providing those services and things of value." This should ensure that the EPA does not recover more than the allowable MVECP costs. If, as a result of the review, EPA determines that there has been a significant change in the MVECP costs without a corresponding change in the number of certification requests, a proposal to revise the fee schedule will be published in the Federal Register. If the fees collected prior to the review exceed recoverable costs, such amount will be factored into the revised fee schedule.

EPA also believes that manufacturers will have sufficient lead time to budget for any increases which may occur in the fee schedule. Based on economic projections, manufacturers can reasonably estimate, in advance, the extent of annual adjustments in the fee schedule due to changes in the CPI. As for increases in the fee schedule which may result from other changes, such as the extent of EPA's MVECP activities, the number of certification requests, and the costs of conducting the MVECP, EPA would promulgate these revisions through notice and comment rulemaking that would take into account manufacturers' lead-time concerns. Further, manufacturers are generally aware of the extent of EPA's MVECP activities and changes in the number of their own certification requests. This should be of assistance to them in preparing that portion of their budgets attributable to fees.

D. Preparation of an Annual Report by EPA

Summary of Proposal. The NPRM did not address the issue of EPA preparing an annual report to be distributed to the Office of Management and Budget (OMB), manufacturers or the public.

Summary of Comments. The Motor Vehicle Manufacturers Association (MVMA) submitted the only comment which requested that EPA prepare an annual report of the MVECP. According to MVMA, EPA should make available (1) an annual report to each manufacturer that details the engine families and fees collected and allows manufacturers the opportunity to resolve any discrepancies, and (2) an annual summary of the MVECP to the public. MVMA asserted that the lack of such a formal annual review is a serious deficiency, since without it there would be no assurance to the manufacturers, the Treasury, or the public that the fees were properly assessed and paid. In support of its position, MVMA stated that OMB Circular A–25 "appears to require an annual review and revision of the fee schedule to assure that the fee is no higher than necessary to recover the cost to the Agency."

EPA Response. The submission of an annual report to OMB by federal agencies that collect fees was a requirement of OMB Circular A–25 (September 23, 1959) and OMB Transmittal Memorandum No. 1 (October 22, 1963). That requirement, however, was rescinded by OMB Transmittal Memorandum No. 2 (April 16, 1974). Transmittal Memorandum No. 2 also stated that the data provided by the annual report "will be obtained in the future through the Budget review process or special studies." Moreover, as previously discussed, EPA will be reviewing the program periodically. Thus, OMB can still monitor EPA's assessment and collection of MVECP fees.

E. Electronic Transfer of Funds

Summary of Proposal. The NPRM did not address the issue of manufacturers making fee payments by the electronic transfer of funds.

Summary of Comments. Jaguar, Toyota, and AIAM submitted comments which suggested that EPA allow manufacturers to pay fees through the electronic transfer of funds. They indicated that this option was especially important for manufacturers that make payments from overseas, and would enhance the speed, accuracy, and security of the payment system.

EPA Response. EPA agrees with the commenters that the electronic transfer of funds would provide an efficient and effective method for the payment of fees. Therefore, the final regulations contain a provision which allows this method of payment.

F. Omnibus Budget Reconciliation Act

Summary of Proposal. The NPRM stated that OBRA requires EPA to assess and collect fees of not less than $38 million in fiscal years 1992 through 1995 for services and activities carried out pursuant to laws administered by the EPA. The proposed MVECP fees would represent part of the aggregate EPA fees collected in each of these fiscal years. In addition, EPA recognized that OBRA neither increases nor diminishes its authority to promulgate regulations pursuant to the IOAA.

Summary of Comments. EMA and MVMA submitted comments on the relationship between the MVECP and OBRA. They stated that section 6501 of OBRA confers general authority on EPA to collect fees for services carried out pursuant to the laws it administers, such as the CAA. OBRA does not, however, provide independent or additional authority for the EPA to recover MVECP fees. Therefore, they asserted that EPA cannot rely on OBRA as a basis for expanding its authority, either today or in the future. Moreover, nothing in OBRA specifically requires EPA to collect any fees from the MVECP or contemplates that this program will contribute to the mandated sum.

EPA Response. EPA is not relying on OBRA as additional authority to assess fees for compliance activities which it conducts. Such authority is derived from the IOAA and the CAA. Further, EPA acknowledges that (1) OBRA neither increases or diminishes its authority to promulgate regulations pursuant to the IOAA and (2) nothing in OBRA expressly requires EPA to collect fees from the MVECP, although OBRA does refer to sums specifically authorized by the CAA, or states that this program will contribute to the $38 million mandated sum. As the NPRM indicated, the MVECP fees will be part of the $38 million that OBRA directs EPA to collect from all of its services and activities carried out pursuant to laws administered by the EPA in fiscal years 1992 through 1995.

G. Heavy-duty Fee

Summary of Proposal. EPA proposed that the costs for conducting HD activities be separated from the costs of LDVs/LDTs and Mcs, and the fee schedule determined accordingly. In this manner, the fee for HDV/HDE certification recovers only the costs incurred by EPA to administer HD compliance activities. Further, it satisfies section 217(c) of the CAA that "In the case of heavy duty engines and vehicle manufacturers, such fees shall not exceed a reasonable amount to recover an appropriate portion of such reasonable costs."

Summary of Comments. The only comments submitted on the issue of appropriate fees for HD manufacturers were from EMA and Mack Truck, which stated it was in concurrence with EMA's comment. EMA requested that EPA reduce the fee schedule for HD manufacturers to an "appropriate portion" of reasonable costs.

Citing the language in section 217(c), EMA acknowledged that there is no documented legislative history on the applicable portion of this provision. It stated, however, that the reasons Congress included such a provision were quite obvious. According to EMA, these reasons include the sales volume, income, and compliance cost differences between the LDV and HDE industries. EMA also stated that economic factors would make it unreasonable to require HDE manufacturers to bear the total costs of compliance.

EMA then stated that by dividing its costs between the light-duty (LD) and HD programs, EPA was meeting its general obligations under the CAA to recover only "reasonable costs" based on equitable and nondiscriminatory factors. This division, however, only meets the requirement imposed by the IOAA to "allocate specific expenses of the cost basis of the fee to the smallest practical unit," and not charge HD manufacturers for LD activities. EMA charged that EPA has failed to address the additional limitation on recovery from HD engine and vehicle manufacturers. In other words, EPA has not further reduced those "reasonable costs" so that its recovery from HD manufacturers represents only an "appropriate portion"of those costs.

EMA then stated that EPA must place the same relative burden on LD and HD manufacturers. This could be done, it stated, by adjusting the fees so that both LD and HD manufacturers' fees represent the same percentage of income earned by the industry.

EPA Response. In calculating the proposed HD fee, EPA went through a process that it believes is consistent with that part of section 217(c) of the CAA which provides that "In the case of heavy duty engines and vehicle manufacturers, such fees shall not exceed a reasonable amount to recover an appropriate portion of such reasonable costs." Therefore, the HD fee is promulgated as proposed. (A detailed

discussion of the issue of the HD fee is contained in the Response to Comments for this rulemaking which has been placed in the public docket.)

H. Waiver

Summary of Proposal. The NPRM included a provision that would allow manufacturers to obtain a waiver or adjustment of a fee if they are able to demonstrate that: (1) The certificate is to be used for sale of vehicles or engines in the U.S.; (2) the worldwide aggregate sales for all vehicles and engines produced by the applicant, including all affiliates, were less than 10,000 units for the most recent MY for which sales data are available preceding the MY for which certification is requested; and (3) the full fee for a certification request for a MY exceeds 1% of the retail sales value of all vehicles or, where applicable, all engines covered by the certificate. If the waiver is granted, the fee to be paid by the applicant would be 1% of the retail sales value of the vehicles to be covered by the certification request for the relevant MY. The fee paid would be based on projected sales for the MY for which certification is requested. However, in no case would the fee be less than 25% of the full fee required for the applicable certification request type.

Summary of Comments. EPA received several comments on the proposed waiver provision. Generally, these comments indicated that the proposed waiver provision was insufficient and unworkable for several reasons. First, the waiver requirement that a manufacturer's worldwide aggregate sales for all vehicles and engines produced by the applicant be less than 10,000 units per MY would exclude most manufacturers. Second, some manufacturers, who do not meet the 10,000 unit waiver prerequisite, produce numerous engine families, with each family having a small sales volume. These manufacturers would be required to pay the full applicable fee for each small engine family. As a result, they would "bear the brunt of the MVECP fees." Third, for small manufacturers and ICIs, the waiver does not reduce the certificate fees to a level necessary to prevent an undue economic burden. Fourth, since the Agency will not recoup the revenue lost through the waiver program from higher fees to large volume manufacturers, the waiver provision does not meet the Congressional objective to reimburse fully the Agency for funds spent on the MVECP.

The commenters suggested several alternatives to the proposed waiver provision. These suggestions included (1) having EPA adopt its old regulations on the qualification of small-volume certification procedures of 2,000 units or less in lieu of worldwide sales of 10,000 units as one of the qualifying criteria, and (2) eliminating the need for a waiver provision by basing the fee schedule on units produced or sold.

One ICI stated that the waiver provision does not apply to ICIs since they do not conduct retail sales and have no means of predicting what cars will be brought to them for modification. Another ICI requested that EPA conduct a Regulatory Flexibility Analysis (RFA) to determine the impact of the proposed regulation on small entities.

EPA Response. The proposed waiver provision was intended to fulfill the requirements of the IOAA by enabling the Agency to "be self-sustaining to the extent possible," while alleviating the economic hardship that the fee program would impose on certain manufacturers. For these reasons, the provision was narrowly drawn. After reviewing the comments, however, EPA believes the proposed waiver criteria may be too restrictive, in that they could fail to alleviate an undue economic hardship on some manufacturers. This is due to the fact that they may have excluded small manufacturers that would have needed a waiver provision to remain competitive.

Therefore, EPA is eliminating the proposed (1) waiver requirement that a manufacturer's worldwide sales must be less than 10,000 units, and (2) limitation that in no case would the fee be less than 25% of the full fee required for the applicable certification request type. Instead, any manufacturer that is granted a waiver will not be required to pay a fee which is more than 1% of the retail sales value of all vehicles or engines covered by a certificate, including vehicles imported under the modification and test option. These changes should alleviate undue economic hardship by allowing both additional small manufacturers and manufacturers with numerous engine families that have small sales volumes to potentially qualify for a waiver.

EPA is concerned, however, that the revised waiver requirements could, in two circumstances, result in manufacturers requesting waivers for engine-system combinations that should be subject to the full applicable fee. First, a manufacturer may request a waiver for a back-up engine-system combination. Manufacturers use such back-up engine-system combinations as alternatives should their primary engine-system combination fail to meet emission or performance objectives. Second, a manufacturer may intend to use EPA's Certificate of Conformity to meet its certification requirements in another country.

EPA does not believe that the U.S. government should absorb the costs for such "certification strategies" which are the result of either a manufacturer's obligation to another government or to meet a manufacturer's emission or performance objectives. Therefore, in determining whether an applicant qualifies for a waiver, EPA will consider all sales directly or indirectly associated with the relevant engine-system combination. Manufacturers will be required to demonstrate that a waiver request is not for either a back-up engine-system combination for an engine-system combination which does not qualify for a waiver or an engine-system combination that will be sold outside the U.S. with the Certificate of Conformity being used as the basis for certification in another country.

EPA determined it cannot, as suggested in the comments, base the fee schedule on the number of vehicles produced or sold. Factors such as a recipient's sales or production volume are not permitted to be a part of the fee calculation unless there is a reasonable relationship between those factors and the costs being recovered. See *National Cable Television Ass'n* v. *Federal Communications Comm'n*, 554 F.2d 1094, 1107–08 (D.C. Cir. 1976); *Electronic Industries Ass'n* v. *Federal Communications Comm'n*, 554 F.2d 1109, 1115 n.13, 1116 (D.C. Cir. 1976). Such a relationship does not exist in this case as the MVECP costs being recovered are unrelated to the number of vehicles covered by a certificate. It would also be inappropriate to excuse some manufacturers from paying the SEA and in-use testing portions of the fees, since every manufacturer is potentially subject to the same level of EPA scrutiny.

EPA recognizes that the use of a waiver provision may prevent it from being fully reimbursed for the costs of the MVECP. However, EPA does not believe that the waiver provision is contrary to Congress' objective expressed in the IOAA that an agency be "self-sustaining to the extent possible." Rather, it alleviates the economic burden on small entities by reducing the fee for these entities to an acceptable level. Such provisions are in accord with prior Congressional legislation aimed at protecting small businesses from undue economic hardship.

EPA does not believe that an RFA is required for this regulation, since it does

not have a significant impact on a substantial number of small entities. Further, the revised waiver provision reduces the fee that ICIs will pay to a level which should prevent undue economic hardship.

The fact that ICIs do not conduct retail sales does not mean the waiver provision does not apply to them. In place of retail sales, ICIs will project the number of vehicles to be admitted to the U.S. (including vehicles admitted under the modification and test option) under a waiver certificate.

I. Recoverable Costs

Summary of Proposal. EPA proposed to recover through fees the direct and indirect costs associated with certain MVECP activities, including certification, fuel economy, SEA, and in-use compliance.

Summary of Comments. Several manufacturers and associations commented on EPA's authority to recover through fees the costs of certification, SEA, and in-use testing. Volkswagen (VW) acknowledged that EPA may promulgate regulations establishing fees to recover all reasonable costs associated with these activities. Generally, however, commenters asserted that SEA and in-use testing are not recoverable under the CAA and the IOAA because they do not confer private benefits, but rather accrue to the benefit of the public.

MVMA and EMA stated that the EPA is authorized by section 217 of the CAA to establish fees for specific services it provides to vehicle manufacturers. However, section 217 stipulates that regulations establishing such fees be consistent with the IOAA. Therefore, the IOAA requirement that fees be for a "service or thing of value" controls the validity of the proposed fees. Further, in accordance with OMB Circular A-25 and the courts, a service must provide a special benefit to an identifiable recipient before a fee may be assessed.

In addition, EMA stated that a fee which recovers the costs of SEA and in-use testing would be inconsistent with Congressional intent. In support of this assertion, EMA cited the House Committee Report, which states that the Administrator's authority to impose compliance program fees "must be carefully exercised so as to avoid proceeding with gold-plated compliance programs." H.R. Rep. No. 3030, 101st Cong., 2d Sess. 311 (1990).

EPA Response. EPA disagrees with the contention that it does not have the statutory authority to collect the proposed fees for the costs of the MVECP because the activities involved do not provide a private benefit as required by the IOAA. As explained in the NPRM, all of the MVECP activities for which EPA seeks to recover fees provide special benefits to identifiable beneficiaries and the full costs of those activities are therefore recoverable under the IOAA. (A detailed discussion of the issue of recoverable costs is contained in the Response to Comments for this rulemaking which has been placed in the public docket.)

A further problem with the commenters' arguments that EPA cannot recover fees for MVECP activities because the recovery of such fees violates the IOAA is that the arguments violate a fundamental principle of statutory construction. According to the commenters' view of the IOAA, the phrase of section 217 referring to consistency with the IOAA would negate any effect of the remainder of section 217, which specifically authorizes EPA to collect fees for the MVECP programs, including compliance activities. If the collection of fees for the specified portions of the MVECP was inconsistent with the IOAA, it is inconceivable that Congress would have, on the other hand, required consistency with the IOAA, and, on the other hand, expressly authorized EPA to collect those fees. Such a view renders section 217 useless. But, as the District of Columbia Circuit Court of Appeals has stated in the context of a decision construing another provision of title II of the CAA, "It is axiomatic that a statute must be construed to avoid that result so that no provision will be inoperative or superfluous." *Motor and Equipment Manufacturers Ass'n* v. *Environmental Protection Agency*, 627 F.2d 1095, 1106 (D.C. Cir. 1979), *cert. denied sub nom. General Motors* v. *Costle*, 446 U.S. 952 (1980). Thus, even if the commenters' view of the application of the IOAA criteria to the MVECP fees were correct, which EPA does not believe to be the case, EPA does not believe that the phrase in section 217 referring to consistency with the IOAA should be interpreted in such a way as to render the remainder of section 217 inoperative. Rather, both portions of section 217 should be interpreted so as to give effect to all the language in the provision. This can be done by interpreting the phrase "consistent with the IOAA" to mean that the fees specifically authorized by section 217 must satisfy the established IOAA criteria that the fees be reasonable and that the fees not exceed the cost to EPA of undertaking the activities. This interpretation comports with the rules of statutory construction and does not render any part of section 217 superfluous.

EPA further notes that, as stated in the NPRM, Congress may constitutionally authorize agencies to recover the total cost of administering a program from those regulated under the normal delegation standards. *Skinner* v. *Mid-Atlantic Pipeline Co.*, 490 U.S. 212 (1989). Thus, Congress may authorize an Agency to recover through the imposition of fees the costs of services it provides even if such fees appear to be a tax to the recipient or the services fail to provide a private benefit. Therefore, there is no constitutional problem with EPA's assessment of fees for the services specifically authorized by Congress—certification, SEA, and in-use testing—even if such services do not confer a special benefit on manufacturers.

EMA also stated that EPA could not recover through fees the costs of SEA and in-use testing since to do so would violate Congressional intent in that it would "gold-plate" the compliance program. EPA believes, however, that EMA's interpretation of Congress' intent is incorrect. Congress required that fees be "consistent with IOAA" so that EPA would not "gold-plate" its compliance program by recovering fees for services it does not provide and then using such fees to expand the MVECP. Further, since Congress determines the MVECP appropriation, it can control "gold-plating." In other words, EPA cannot unilaterally expand the MVECP and then collect additional fees to cover the expansion of services.

J. Cost Analysis

Summary of Proposal. The NPRM noted that EPA had prepared a Cost Analysis that sets forth the direct and indirect costs used to calculate the fee schedule.

Summary of Comments. The only comment received on the Cost Analysis was from EMA which stated that the Analysis did not provide sufficient justification of the proposed fees. In particular, EMA asserted that EPA failed to calculate the cost basis for each fee assessed. EMA also asserted that the Cost Analysis provides an insufficient explanation of the criteria used in eliminating certain costs and retaining others.

Last, EMA asserted that the Cost Analysis deprives manufacturers of their constitutional rights of due process, since it is drafted in a manner that does not allow for a meaningful response. For this reason, as well as its failure to meet IOAA requirements, EMA stated that the Cost Analysis must be revised and republished for public comment.

EPA Response. The Cost Analysis prepared by EPA sets forth in detail the costs associated with the MVECP and the calculations which form the cost basis for each fee. Direct and indirect costs for each certification request type are identified. Specific activities that were included or excluded are identified in the preamble and the costs of such activities are shown as recoverable or unrecoverable. Further, the calculations used by EPA to determine fees are reasonable and comport with the requirements of the IOAA. As a result, the Cost Analysis is neither deficient nor deprives EMA of its constitutional rights of due process. Therefore, EPA has determined that it is unnecessary to revise and republish the Cost Analysis. (A more detailed discussion of the issue of the Cost Analysis is contained in the Response to Comments for this rulemaking which has been placed in the public docket.)

K. Carryover

Summary of Proposal. EPA proposed that the fee for a carryover engine-system combination be the same as that for a new engine-system combination.

Summary of Comments. AIAM and five manufacturers submitted comments on carryover. All of the comments supported a reduction of the fee for carryover vehicle certification.

Manufacturers stated that a reduction for carryover models was warranted since the only effort required by EPA for carryover certification is reviewing the application to ensure it is the same as the application for the previous year. They asserted that such a review involves minimal time. Further, no testing is necessary for carryover models.

EPA Response. Contrary to the comments of the manufacturers, a certification request for a carryover engine-system combination does not result in lower costs than a certification request for a new engine-system combination. When a manufacturer elects to carryover test data from a previous MY, its certification effort may be reduced. Further, such carryover test data may reduce certain EPA efforts. However, such potential reductions are offset by additional activities necessitated by the carryover request. The application for a carryover certification request is usually not an exact duplicate of the MY being carried-over. For example, carryovers may involve changes (e.g., additional test weight and horsepower) which could change the test fleet selection. In such cases, EPA must conduct additional review of carryover requests to ensure that they meet EPA requirements and that the test fleets were properly selected for the carryover. Further, EPA must develop and maintain extensive computer procedures, programs and data storage to facilitate the carryover process. EPA must also review a carryover to determine the applicability of the regulations for the new MY compared to the carryover MY.

In addition, while a carryover engine-system combination may not require confirmatory testing, it does require all of the other activities involved in processing a non-carryover certification request, including: review and audit of the application; review of the selection of test fleets by the manufacturer; fuel economy calculations, processing the certification request; review of running changes and related testing.

EPA must ensure compliance of a carryover engine-system combination in the same manner as a new certification request. Carryover engine-system combinations are subject to in-use and SEA testing. In fact, in-use or SEA testing is sometimes not conducted on an engine-system combination until it has been carried over. Further, in-use or SEA testing may be indicated for a carryover engine-system combination based on test results from an earlier MY.

Thus, the costs that EPA may incur in certifying a carryover engine-system combination do not differ substantially from those that EPA may incur in certifying a new engine-system combination. As a result, the fee schedule will remain as proposed with the fee for carryover certification requests being the same as that for new certification requests.

L. Fee Basis

Summary of Proposal. EPA proposed that the fee be based on the certification request, the event which triggers the costs related to the MVECP.

Summary of Comments. EPA received 14 comments on the issue of the appropriate basis for fees. Three manufacturers and two associations submitted comments in support of EPA's proposal to base fees on the certification request. In support of their position they noted that it is equitable and efficient to base fees on the certification request since (1) EPA's certification costs are similar for all families and (2) each family is exposed to audit costs. In other words, it would be inequitable to charge recipients of essentially the same service different fees depending on their size, sales volume or income. Other reasons cited were that (1) It allows manufacturers to budget for compliance fees in advance, (2) MVECP activities are largely independent of the number of vehicles produced, and (3) other alternatives would add administrative overhead and cost to the program without improving equity.

Five manufacturers commented that the fee should be based on the number of vehicles and engines produced or sold. These manufacturers provided several reasons for their position. First, they cited that portion of section 217 which provides that EPA may base the fee schedule on "such factors as the Administrator finds appropriate and equitable and nondiscriminatory, including the number of engines produced under a Certificate of Conformity." This language and the requirement that fees be consistent with the IOAA clearly contemplate that EPA will link the compliance fee schedule to vehicle sales volume.

Second, a fee based on certification requests does not comply with the IOAA authorization criteria, since the process of application for certification is a matter of public policy. Further, only after sales does an identifiable benefit exist for the recipient, and the larger the sales volume the greater the value to the recipient.

Third, the proposed basis is anti-competitive. It places small manufacturers at a competitive disadvantage since their per engine expense is greater than that of larger manufacturers.

EPA Response. A fee based on the number of vehicles produced or sold is neither consistent with the IOAA nor equitable. Fees imposed under the IOAA must represent the value conferred by an agency on a recipient, i.e., the Agency's costs and not the value derived by the recipient. Factors such as a recipient's sales volume or production volume, which are relevant to the value derived by the recipient, are not permitted to be a part of the fee calculation unless there is a reasonable relationship between those factors and the costs being recovered. See *National Cable Television Ass'n* v. *Federal Communications Comm'n*, 554 F.2d 1094, 1107–08 (D.C. Cir. 1976); *Electronic Industries Ass'n* v. *Federal Communications Comm'n*, 554 F.2d 1109, 1115 n.13, 1116 (D.C. Cir. 1976). No such relationship exists between sales or production volumes and the costs being recovered.

Further, a fee based on certification requests is more equitable than a sales-based fee in that it reflects the way in which EPA incurs costs for providing MVECP services. Such costs are basically the same for each type of certification request and are unrelated to the number of vehicles a manufacturer produces or sells. Thus, it

would be inequitable to charge a manufacturer who requests two federal signed LDV certificates and sells 150 vehicles less than a manufacturer who requests one certificate and sells 1,000 vehicles. (A detailed discussion of the issue of the appropriate fee basis is contained in the Response to Comments for this rulemaking which has been placed in the public docket.)

M. Time of Payment

Summary of Proposal. EPA proposed that manufacturers submit payment to the Treasury at the time the application for certification or ESI is submitted to EPA. EPA would process the application after it was notified by the Treasury that it had received payment. This would ensure that EPA would receive payment for the services that it provides.

Summary of Comments. EPA received comments from seven manufacturers and three associations which requested that EPA change the time of payment. The majority of commenters stated that EPA's proposal to require payment at the time of the certification request would create an unnecessary paperwork burden for manufacturers, the Treasury, and EPA. Further, it has the potential to cause unnecessary delays in the certification process resulting in wasted resources and increased production costs. Therefore, they recommended that EPA implement a tracking and billing system whereby manufacturers would receive an invoice on a regular basis, preferably annually at the completion of the certification period for each MY. Several manufacturers and associations indicated that EPA's concern regarding nonpayment is unfounded. Manufacturers are responsible ongoing businesses that are unlikely to jeopardize current or future certification status by withholding or delaying payment of fees. They stated that if EPA is concerned about nonpayment it could add provisions to the rule which would establish either a penalty system or special payment requirements for companies that have poor payment records.

EPA Response. The comments received by EPA in support of a periodic invoice system do not outweigh the benefits of collecting the fees in advance. An invoice system would increase EPA's cost of administering the fee program due to the work and costs associated with establishing a billing system, increased paperwork, payment collection, and tracking delinquent payments. Further, these additional costs would ultimately be borne by the fee payer through increased fees in the future. It is also consistent with EPA practice and policy in Agency fee programs to collect the fee prior to services being rendered and costs being incurred. For example, the Pesticides Program requires that a fee accompany each petition or request for the establishment of a new tolerance for a pesticide under the Federal Food, Drug, and Cosmetic Act. Similarly, the Toxic Substances Program collects fees from manufacturers, importers and processors at the time they submit notices and applications to EPA under section 5 of the Toxic Substances Control Act (15 U.S.C. 2604).

In most cases, EPA anticipates that the fee will be paid in a timely manner, even if advance payment is not required. However, by requiring payment of the fee in advance of providing services, EPA will be certain to collect a fee for the services it renders.

Therefore, manufacturers will be required to submit a filing form and payment, as proposed. To allay manufacturer concerns regarding a potential delay in the certification process from unforeseen circumstances, EPA may initiate and continue providing certification services for up to 15 days following the submission of an application for certification or an ESI for applicants with a timely payment record.

V. Economic Impact

A. Cost to Industry

This rule will not have a significant impact on the majority of vehicle and engine manufacturers. The cost to industry will be a relatively small value per unit manufactured for most engine-system combinations.

EPA expects to collect about 5 to 15 million dollars annually. This averages out to approximately one dollar per vehicle or engine sold annually. However, for engine. System combinations with low annual sales volume, the cost per unit could be higher. To remove the possibility of serious financial harm on companies producing only low sales volume designs, the regulations adopted today include a waiver provision which is based solely on economic hardship. This provision should alleviate concerns about undue economic hardship on small volume manufacturers and ICIs which could result from payment of the full fee required to obtain a certificate.

B. Cost to the Government

The cost to the government will be the extra cost of administering the fee program and occasional revision of these regulations. The administration costs will be recovered as part of the fee.

VI. Other Statutory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement that a Regulatory Impact Analysis (RIA) be prepared. The Agency has determined that this regulation is not "major" because it does not meet any of the criteria set forth and defined in section 1(b) of the Order. In fact, this proposal is concerned with recompensation to the government of a portion of the benefits received by private parties.

Also, in accordance with Executive Order 12291, this rule was submitted to OMB for review. Any written comments from OMB and any EPA response to those comments are in the public docket for this rulemaking.

B. Paperwork Reduction Act

The information collection requirements in this final rule have been approved by OMB and assigned clearance number 2060-0104, under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA (ICR No. 783.17) and a copy may be obtained from Sandy Farmer, Information Policy Branch; EPA; 401 M St., SW. (PM-223Y); Washington, DC 20460 or by calling (202) 382-2740.

Public reporting burden for this collection request is estimated to vary from 5 to 30 minutes per response with an average of 24 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch; EPA; 401 M. St., SW. (PM-223Y); Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." No OMB or public comments were received on the information collection requirements contained in the NPRM for this rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires federal agencies to identify potentially adverse impacts of federal regulations upon small entities. In instances where significant impacts are possible on a substantial number of