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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 86**

[FRL-5966-6]

**Control of Air Pollution From Motor Vehicles and New Motor Vehicle Engines; Modification of Federal On-board Diagnostic Regulations for Light-Duty Vehicles and Light-Duty Trucks; Extension of Deficiency Policy**

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

**ACTION:** Final rule.

**SUMMARY:** Today's action extends the EPA's allowance of deficiencies for vehicles certified to federal OBD standards through the 1999 model year.

**EFFECTIVE DATE:** This action becomes effective February 17, 1998.

**ADDRESSES:** Materials relevant to this rulemaking are contained in Docket No. A-96-32. The docket is located at The Air Docket, 401 M. Street, SW., Washington, DC 20460, and may be viewed in room M1500 between 8:00 a.m. and 5:30 p.m., Monday through Friday. The telephone number is (202) 260-7548 and the facsimile number is (202) 260-4400. A reasonable fee may be charged by EPA for copying docket material.

**FOR FURTHER INFORMATION CONTACT:** Holly Pugliese, Vehicle Programs and Compliance Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105, Telephone 313-668-4288, or Internet e-mail at "pugliese.holly@epamail.epa.gov."

**SUPPLEMENTARY INFORMATION:**

**Regulated Entities**

Entities potentially regulated by this action are those which manufacture new motor vehicles and engines. Regulated categories include:

Category	Examples of regulated entities
Industry .....	New motor vehicle and engine manufacturers.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether

your product is regulated by this action, you should carefully examine the applicability criteria in § 86.099-17 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular product, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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**I. Electronic Availability**

Electronic copies of the preamble and regulatory text of this final rulemaking are available via the Internet on the Office of Mobile Sources (OMS) Home Page (<http://www.epa.gov/OMSWWW/>). Users can find OBD related information and documents through the following path once they have accessed the OMS Home Page: "Automobiles," "I/M & OBD," "On-Board Diagnostics Files."

**II. Introduction and Background**

On May 28, 1997, the EPA published a notice of proposed rulemaking (62 FR 28932) that proposed changes to the federal OBD requirements. Those proposed changes would be implemented beginning with the 1999 model year. The proposed revisions included a provision indefinitely extending the allowance of deficiencies for federal OBD vehicles. Today's action finalizes this extension through the 1999 model year.

**III. Requirements of the Final Rule**

Today's action finalizes a provision to extend the current flexibility provisions (i.e., "deficiency provisions") contained in 40 CFR part 86.094-17(i) through the 1999 model year, rather than being eliminated beyond the 1998 model year. EPA is taking this action at this time because EPA is beginning to certify vehicles for the 1999 model year. Though EPA is currently completing its preparation of the final rule associated with the notice of proposed rulemaking published on May 28, 1997, EPA will not be able to complete its review in time for the beginning of the 1999 model year. EPA has become concerned that manufacturers would not be able to use EPA's deficiency regulations for its certifications, and that this may lead to

delays in certifications. Therefore, EPA is finalizing its proposal to extend the deficiency policy on an expedited basis, in order to allow manufacturers to request deficiencies in the 1999 model year. This will allow the Administrator to accept an OBD system as compliant in the 1999 model year even though specific requirements are not fully met. This provision neither constitutes a waiver from federal OBD requirements, nor does it allow compliance without meeting the minimum requirements of the CAA (i.e., oxygen sensor monitor, catalyst monitor, and standardization features).

EPA received no comments opposing extension of the deficiency provision. Any particular comments dealt with specific clarifications made in the notice of proposed rulemaking that EPA is not finalizing at this time. As EPA received no comments adverse to this revision, and as the Agency believes that, despite the best attempts by manufacturers to comply with the complex OBD requirements, there will still be unanticipated instances that cannot be remedied in time to meet production schedules, EPA is finalizing its deficiency provision for the 1999 model year. EPA will take final action regarding the remainder of its proposal, including further action on its deficiency policy, at a later date.

**IV. Effective Date**

This rule shall be effective on the date of publication in the **Federal Register**. This rule grants regulatory relief from full compliance with OBD regulations for vehicle manufacturers for a single model year. In addition, the agency finds good cause for this rule to be effective upon publication, as certifications of vehicles for the 1999 model year are likely to begin prior to thirty days from publication.

**V. Cost Effectiveness**

This final rulemaking alters an existing provision by extending the current allowance of deficiencies for federal OBD systems through the 1999 model year. EPA believes that the regulations being finalized today will provide cost savings by eliminating the need to fully comply with all technical requirements of the OBD regulations in the 1999 model year.

The costs and emission reductions associated with the federal OBD program were developed for the February 19, 1993, final rulemaking. The changes being finalized today do not affect the costs or emission reductions published as part of that rulemaking, with the possible exception

of decreasing costs for some manufacturers.

## VI. Public Participation

The Agency held a public hearing on July 9, 1997, for public testimony on the proposed revisions. Those comments and the additional comments received during the public comment period are available in Air Docket A-96-32. The comments received on the proposed revisions are discussed and addressed in section IV. of this final rulemaking.

## VII. Administration Requirements

### A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) 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;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

### B. Reporting and Recordkeeping Requirements

Today's action does not impose any new information collection burden. The modification does not change the information collection requirements submitted to and approved by OMB in association with the OBD final rulemaking (58 FR 9468, February 19, 1993; and, 59 FR 38372, July 28, 1994). The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in 40 CFR 86.084-17 under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060-0104 (EPA ICR No. 783.25).

Burden means the total time, effort, or financial resources expended by persons

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

Copies of the ICR document(s) may be obtained from Sandy Farmer, Information Policy Branch; EPA; 401 M St., SW. (mail code 2136); Washington, DC 20460 or by calling (202) 260-2740. Include the ICR and / or OMB number in any correspondence.

### C. Impact on Small Entities

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. This rule will not have a significant adverse economic impact on a substantial number of small businesses. This rulemaking will continue a regulatory relief policy for both large and small volume automobile manufacturers for a single model year. It will not have a substantial impact on such entities. This rulemaking will not have a significant impact on businesses that manufacture, rebuild, distribute, or sell automotive parts, nor those involved in automotive service and repair, as the revisions affect only requirements on automobile manufacturers.

### D. Unfunded Mandates Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, or \$100 million or more. Under section 205, EPA must select the most cost effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the action finalized today would not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

### E. Congressional Review of Agency Rulemaking

Under section 810(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Reform Act of 1996, EPA submitted 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 General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

### List of Subjects in 40 CFR Part 86

Environmental protection, Administrative practice and procedure, Air pollution control, Gasoline, Incorporation by reference, Motor vehicles, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: February 6, 1998.

**Carol M. Browner,**  
Administrator.

For the reasons set out in the preamble, part 86 of title 40 of the Code of Federal Regulations is amended as follows:

### PART 86—CONTROL OF AIR POLLUTION FROM NEW AND IN-USE MOTOR VEHICLES AND NEW AND IN-USE MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

1. The authority citation for part 86 is revised to read as follows:

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

#### Subpart A—[Amended]

2. Section 86.094-17 is amended by revising paragraph (i) to read as follows:

**§ 86.094-17 Emission control diagnostic system for 1994 and later light-duty vehicles and light-duty trucks.**

\* \* \* \* \*

(i) Upon application by the manufacturer, the Administrator may either waive the requirements of this section for specific components of any class or category of light-duty vehicles or light-duty trucks for model years 1994 or 1995 (or both), or through the

1999 model year, the Administrator may accept an OBD system as compliant even though specific requirements are not fully met. Such waivers or compliances without meeting specific requirements will be granted only if compliance would be infeasible or unreasonable considering such factors as, but not limited to, technical feasibility, lead time and production cycles including phase-in or phase-out of engines or vehicle designs and programmed upgrades of computers, and if any unmet requirements are not carried over from the previous model year except where unreasonable hardware modifications would be necessary to correct the non-compliance, and the manufacturer has demonstrated an acceptable level of effort toward compliance as determined by the Administrator. For alternate fueled vehicles (i.e. natural gas, liquefied petroleum gas, or methanol), beginning with the model year for which alternate fuel emission standards are applicable and extending through the 1999 model year, manufacturers may request the Administrator to waive specific monitoring requirements of this section for which monitoring may not be reliable with respect to the use of the alternate fuel. At a minimum, all vehicles covered by this section, including those receiving a waiver as described in this paragraph, shall be equipped with an OBD system meeting either the California OBD I requirements, or some acceptable portion of the California OBD II or federal OBD requirements as specified in this section, except that for the 1994 and 1995 model years EPA may grant a waiver to a system less than OBD I giving consideration to such factors as manufacturer projections of very low sales volume for an engine family (e.g., 5000 or less), scheduled phase-out of significant engine technology with the 1994 or 1995 model years for that engine family, and whether or not the engine, or any similar engine within the manufacturer's product line, has ever been equipped with an OBD I or similar OBD system.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[FRL-5965-3]

#### Technical Amendments to Dried Fermentation Solids and Solubles of *Myrothecium Verrucaria*; Exemption From the Requirement of a Tolerance on All Food Crops and Ornamentals; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction of effective date under CRA.

**SUMMARY:** On November 14, 1996 (61 FR 58331), the Environmental Protection Agency published in the **Federal Register** a final rule amending a final rule which established an exemption from the requirement of a tolerance for dried fermentation solids and solubles of *myrothecium verrucaria* on all food crops and ornamentals. The rule established an effective date of November 14, 1996. This document corrects the effective date of the November 14, 1996 amendment to February 17, 1998 to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

**EFFECTIVE DATE:** This rule is effective on February 17, 1998.

**FOR FURTHER INFORMATION CONTACT:** Angela Hofmann, (202) 260-2922.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on November 14, 1996 (61 FR 58331), by operation of law, the rule did not take effect on November 14, 1996, as stated therein. Now that EPA has discovered its error, the rule is being submitted to both Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 408(e)(2) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e)(2), provides that the Administrator, before issuing a final

rule under section 408(e)(1), shall issue a proposed rule and allow 60 days for public comment unless the Administrator for good cause finds that it would be in the public interest to provide a shorter period. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under section 408(e)(2). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since November 14, 1996, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2). Under section 408(g)(1) of FFDCA today's rule is effective upon publication. Because the delay in the effective date was caused by EPA's inadvertent failure to submit the rule under the CRA, EPA does not believe that affected entities that acted in good faith, relying upon the effective date stated in the November 14, 1996 **Federal Register**, should be penalized if they were complying with the rule as promulgated.

##### II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the November 14, 1996, **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA