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40 CFR Parts 85 and 86

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

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 85 and 86

[AMS–FRL–7250–1]

RIN 2060–AJ62

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

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: Today's action proposes to update the current Motor Vehicle and Engine Compliance Program (MVECP) fees regulation under which fees are collected for certification and compliance activities related to light-duty vehicles and trucks, heavy-duty highway vehicles and engines, and highway motorcycles. Today's action proposes to update the fees regulations to reflect increased costs of administering the compliance programs already covered within the existing MVECP fee program. In addition, EPA is proposing to add a fee program for the nonroad compliance programs that have been implemented since the initial MVECP fees regulation including certain nonroad compression ignition, locomotive, and small spark ignition engines. EPA is also proposing to add a fee program for other nonroad categories including recreational vehicles (including snowmobiles, off-road motorcycles and all-terrain vehicles), recreational marine compression ignition engines and the remaining nonroad large spark ignition engines (engines over 37 kW) compliance programs for which emission standards have been proposed but not yet finalized. Also included in this proposal are fees for marine spark ignition/inboard sterndrive engines; the emission standards for these engines are under development but not yet proposed.

DATES: *Comments:* Send written comments on this document by October 19,2002.

Hearings: We will hold a public hearing on September 19, 2002. The hearing will begin at 10 a.m. and continue until all testimony has been presented. If you want to testify at the hearing, notify either contact person below by September 12, 2002. See Section VII. A. and B. of the **SUPPLEMENTARY INFORMATION** section of this document for more information about public hearings and comment procedures.

ADDRESSES: *Comments:* You may send written comments in paper form or by e-mail. We must receive them by the date indicated under **DATES** above. Send paper copies of written comments (in duplicate, if possible) to either contact person listed below or by e-mail to ''*otaqfees@epa.gov*''. In your correspondence, refer to Docket A–2001–09.

EPA's air docket makes materials related to this rulemaking available for review in EPA Air Docket No. A–2001–09. Until August 26, 2002, the docket is located at The Air Docket, 401 M. Street, SW., Washington, DC 20460, and may be viewed in room M1500 between 8 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. After August 26, 2002, the Air Docket will be located at room B–108, 1301 Constitution Avenue, NW., Washington, DC 20460. A reasonable fee may be charged by EPA for copying docket material.

Hearings: We will hold a public hearing at the Towsley Auditorium, Morris Lawrence Building, Washtenaw Community College, Ann Arbor, MI. See Section VII. A. and B. for more information about public hearings and comment procedures.

FOR FURTHER INFORMATION CONTACT: Lynn Sohacki, Certification and Compliance Division, U.S. Environmental Protection Agency, 2000 Traverwood, Ann Arbor, Michigan 48105, Telephone 734–214–4851, Internet e-mail ''*sohacki.lynn@epa.gov,*'' or Trina D. Vallion, 734–214–4449, Internet e-mail ''*vallion.trina@epa.gov.*''

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are those which manufacture or seek certification (''manufacturer'' or ''manufacturers'') of new motor vehicles and engines (including both highway and nonroad). The table below shows the category, North American Industry Classification System (NAICS) Codes, Standard Industrial Classification (SIC) Codes and examples of the regulated entities:

Category	NAICS Codes [1]	SIC Codes [2]	Examples of potentially regulated entities
Industry	333111	3523	Farm Machinery and Equipment Manufacturing.
Industry	333112	3524	Lawn and Garden Tractor and Home Lawn and Garden Equipment Manufacturing.
Industry	333120	3531	Construction Machinery Manufacturing.
Industry	333131	3532	Mining Machinery and Equipment Manufacturing.
Industry	333132	3533	Oil & Gas Field Machinery.
Industry	333210	3553	Sawmill & Woodworking Machinery.
Industry	333924	3537	Industrial Truck, Tractor, Trailer, and Stacker Machinery Manufacturing.
Industry	333991	3546	Power Driven Handtool Manufacturing.
Industry	336111	3711	Automotive and Light-Duty Motor Vehicle Manufacturing.
Industry	336120	3711	Heavy Duty Truck Manufacturing.
Industry	336213	3716	Motor Home Manufacturing.
Industry	336311	3592	Motor Vehicle Gasoline Engine and Engine Parts Manufacturing.
Industry	336312	3714	Gasoline Engine & Engine Parts Manufacturing.
Industry	336991	3751	Motorcycle, Bicycle, and Parts Manufacturing.
Industry	336211	3711	Motor Vehicle Body Manufacturing.
Industry	333618	3519	Gasoline, Diesel & dual-fuel engine Manufacturing.
Industry	811310	7699	Commercial & Industrial Engine Repair and Maintenance.
Industry	336999	3799	Other Transportation Equipment Manufacturing.
Industry	421110	.....	Independent Commercial Importers of Vehicles and Parts.
Industry	333612	3566	Speed Changer, Industrial High-speed Drive and Gear Manufacturing.
Industry	333613	3568	Mechanical Power Transmission Equipment Manufacturing.

Category	NAICS Codes [1]	SIC Codes [2]	Examples of potentially regulated entities
Industry	333618	3519	Other Engine Equipment Manufacturing.

[1] North American Industry Classification System (NAICS)
[2] Standard Industrial Classification (SIC) system code.

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 proposed action. Other types of entities not listed in the table could also be regulated. To determine whether your product would be regulated by this proposed action, you should carefully examine the applicability criteria in title 40 of the Code of Federal Regulations, parts 86, 89, 90, 91, 92 and 94; also parts 1045, 1048, and 1051 when those Parts are finalized. If you have questions regarding the applicability of this proposed action to a particular product, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Obtaining Rulemaking Documents Through the Internet

The preamble and regulatory language of today's proposal, and the Motor Vehicle and Engine Compliance Program Cost Analysis document (which is an explanation how we determined EPA's costs to conduct the MVECP and the proposed fees to cover the program) are also available electronically from the EPA Internet Web site. This service is free of charge. The official EPA version is made available on the day of publication on the primary Web site listed below. The EPA Office of Transportation and Air Quality also publishes these notices on the secondary Web site listed below.

(1) *http://www.epa.gov/docs/fedrgstr/EPA–AIR/* (either select desired date or use Search feature)

(2) *http://www.epa.gov/OTAQ/* (look in ''What's New'' or under the specific rulemaking topic)

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

Table of Contents

I. Introduction

A. Overview

EPA is proposing to update the current MVECP fees regulation which assesses fees for the EPA's certification and compliance activities related to highway vehicles and engines and to incorporate new fees for certification and compliance activities related to nonroad [1] engines. Currently, fees are collected for certification and compliance activities related to light-duty vehicles and trucks, heavy-duty highway vehicles and engines, and highway motorcycles. Today's action proposes to update the fees regulations to reflect the increased costs of administering the compliance programs already covered within the existing MVECP fee program and to add a fee program for the nonroad compliance programs we have implemented since the initial MVECP fees regulation including nonroad compression ignition, marine spark ignition outboard/personal-water-craft, locomotive, and small spark ignition (less than or equal to 19 kW) engines. We are also proposing to add a fee program for recreational vehicles (including, but not limited to, snowmobiles, off-road motorcycles and all terrain vehicles), recreational marine compression ignition engines and large spark ignition nonroad engines (over 19 kW) compliance programs. Also included in this proposal are fees for marine spark ignition/inboard-sterndrive engines. Hence, under this new proposal all manufacturers and Independent Commercial Importers (ICIs) of light-duty vehicles (LDVs), light-duty trucks (LDTs), heavy-duty vehicles (HDVs), heavy-duty highway engines (HDEs), nonroad spark and compression ignition engines (NR), marine compression and spark ignition engines (including recreational applications), locomotives, highway and off-road motorcycles (MCs), and recreational vehicles would be subject to fees. Table II–B.1 below lists the vehicle and engine classes that are affected by today's proposed action.

A certificate of conformity is generally required when a manufacturer [2] decides to market new vehicles or engines in the United States (see discussion below for complete discussion of when a certificate of conformity is required).

[1] Nonroad engines are defined in 40 CFR 89.2. It is a general term which encompasses all the regulated subclasses including, but not limited to, both CI and SI engines used in: farm and construction equipment, marine applications, recreation applications, and locomotives.

[2] Manufacturer, as used in this NPRM, means all entities or individuals requesting certification, including, but not limited to, Original Equipment Manufacturers, ICIs, and vehicle or engine converters.

Before issuing that certificate, EPA must perform certain activities necessary to ensure compliance with regulations implemented within the Motor Vehicle and Engine Compliance Program (MVECP). The MVECP includes all activities conducted by EPA that are associated with certification, fuel economy, Selective Enforcement Auditing (SEA), and in-use compliance monitoring and audits. Such MVECP activities include: Providing certification assistance during the pre-production phase; pre-certification confirmatory testing of vehicles; laboratory correlation; certification compliance audits and investigations; conducting fuel economy selection, testing, and labeling; selective enforcement audits (SEA); providing manufacturers and ICIs with CAFE calculations; monitoring of in-use vehicles and engines; monitoring/data review of mandatory production line (PLT) and in-use testing; and Agency-run in-use surveillance and/or recall tests.

In accordance with the Clean Air Act, as amended in 1990 (CAA), and the Independent Office of Appropriations Act (IOAA), EPA is authorized to collect fees for specific services it provides to manufacturers. Section 217 of the CAA (42 U.S.C. 7552) permits the EPA to establish fees to recover all reasonable costs associated with (1) new vehicle or engine certification under section 206(a) or part C,[3] (2) new vehicle or engine compliance monitoring and testing under section 206(b) or part C, and (3) in-use vehicle or engine compliance monitoring under section 207(c) or part C. Secondly, the authority to collect fees is also provided by the IOAA (31 U.S.C. 9701) which permits a government agency to establish fees for a service or thing of value provided by the agency to an identifiable recipient. Finally, Office of Management and Budget (OMB) Circular No. A–25 Revised, establishes Federal policy regarding fees assessed for Government services and for the sale or use of Government goods or resources and provides guidance for agency implementation of charges and the deposition of collections.

The MVECP fees have been in existence since 1992. The first fees regulations (57 FR 30055) were published on July 7, 1992, establishing MVECP fees to recover all reasonable costs associated with certification and compliance programs within the Office of Transportation and Air Quality (OTAQ), then called Office of Mobile Sources (OMS). In 1999, under the Compliance Assurance Program (CAP 2000) regulations (64 FR 23906), the provisions for fees were updated to reflect several changes in the costs of the MVECP. The fees regulations were further modified by a regulatory amendment published on March 7, 2000 (65 FR 11904). This amendment, which is applicable to original equipment manufacturers (OEMs) and aftermarket conversion manufacturers, allows a fee waiver for small volume engine families of alternatively fueled vehicles that are certified to the Clean-Fuel Vehicle standards for model years (MY) 2000 through 2003. Since the initial MVECP fees regulation, EPA has incurred additional costs and will continue to incur cost in supporting these current light-duty and heavy-duty compliance programs (including Tier 2 and new heavy-duty engine regulations), and new compliance programs and testing requirements for nonroad. Today's action proposes to update the MVECP fee provisions to reflect these changes.

Manufacturers receive certification and compliance services by initiating a certification request and an application for certification.[4] By determining the EPA activities and associated costs within the MVECP, we calculated a fee for each certification request type. The certification request types are described in more detail later in this proposal. Each request for a certificate of conformity within a certification request type is potentially subject to an equal amount of EPA expenditure related to the applicable certification, fuel economy, SEA, and in-use compliance monitoring and audit programs, thus EPA believes it is fair and equitable to calculate fees in a manner whereby the cost for each certificate within a certification request type is the same.

In summary, today we are proposing to collect fees under the authority of the IOAA and section 217 of the CAA to ensure that the MVECP is self-sustaining to the extent possible. In essence, this proposed regulation will require those manufacturers specially benefitting from the services provided under the MVECP to bear the EPA's cost of administering the program on their behalf.

B. What Programs Are Covered by the Fees?

EPA has a number of different services it provides under the MVECP. Under the MVECP, fees are collected to recover the cost of services associated with: (1) New vehicle or engine certification; (2) new vehicle or engine compliance monitoring (including selective enforcement auditing (SEA) and production line testing (PLT)); (3) in-use vehicle or engine compliance monitoring and testing; and (4) the fuel economy program. These services include: pre-production certification assistance; confirmatory testing of vehicles; laboratory correlation; certification compliance audits and investigations; conducting fuel economy selection, testing, and labeling; selective enforcement audits (SEA); providing manufacturers and ICIs with CAFÉ calculations; monitoring of in-use vehicles and engines; monitoring/data review of mandatory production line and in-use testing; and Agency-run in-use surveillance and/or recall tests. The proposed fees reflect the cost of these activities.

In addition to those services just mentioned, EPA also conducts activities for which a fee is not being proposed at this time. These activities include regulation development and policy, emission factors determination, air quality assessment and analysis, air quality initiatives, and support of state inspection and maintenance (I/M) programs. Under the currentMVECP fees regulation these activities are not covered.

II. Background

A. Basis for Action Under the Clean Air Act and Other Legal Authority

We are amending current fees and setting new fees within the MVECP fees regulation under the authority of section 217 of the Clean Air Act (CAA). EPA is authorized under section 217 of the CAA, as amended by Public Law 101–549, section 225, to establish fees for specific services it provides to vehicle and engine manufacturers. The CAA provides in pertinent part:

(a) Fee Collection.—Consistent with section 9701 of title 31, United

States Code, the Administrator may promulgate (and from time to time revise) 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, and

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

The Administrator may establish for all foreign and domestic manufacturers a fee schedule based on such factors as the Administrator finds appropriate and equitable and nondiscriminatory,

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

[4] A certification request is defined as a manufacturer's request for certification evidenced by the submission of an application for certification, Engine System Information (ESI) data sheet, or ICI Carry-Over data sheet.

including the number of vehicles or engines produced under a certificate of conformity. In the case of heavy-duty and vehicle manufacturers, fees shall not exceed a reasonable amount to recover an appropriate portion of such reasonable costs.

EPA is also authorized under the Independent Offices Appropriation Act of 1952 to establish fees for Government services and things of value that 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 provided to identifiable recipients. The relevant text states:

(a) 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.

(b) The head of an agency * * * may prescribe regulations establishing the charge for a service or thing of value provided by the agency. Regulations prescribed by the heads of executive agencies are subject to policies prescribed by the President and shall be uniform as practicable. Each charge shall be—

(1) Fair; and

(2) Based on—

(A) Costs to the Government;

(B) The value of the service or thing to the recipient;

(C) Public policy or interest served; and

(D) Other relevant facts.

EPA also intends to follow, and is guided by, the Office of Management and

Budget's Circular No. A–25 (Revised),[5] which establishes Federal policy regarding fees assessed for Government services and for the sale or use of Government goods or resources and was issued under the authority of the IOAA. Included in the Circular's objectives are ensuring that each service provided by an agency to a specific recipient be self-sustaining, and to promote the efficient allocation of the Nation's resources by establishing charges for special benefits provided to a recipient that are at least as great as costs to the Government of providing the special benefits.

Subsequent to EPA's initial rulemaking that set forth the fees for the MVECP,[6] the U.S. Court of Appeals for the D.C. Circuit, upon reviewing EPA's authority to collect fees under the IOAA and section 217, held that for the regulated industry, a certificate of conformity is deemed a benefit specific to the recipient, for purposes of the provision of the Independent Offices Appropriation Act (IOAA); thus authorizing a federal agency to collect fees from a beneficiary of service or thing of value the federal agency provides in order to make the service self-sustaining to the extent possible.[7] The court held that because the Compliance Program confers a specific, private benefit upon the manufacturers, the EPA can lawfully recoup from them the reasonable cost of the program.

Court decisions have also provided guidance on the criteria to be used in implementing fee schedules under the IOAA when user fees are being charged for special benefits. See National Cable Television Ass'n v. Federal Communications Comm'n, 554 F.2d 1094 (D.C. Cir. 1976); *Electronic Industries Association* v. *Federal Communications Comm'n,* 554 F.2d 1109 (D.C. Cir. 1976); and *Capital Cities Communications, Inc.* v. *Federal Communications Comm'n,* 554 F.2d 1135 (D.C. Cir. 1976). These decisions indicate the following factors are relevant in developing a fee program:

1. An agency may impose a reasonable charge on recipients for an amount of work from which the recipients benefit. The fees must be for specific services to specific persons.

2. The fees may not exceed the cost to the agency in rendering the service.

3. An agency may recover the full cost of providing a service to an identifiable beneficiary regardless of the incidental public benefits which may flow from the service.

An agency, when it proposes a fee pursuant to the IOAA to recover special benefits, should also address the following matters set out in *Electronic Industries Ass'n* v. *Federal Communications Comm'n,* 554 F.2d at 1117:

1. The agency must justify the assessment of a fee by a clear statement of the particular service or benefit for which it seeks reimbursement.

2. The agency must calculate the cost basis for each fee by:

a. Allocating specific expenses of the cost basis of the fee to the smallest practical unit;

b. Excluding expenses that serve an independent public interest; and

c. Providing public explanation of the specific expenses included in the cost basis for a particular fee, and an explanation of the criteria used to include or exclude a particular item.

3. The fee must be set to return the cost basis at a rate that reasonably reflects the cost of the services performed and valued conferred on the payor.

As detailed in today's proposal and in the Motor Vehicle and Engine Compliance Program Cost Analysis, EPA believes it has fulfilled all of these aims in developing this proposal.

EPA believes that all the fees included in this proposal are justified based on the tests for fee recovery relating to special benefits applicable under IOAA. In addition, EPA believes that CAA section 217 gives EPA additional support for imposing fees for the programs specified in that section. Section 217 authorizes EPA to establish fees ''[c]onsistent'' with the IOAA ''to recover all reasonable costs to the Administrator associated'' with certification, SEA testing and in-use compliance programs. This section establishes Congress' position that the specified programs provide the type of benefit and have the type of costs that are appropriately recoverable under the IOAA.

In addition to collecting fees for new highway vehicles and engines, EPA believes section 217 also authorizes the collection of fees for EPA certification and compliance activities related to new nonroad vehicles and engines. As noted above, section 217 sets forth the authority for EPA to collect fees for: new vehicle or engine certification activities conducted under section 206(a) of the CAA, new vehicle or engine compliance monitoring and testing under section 206(b) of the CAA (including such activities as SEA and PLT testing), and in-use vehicle or engine compliance monitoring and testing under section 207(c) of the CAA. Section 213 of the CAA[8] creates a statutory program which mirrors that Congress created for the regulation of new highway vehicles and engines. The nonroad standards created under section 213 are in fact subject to the same requirements (*e.g.,* sections 206, 207, 208, and 209) and implemented in the same manner (including certification, SEA, and in-use testing) under the same sections (as those referenced in section 217) as regulations for new highway vehicles and engines under section 202 (with modifications to the implementing nonroad regulations as the Administrator deems appropriate). Therefore, because EPA's certification and compliance activities related to new nonroad vehicles and engines are

[5] See *http://www.whitehouse.gov/omb/circulars/a025/a025.html* the text of which is also contained in the EPA Air Docket No. A–2001–09.

[6] See 57 FR 30055 (July 7, 1992).

[7] See *Engine Manufacturers Association* v. *EPA,* 20 F.3d 1177 (D.C. Cir. 1994).

[8] 42 U.S.C. 7547.

pursuant to sections 206 and 207 and because the text of section 217 authorizes the collection of fees for activities under such sections without limiting it to new highway vehicles and engines, EPA believes collecting fees for new nonroad vehicles and engines certification and compliance activities under section 217 is appropriate as an additional compliance requirement. EPA also believes that the IOAA creates an additional and independent authority for EPA to collect such fees due to the same special and unique benefits that manufacturers of both new highway and nonroad vehicle and engine manufacturers receive from EPA under the certification and compliance services.

Moreover, by providing authority to recover ''all reasonable costs * * * associated'' with the programs, Congress has given EPA authority to impose fees on a basis that can extend beyond the specific criteria used in interpreting the IOAA. See *Florida Power & Light Co.* v. *United States,* 846 F.2d 765 (DC Cir. 1988), cert denied, 109 S. Ct. 1952 (1989). If any commenters believe that any fee proposed by EPA for recovery for the programs identified in CAA section 217 is not recoverable under the IOAA, the commenters are requested to discuss whether, in their view, the fees would be recoverable under the ''all reasonable costs associated'' test found in section 217 and should do so in light of the court decision noted above. Additionally, if any commenters believe that any fee proposed by EPA for recovery is not identified or authorized by section 217, the commenters are requested to identify which portions of the fee program are not identified or authorized and why the provisions of the IOAA would not provide such authorization. As noted in more detail in the reduced fee section of today's preamble, EPA also believes that section 217 and the IOAA allow the Agency to set fees for specific small volume engine families and invites comments on this as well.

B. How Do EPA's Compliance Programs Work?

Certification

Section 203(a) [9] of the CAA requires that a manufacturer of new motor vehicles and new motor vehicle engines obtain a certificate of conformity prior to the distribution into commerce, sale, or offering for sale, or the introduction, or delivery for introduction, into commerce, within the United States of such new motor vehicles or engines. The certificate of conformity covers a defined group of vehicles or engines and has a specified duration referred to as the model year (MY).

''Model year'' is defined in the CAA [10] to be the manufacturer's annual production period (as determined by the Administrator) which includes January 1 of the calendar year. If the manufacturer has no annual production period, the term ''model year'' means the calendar year. For some industries, such as the light duty vehicle industry, the model year typically begins before the calendar year; for example, the 2003 model year might run from August 1, 2002 to July 31, 2003. For other industries it is synonymous with the calendar year and runs from January 1 to December 31. In some cases a model year may be longer than twelve months. However, in all cases the model year refers to an annual production period. Consequently new certificates must be issued each year.

For marine vessels covered under the voluntary IMO program, a letter of compliance is issued instead of a certificate of compliance. For purposes of the fee rulemaking, the letter of compliance will be treated the same as a certificate of compliance. In this case a request for certification shall mean a request for the voluntary IMO letter of compliance. Although such letters of compliance are not a requirement under title II of the CAA, EPA believes that it provides special and unique benefits to the manufacturers of marine vessels that seek and receive EPA services in order to receive letters of compliance. As explained above, EPA believes that the IOAA provides the basis by which to collect fees for this activity. As further discussed below, EPA is also considering and inviting comment on whether to finalize fees for industry categories that may not yet have final emission standards regulations, as part of the overall final fees regulation promulgated from today's proposal or to issue such fees requirements at the time the emission standards themselves become final. EPA anticipates promulgating fees for marine vessels covered under the voluntary IMO program as part of final fees regulation associated with today's proposal.

The group of vehicles or engines covered by a certificate of conformity is called either an ''engine family'' or a ''test group'' depending on the applicable class of vehicles or engines. While the terminology changes between classes, the basic certification unit (or group) is designed to accomplish the same purpose. Only vehicles or engines which are expected to exhibit similar emission characteristics and deterioration are combined together into a single group.

Table II.B–1, below, summarizes the name of these basic certification groups, the location of the general certification and compliance program rules, and the typical number of certificates which are issued for each class of vehicles and engines covered by this proposal. The number of certificates in the following table are projections. If there is a certification program currently active for the class, the number of certificates are based on latest actual numbers. For other industries, the number of certificates is based on projections gathered from the discussions with manufacturers and information presented when the Agency proposed and/or finalized the rules pertaining to the industry.

TABLE II.B–1.—CLASSES OF CERTIFICATES, THEIR UNIT, NUMBER OF CERTIFICATES AND REGULATIONS

Class of vehicles/engines	Basic certification unit	Number of certs	Location or future location of general certification regulations
Light Duty Vehicles & Trucks (LD)	Test Group	411	40 CFR Part 86, Subpart S.
Highway motorcycles (MC)	Engine Family	174	40 CFR Part 86, Subpart E
Heavy-duty Highway Engines	Engine Family	130	40 CFR Part 86, Subpart A.
Nonroad CI Engines	Engine Family	603	40 CFR Part 89.
Heavy-duty Vehicle Evap	Evap Family	42	40 CFR Part 86, Subpart M.
Marine SI Outboard/PWC	Engine Family	155	40 CFR Part 91.

[9] CAA Sec. 213(d) requires that the standards for nonroad engines or vehicles under Sec. 213 be enforced in the same manner as standards prescribed under section 202. As such, EPA applies the provisions of Sec. 203 to nonroad vehicles and engines.

[10] See CAA Sec. 202(b)(3). It is also defined in the applicable Title 40 regulations for the applicable class of vehicle or engine covered.

TABLE II.B–1.—CLASSES OF CERTIFICATES, THEIR UNIT, NUMBER OF CERTIFICATES AND REGULATIONS—Continued

Class of vehicles/engines	Basic certification unit	Number of certs	Location or future location of general certification regulations
Marine CI [a] > 37 kW	Engine Family	40	40 CFR Part 94.
International Maritime Organization [b]	Engine Family	9	
Small Nonroad SI	Engine Family	546	40 CFR Part 90
Locomotives & Locomotive Engines	Engine Family	10	40 CFR Part 92.
Large Nonroad SI (>19 kW) [c]	Engine Family	50	40 CFR Part 1048.
Recreational Marine CI>37 kW [c]	Engine Family	25	40 CFR Part 94.
Marine SI Inboard /Sterndrive [d]	Engine Family	50	40 CFR Part 1045.
Recreational [c] (including Off-road MC, ATV's, Snowmobiles).	Engine Family	100	40 CFR Part 1051.

[a] The rules for these classes are finalized but not yet implemented; numbers are estimates.
[b] The International Maritime Organization (IMO) has established procedures for obtaining a letter of compliance with the MARPOL 73/78 Annex 6 which have not yet been ratified by the U.S.A. Manufacturers of such engines may voluntarily comply with these requirements. EPA has agreed to issue a letter of compliance for such manufacturers who voluntarily comply with the MARPOL 73/78 Annex 6 emission requirements.
[c] The rules for these classes are proposed but not yet finalized; numbers are estimates.
[d] The rules for these classes are under development but not yet finalized; numbers are estimates.

To obtain a certificate, the manufacturers must perform the required testing and fulfill other requirements specified in the applicable regulations listed in the above table. When the manufacturer has satisfied itself that it has complied with all the requirements, it submits an application for certification for review by the Agency. EPA processes these applications and makes a determination of conformance with the CAA and the applicable regulations. If the vehicle or engine satisfies the prescribed emission standards and otherwise complies with the applicable provisions of the regulations, EPA issues a certificate of conformity for the group (*e.g.*, engine family).

The certification process includes, but is not limited to, review of the application for certification, review of the manufacturer's durability and deterioration determination, review of emission-data for test engine selection, review of the manufacturer's justification that auxiliary emission control devices (AECDs) are not defeat devices, 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. The certification program also covers ICI manufacturers review and processing and approval for final importation of vehicles and engines.

SEA and PLT

EPA conducts new vehicle or engine compliance monitoring in the form of Agency-conducted Selective Enforcement Audits (SEA) or manufacturer-conducted production line testing (PLT) programs. The purpose of these programs is to assure that the vehicles that are actually being produced comply with the emission standards. The certification portion of the MVEPC demonstrates that the vehicles are *designed* to pass the standards for the vehicles' useful life through testing of pre-production prototype vehicles or engines. The SEA or PLT testing also serves as some additional proof of in-use compliance for certain programs (where in-use testing is more difficult) by addressing the prototype to production effects on emissions.

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. PLT programs require the manufacturer (rather than EPA) to test a percentage of engines as they leave the production line. In either case, if a substantial number of vehicles or engines fail to meet the emission standards the manufacturer could be required to cease production of the failing vehicles until the manufacturer had demonstrated that a new version of the vehicle complied with the standard. The manufacturer may also be required to recall (see discussion below for the meaning of a recall) failing vehicles or engines which have been introduced into commerce.

In-Use Programs

EPA further ensures compliance with the CAA through a variety of in-use testing and in-use defect investigations.

These activities include investigations into potential emission-related defects vehicles and engines and various types of in-use compliance programs. In-use compliance activities ensure that vehicles and engines continue to meet emission standards throughout their useful life.

The type of in-use programs conducted by the Agency vary between the classes of vehicles and engines. These variations contribute to the different fee amounts which the Agency is proposing for different classes. (See Section IV of the Motor Vehicle and Engine Compliance Program Cost Analysis, available in the docket, for details of how the Agency calculated the fee amounts). In all cases, should the Administrator of EPA determine, by whatever means, that a substantial number of any class or category of vehicles or engines, although properly maintained and used, do not comply with their applicable regulations when in actual use throughout their useful life, the Agency requires the manufacturer to submit a plan to remedy the nonconformity of the vehicles or engines. The implementation of the plan to remedy vehicles is called a recall.

The Agency uses data from Selective Enforcement Audits (SEA), manufacturer-supplied production line testing (PLT), Agency-run in-use surveillance and/or recall tests conducted on a dynamometer and/or on the road , manufacturer-run in-use verification program (IUVP) testing, manufacturer-run engine testing and manufacturer-supplied defect reports to evaluate in-use emissions performance for the various classes of engines and vehicles which are certified.

For recall and surveillance testing, the Agency recruits vehicles from their owners and conducts tests either on a dynamometer or on the road using mobile emission measurement equipment. The IUVP program only applies to light-duty vehicles and medium-duty passenger vehicles; it requires manufacturers to conduct a specified amount of testing on in-use vehicles which they procure from

owners. Defect reporting (DR) generally requires manufacturers to notify the Agency when an emission related defect occurs on more than 25 vehicles or engines in use.

The specific programs currently employed by the Agency to assure in-use compliance for the various classes of vehicles and engines are summarized in the following paragraphs. This list is being provided to document the activities considered in the analysis for proposed fees. The Agency may at any time perform other investigations and/or use other sources of data to make compliance determinations of in use vehicles and engines.

The selection of which in-use tools are used by the Agency for each industry is based on the in-use compliance needs. Each of the industries are subject to different regulations which establish different requirements. When the applicable regulations require the manufacturer to supply some form of in-use data, production line data, or aged engine testing; this information makes it easier for the Agency to monitor compliance in actual use. Consequently for those industries the Agency can spend less of its own effort to collect data.

For the light-duty and highway motorcycle programs, the Agency conducts an in-use surveillance and recall program where individual owner's vehicles are recruited and tested by the Agency. This data is augmented by manufacturer-run in-use data to fulfill the requirements of the in-use verification program (IUVP) for light duty vehicles. The Agency also reviews defect reports submitted by the manufacturers for potential in-use problems. Although there is authority for the Agency to conduct SEA testing, EPA does not currently conduct SEA testing for light-duty vehicles.

For heavy-duty highway vehicles and nonroad vehicles, the Agency conducts SEAs and on-the-road emission measurements of engines installed in in-use vehicles. EPA may also remove engines from heavy-duty highway and nonroad vehicles for laboratory testing when problems are found using on-vehicle measurement equipment.

For other classes of engines such as marine SI outboards and personal water craft (PWC), manufacturers are required to age engines in fleets and then perform testing on the engine.

C. How Does This Rulemaking Affect the Proposed Recreational Vehicles Rule and Future Rules?

We are proposing fees for Large Nonroad SI (>19 kW), Recreational Marine CI, Marine SI Inboard and Sterndrive engines, Recreational engines (including Off-Road Motorcycles (MC), All-terrain Vehicles (ATVs), and Snowmobiles) even though emission regulations currently do not exist for those classes. As discussed previously, the Agency has proposed and is in the process of finalizing emission standards (See 66 FR 51098, (October 10, 2001)) or is in the process of preparing to propose emission standards for these industries. The fees listed in the Table III.D–1, below, will apply only after the applicable regulations are effective for these classes of engines. The fees are due only when a manufacturer is making a request for certification.

We are proposing fees for these classes at this time because enough is known of the anticipated Agency costs for the MVECP for these programs and the projected number of certificates to accurately calculate proposed fees. The fees proposed for these programs represent a reasonable but somewhat conservative and low estimate Agency cost and assume either low levels of EPA monitoring or monitoring through manufacturer-run PLT and in-use testing. In the event that the programs for these classes of engines significantly change, the Agency will revise the applicable fee by a separate regulation.

Today's proposal of potential fees for these classes in no way prejudges the outcome of the ongoing emission standards rulemakings.

D. How Does the Fuel Economy Program Work?

The Agency is proposing to continue the current provisions which incorporate the fuel economy program costs into a single fee due at the time of certification for light duty vehicles.

The fuel economy program applies to light duty vehicles only. There are three separate programs: fuel economy labeling and Guide publication, gas guzzler tax, and corporate average fuel economy (CAFÉ).

The fuel economy labeling program is a public information program which is designed to provide the public accurate fuel economy information for comparison purposes. All light duty vehicles are required to have a fuel economy label before they can be introduced into commerce. The label values are also published in the Fuel Economy Guide (a joint publication with the Department of Energy, DOE) and published on the internet on two web sites (*http://www.fueleconomy.gov* and *http://www.epa.gov/autoemissions).* EPA reviews manufacturers' testing, conducts confirmatory testing, audits the manufacturers' label calculations, and determines the classification of vehicles. EPA receives approximately 1000 label calculations in a typical model year. The fuel economy label program is mandated by the Energy Policy and Conservation Act (EPCA), 42 U.S.C. 620, and is codified in regulations in 40 CFR part 600.

The gas guzzler tax program is designed to discourage the purchase of vehicles with particularly poor fuel economy through a tax program administered by the Internal Revenue Service (IRS). Vehicles with a combined fuel economy value below 22.5 mpg must pay a tax which starts at the rate of $1000 per vehicle. EPA determines potential gas guzzlers as part of the labeling process; the final determination of the tax liability is made by the IRS. The gas guzzler program is mandated by the Gas Guzzler Tax Law and is codified in regulations in 40 CFR part 600.

The CAFÉ program is designed to reduce fuel consumption, reduce dependence on foreign oil, and to reduce greenhouse gas emissions from new light duty vehicles. Manufacturers are required to meet specified average fuel economy values. Separate values are specified for cars and trucks.[11] If manufacturers fail to meet the specified standards they are required to pay a fine.[12] The Department of Transportation (DOT) administers the CAFÉ program and collects the fines. Many additional vehicle tests are required to calculate the CAFÉ values. EPA reviews manufacturers' testing and conducts confirmatory testing as necessary. EPA also calculates the CAFÉ values; typically 50 CAFÉ are processed each year. The CAFÉ program is mandated by the Energy Policy and Conservation Act (EPCA), 42 U.S.C. 620, and is codified in regulations in 40 CFR part 600.

The fuel economy and light-duty certification program have substantial overlap. Both programs collect fuel economy and emissions data. Emission-data vehicles provide both emissions and fuel economy data on engine families for which the manufacturer submits a certification request. 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

[11] Current CAFÉ standards are 27.5 mpg for cars and 20.7 mpg for trucks.

[12] Current fines are $5.50 per tenth of an mpg beneath the standard multiplied by the total number of vehicles in the fleet average. Manufacturers are allowed to carry-forward or carry-back credits up to three years to offset short falls calculated in other years.

certification and fuel economy. 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. Every vehicle that is certified must also receive a fuel economy label and will ultimately be included in the CAFÉ for that manufacturer.

For these reasons, it is unnecessary, for fee purposes, to distinguish between the efforts expended on fuel economy and certification. Consequently, the Agency is proposing to continue its current practice of assessing light duty vehicle fees based on certification of test groups and including the costs for the fuel economy activities in that single fee.

III. Proposed Fee System

A. What Agency Costs Are Recoverable by Fees?

Today's notice proposes a fee program to recover those costs incurred by EPA in conducting the MVECP as authorized under the CAA and the IOAA. These costs, incurred by EPA while conducting new vehicle and engine certification which includes EPA pre-certification testing, certification compliance audits and investigations, fuel economy labeling, CAFÉ calculations and certificate processing; new vehicle and engine compliance monitoring and testing which includes SEAs and review of manufacturer production line test data; and in-use vehicle or engine compliance monitoring which includes testing of in-use vehicles and engines, in-use audits and reviewing manufacturers' in-use test data. The proposed fees are based on all recoverable direct and indirect costs associated with administering these activities. Recoverable costs include all labor, operating and program costs associated with the activities listed above. Direct labor costs consist of the personnel compensation or pay and benefits for the people that directly administer the MVECP. Indirect labor costs consist of the personnel compensation or pay and benefits for the people that support the employees that directly administer the MVECP. This includes support staff, computer technicians in the lab, managers, etc.

Operating costs include all costs for contracts, parts, supplies and infrastructure, excluding labor costs that are used to support the MVECP. Examples of these costs include travel costs, building space, computer support and training for people who work directly on the MVECP.

Program Costs are those of specific compliance activities conducted for individual industries. These include the costs of testing either at the NVFEL or at a contracted facility, engine procurement for testing, equipment for testing and equipment used in analyzing the test data.

The overall EPA overhead cost is also included in the analysis. The overall EPA overhead costs are costs incurred by other parts of the EPA that support the people working directly on the MVECP. See the Motor Vehicle and Engine Compliance Program Cost Analysis [13] for further discussion.

These costs are all costs of providing a certificate of conformity and the related compliance activities which allows vehicle and engine manufacturers an opportunity to introduce such vehicles and engines into commerce within the United States, and are, therefore, recoverable by fees as stated in the Independent Offices Appropriation Act and the Office of Management and Budget's Circular No. A–25 discussed in Section II.A above. A more complete description of the agency costs that are recoverable by fees is in the Motor Vehicle and Engine Compliance Program Cost Analysis, Section III.A.

B. What OTAQ Activities Are Not Included in the Agency's Proposed Fee Program?

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 but are not limited to: regulation development, emission factor testing, air quality assessment, support of state inspection and maintenance programs and research. For a more complete description of OTAQ's programs, see Section II.D of the Motor Vehicle and Engine Compliance Program Cost Analysis.

C. How Did the Agency Analyze the Costs of the Compliance Programs?

The proposed fees were based on the Agency's projected costs of providing certification and related compliance programs to manufacturers in the 2003 model year. To determine these projected costs, we conducted an in-depth analysis and detailed all of the direct and indirect costs incurred by EPA to operate the MVECP. Budget data from 2001 was used as a baseline since it is the most current data available. Cost estimates for future compliance programs are based on estimates for the equipment, labor and contract needs required to support new compliance-related programs and regulations and was collected through discussions with senior management. The full discussion of the methods and numbers used in the analysis is contained in the ''Motor Vehicle and Engine Compliance Program Fees Cost Analysis.''

EPA determined that by 2003, significant laboratory equipment modernization will be required to satisfactorily test vehicle and engines at the lower emission levels associated with Tier 2 and new diesel engine emission standards. Consequently, an appropriate portion of the cost of this laboratory upgrade ($10 million dollars of the total $14 million dollar upgrade) was included in the cost analysis that supports this proposal. The 10 million dollar projected, recoverable cost was amortized over 10 years for an annual cost of 1 million dollars. Refer to the Motor Vehicle and Engine Compliance Program Fees Cost Analysis for a complete discussion of the laboratory upgrade costs.

EPA is exploring the possibility of a partnership with industry through a Cooperative Research and Development Agreement (CRADA) that would fully develop and deploy the National Low Emission Vehicle Compliance/Correlation Test Site at the National Vehicle and Fuel Emissions Laboratory. A CRADA agreement may reduce the cost of the laboratory modernization. In the event the EPA enters into such a CRADA and the agreement results in a significant cost savings, EPA may adjust the fees in a future rulemaking. However, at this time EPA believes it is appropriate to include in the costs to be recovered by today's proposal, those projected actual costs associated with the laboratory equipment modification, as such modification is necessary to conduct the MVECP.

Another cost that was projected for 2003 is the cost of a robust highway and nonroad engine compliance program, discussed in more detail in Section V.B of Motor Vehicle and Engine Compliance Program Cost Analysis available in the docket. These costs and the laboratory modernization costs were projected for 2003 and are included in the cost study because they will be incurred by the EPA as part of the MVECP in 2003.

[13] The Motor Vehicle and Engine Compliance Program cost is contained the EPA Air docket No. A–2001–09 and is on the EPA OTAQ website.

D. Proposed Fee Schedule

Today's action proposes the following fees for each certification request:

TABLE III.D–1—PROPOSED FEE SCHEDULE

Category	Certificate type [a]	Fee
LD, excluding ICIs	Fed Certificate	$33,911
LD, excluding ICIs	Cal-only Certificate	16,958
MDPV, excluding ICIs	Fed Certificate	33,911
MDPV, excluding ICIs	Cal-only Certificate	16,958
Complete SI HDVs, excluding ICIs	Fed Certificate	33,911
Complete SI HDVs, excluding ICIs	Cal-only Certificate	16,958
ICIs for the following industries: LD, MDPV, or Complete SI HDVs.	All Types	8,394
MC HW, including ICIs	All Types	2,416
HD HW, including ICIs	Fed Certificate	30,437
HD HW, including ICIs	Cal-only Certificate	827
HDV (evap), including ICIs	Evap Certificate	827
NR CI, including ICIs, but excluding Locomotives, Marine and Recreational engines.	All Types	2,156
NR SI, including ICIs	All Types	827
All Marine, including ICIs	All Types and IMO	827
All Recreational [b], including ICIs, but excluding marine engines	All Types	827
Locomotives, including ICIs	All Types	827

[a] Fed and Cal-only Certificate and IMO is defined in 40 CFR 85.2402
[b] Recreational means the engines subject to 40 CFR 1051 which includes off road motorcycles, all-terrain vehicles and snowmobiles.

The Agency is proposing fees for Large Nonroad SI (>19 kW), Recreational Marine CI, Marine SI Inboard and Sterndrive engines, Recreational engines (including Off Road MC, ATV's, and Snowmobiles) even though emission regulations currently do not exist for those classes. The Agency has proposed (See 66FR 51098, published on October 5, 2001) or is in the process of proposing regulations for these classes.

The fees listed in the above table will apply only after the applicable regulations are effective for these classes of engines. The fees are due only when a manufacturer is making a request for certification. It may be worth noting again, that we are considering whether to finalize the fees for these yet to be regulated industries within the final rule based on today's fee proposal or to finalize the fees associated with these yet to be regulated industries in the emission regulations covering such industries.

E. Will the Fees Automatically Increase To Reflect Future Inflation?

One factor that could keep EPA from recovering the full cost of conducting the MVECP is inflation. To help mitigate the effects of inflation, the Agency is proposing that fees be automatically adjusted annually by the change in the Consumer Price Index starting with the 2005 model year. The Agency is proposing a formula for manufacturers to use to calculate the applicable calculate beginning with the 2005 model year.

Starting with the 2005 model year, fees will be calculated using the following equation:

$$Fees_{MY} = Fees_{base} \times (CPI_{MY-2}/CPI_{2002})$$

Where:

$Fees_{MY}$ is the applicable fee for the model year of the certification request.

$Fees_{base}$ is the applicable fee from paragraph (a) of this section.

CPI_{MY-2} is the consumer price index for all U.S. cities using the ''U.S. city average'' area, ''all items'' and ''not seasonally adjusted'' numbers calculated by the Department of Labor listed for the month of July of the year two years before the model year. (*e.g.,* for the 2005 MY the CPI used in the equation will be calculated based on the date of July, 2003).

CPI_{2002} is the consumer price index for all U.S. cities using the ''U.S. city average'' area, ''all items'' and ''not seasonally adjusted'' numbers calculated by the Department of Labor for December, 2002.

The applicable CPI results calculated by the Department of Labor are currently published on the following internet address: *http://stats.bls.gov/cpihome.htm* by choosing the data option link for ''Consumer Price Index—All Urban Consumers (Current Series)'', then selecting ''U.S. city average'' area, ''all items'' and ''not seasonally adjusted''.

The Agency invites comment on alternate ways to adjust fees for inflation. As a convenience for manufacturers and to avoid errors in calculation, the Agency intends to provide, via a guidance letter, a listing of applicable fees calculated from the above equation for each model year beginning with the 2005 model year. The Agency invites comments regarding potential procedures for notification of the new fee amounts.

F. Comments on the Proposed Fee System

The Agency requests comments on the proposed fee system including the ''Vehicle and Engine Compliance Program Fees Cost Analysis,'' recoverable costs, costs not recovered, the allocation of recoverable costs by compliance industry, and the fees per certificate. Comments can refer to this preamble, the proposed regulations and the cost analysis.

IV. Fee Collection and Transactions

A. Procedure for Paying Fees

Fees must be paid in advance of receiving a certificate. For each certification request, evidenced by an application for certification, ESI data sheet, or ICI Carryover data sheet, manufacturers and ICIs 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 [wire or Automated Clearing House (ACH)], 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 application for certification to the National Vehicle and Fuel Emission Laboratory (NVFEL) in Ann Arbor, Michigan or to the Engine Programs Group in Washington, DC.

To ensure proper identification and handling, the check or electronic funds transfer and the accompanying filing form will indicate the manufacturer's corporate name, the EPA standardized test group or engine family name. The full fee is to accompany the filing form. Partial payments or installment payments will not be permitted. If submitting a wire or an ACH payment the full fee payment does not include the extra fee a banking institution may charge to process the wire or ACH. The Agency invites comment on methods of streamlining the fee payment process while maintaining the requirement that fees are paid in advance of certification services.

B. What Is the Implementation Schedule for Fees?

The fee schedule proposed today will apply to 2003 and later model year vehicles and engines. This proposal will not apply to 2003 model year certification requests received by EPA prior to the effective date of the regulations, providing that they are complete and include all required data.

C. What Happens to the Money That Is Collected by the Fees Program?

Any fees collected for administering the MVECP will be deposited in a special fund in the United States Treasury.

D. Can I Qualify for a Reduced Fee?

EPA believes that an expansive fee reduction policy could violate the very premise underlying section 217 of the CAA: to reimburse the government for the specific regulatory services provided to an applicant. Nevertheless, EPA recognizes that there may be instances, in the case of small engine families, where the full proposed fee may represent an unreasonable economic burden. Therefore, EPA is proposing to continue the current two part test which, if met, would qualify an applicant for a reduction of a portion of the certification fee.

A reduced fee is available when:

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

(2) The full fee for the certification request exceeds 1% of the projected aggregate retail value of all vehicles or engines covered by that certificate.

The proposed requirement that the certificate request pertain to U.S. vehicle/engine sales is intended to exclude fee reductions for certificates used to support foreign vehicle or engine sales. This provision is carried over from the current fees rules. These certificates are not required and represent extra effort expended by the Agency beyond that which is mandated in U.S. laws or regulations. Further, the Certificate of Conformity does not distinguish between U.S. and foreign sales, therefore, although the manufacturer's intention may be to certify vehicles for a foreign market, there is nothing to prohibit the sale of these vehicles in the U.S. Consequently, the Agency is proposing that it is inappropriate to reduce the cost of these certificates below the actual cost to the Agency.

For the first time EPA is also proposing that the reduced fee will be the larger of 1% of the aggregate retail value of the vehicles and engines covered by the certificate or a minimum fee of $300. The $300 minimum fee represents the lowest level of fee that is cost effective for the Agency to collect and still represents actual costs incurred by the Agency in providing services. As noted below, the Agency is proposing two potential ''pathways'' by which a manufacturer can seek to pay a reduced fee. Under either pathway the minimum that a manufacturer will be required to pay is $300. The Agency invites comment on the concept of a minimum fee and the amount of the minimum fee.

The Agency is proposing two separate pathways by which a manufacturer can request and pay a reduced fee amount. One of the purposes of these pathways is to clarify when manufacturers are required to determine the value of the vehicles or engines actually sold under a certificate and to either pay additional fees or seek a refund if necessary. Under the first pathway, the Agency is proposing that manufacturers seeking a reduced fee include in their certification application a statement that the reduced fee is appropriate under the criteria and a calculation of the amount of the reduced fee. The manufacturer's evaluation and submission of a fee amount under this reduced fee provision is subject to EPA review or audit. A manufacturer's statement that it is eligible for a reduced fee can be rejected by EPA if the Agency finds that manufacturer's evaluation does not meet the eligibility requirements for a reduced fee, the amount of the reduced fee was improperly calculated, the manufacturer failed to meet the requirements to calculate a final reduced fee using actual sales data, or the manufacturer failed to pay the net balance due between the initial and final reduce fee calculation (see below for discussion of the final fee calculation, reporting and payment proposals). If the manufacturer's statement of eligibility or request of a reduced fee is rejected by EPA then EPA may require the manufacturer to pay the full fee normally applicable to it or EPA may adjust the amount of the reduced fee that is due or EPA may require the manufacturer to utilize the special fee provisions (the second pathway) which are explained below. To aid our review, the Agency is proposing that the applicant for a reduced fee also provide EPA with a report (called a ''report card''). This report shall include the total number of vehicles ultimately covered by the certificate (the report card shall include information on all certificates held by the manufacturer that were issued with a reduced fee), a calculation of the actual final reduced fee due for each certificate which is derived by adding up the total number of vehicles and their sales prices, a statement of the total initial fees paid by the manufacturer and the total final fees due for the manufacturer. Manufacturers will be required to submit the report card within 30 days of the end of the model year,[14] EPA believes this is reasonable as manufacturers should have final figures for each certificate by this time. Manufacturers will be required to ''true -up'' or submit the final reduced fee due as calculated within the report card within 45 days of the end of the model year. The Agency is proposing to not require payment of the balance when the amount is less than $500 for a manufacturer. (The Agency requests comment on these special provisions.)

In addition, EPA may require that manufacturers submit a report card, with the same or similar information as noted above, for previous model years. The purpose of such report card would be to give EPA assurance that the manufacturer has demonstrated a continuous capability of submitting the necessary year to year report cards and that appropriate fees have been paid. This will assist EPA in its determination as to whether a manufacturer is capable of adequately projecting its annual sales for reduced fee purposes and whether

[14] Typically, this will be the first February 15 after a certificate expires. Certificates generally expire on December 31 of the model year.

the manufacturer shall remain eligible for the reduced fee provisions.

Under the second pathway, EPA is also proposing special provisions for fee payment that are available for manufacturers which, due to the nature of their business, may be unable to make good estimates of the aggregate projected retail value of all the vehicles or engines to be covered by the requested certificate. Examples of manufacturers that may be unable to estimate the number of vehicles and engines covered by a certificate are those that modify customer-owned vehicles (as done by some ICIs and after-market alternative fuel converters) that are uncertain how many owners will approach them to perform this service. Under the special provisions, manufacturers that obtain prior approval from the Agency may pay 1.0% of the retail selling price of 5 vehicles, engines or conversions when applying for a certificate. Manufacturers under this pathway will be required to submit the same report card and true-up the actual amount of reduced fee that is due in the same manner as described above under the first pathway.

Under either pathway, if a manufacturer fails to report within 30 days or pay the balance due by 45 days of the end of the model year, then EPA may refuse to approve future reduced fee requests from that manufacturer. In addition, if a manufacturer fails to report within 30 days and pay the balance due by 45 days of the end of the model year as noted above then the Agency may deem the applicable certificate as void ab initio.

In the case of vehicles or engines which have originally been certified by an OEM but are being modified to operate on an alternative fuel, EPA is proposing that the cost basis for the reduced fee amount be the value-added by the conversion, not the full cost of the vehicle or engine.

On the other hand, ICI vehicles or engines certificates cover vehicles or engines which are imported into the U.S.A. and that were not originally certified by an OEM. As such, EPA costs associated with proving various MVECP services for these vehicles has not yet been recovered. Since the Agency has not received a fee payment for the ''base vehicle'' or the vehicle imported before its conversion to meet U.S. emissions requirements, we are proposing that the cost basis for calculating a reduced fee for an ICI certification shall be based upon the full cost of the vehicle or engine rather than the cost or value of the conversion. As noted above, EPA is already proposing a fee of $8,394 for certain types of ICI certificates as EPA has determined the costs of MVECP services provided for such certificates regardless of the number of vehicles included under such certificates. However, we recognize that this fee or the full fee associated with other types of certificates may represent an unreasonable economic burden on smaller businesses or on the price of vehicles in smaller classes under a certificate. Therefore, EPA is proposing to retain its current requirement that manufacturers pay a fee based on 1% of the aggregate retail sales price (or value) of the vehicles covered by a certificate as EPA believes this best represents the proper balance between recovering the MVECP costs without imposing an unreasonable economic burden. EPA invites comment on the continued use of the 1% multiplier.

For ICI requests EPA proposes to continue the current requirement to calculate the full cost of a vehicle based on a vehicle's average retail price listed in the National Automobile Dealer's Association (NADA) price guide. By using the NADA price guide to establish a vehicle's retail sales price (or value), EPA ensures uniformity and fairness in charging fees. Further, it avoids problems associated with abuse, such as falsification of entry documents, in particular, sales receipts. Where the NADA price guide does not provide the retail price of a vehicle, and in the case of engines, the applicant for a reduced fee must demonstrate to the satisfaction of the Administrator, the actual market value of the vehicle or engine in the United States at the time of final importation. When calculating the aggregate retail sales price of vehicles or engines under the reduced fee provisions such calculation must not only include vehicles and engines actually sold but also those modified under the modification and test options in 40 CFR 85.1509 and 40 CFR 89.609 and those imported on behalf of a private or another owner.

EPA is continuing the current exemption of fees for small volume certification requests for vehicles using alternative fuels through the 2003 model year. EPA believes that this program has completed its purpose of providing a short-term relief for alternative fuel conversion manufacturers. Therefore, starting with the 2004 model year, EPA is no longer including this exemption for alternative fuel convertors, and such convertors shall be subject to the same fee provisions as other manufacturers. This includes the reduced fee provisions.

We believe that this fee reduction proposal will provide adequate relief for small entities that would otherwise have been harmed by a standardized fee. It is important to note that this fee reduction does not raise the fees for other manufacturers; EPA will simply collect less funds. The Agency invites comment on the necessity of a reduced fee provision.

E. What Is the Refund Policy?

Instances may occur in which an applicant submits a filing form with the appropriate fee, has an engine-system combination undergo a portion of the certification process, but fails to receive a signed certificate. Under the current rules, the Agency offers the manufacturer a partial refund in those situations. The Agency retains a portion of the fee to pay for the work which has already been done. This policy has been difficult to administer and required substantial Agency oversight. Consequently, we have included a simplified refund policy in today's proposal.

When a certificate has not been issued, the applicant will be eligible to receive, upon request, a full refund of the fee paid. Optionally, in lieu of a refund, the manufacturer may apply the fee to another certification request. The new refund policy will not reduce the money collected by the Agency because the fee schedule proposed today is based on the number of certificates actually issued rather than the number of certification requests.

The Agency also considered not allowing any refunds if the manufacturer overpaid based on their own projections. However, the Agency was concerned there could be cases where sales were significantly lower than expected and the overpayment amount would be significant. Also, the Agency does not want to encourage manufacturers to systematically under-project the reduced fees on the fear that they might significantly overpay and be unable to obtain a refund. On the other hand, processing refunds costs the Agency time and money and there is a potential for a large number of small refunds that would be not be cost effective for EPA to process or for the manufacturer to request. Therefore, the Agency is proposing to only consider refund requests for a minimum of $500 overpayment. The Agency invites comment on this issue.

V. What Other Options Were Considered by EPA When Proposing This Rule?

A. Separate Fees for Other ICI Categories Beyond Light-Duty

EPA considered continuing the current provisions which charge the

same fee for ICI and OEM manufacturers. However, when the Agency examined the costs associated with ICI and OEM manufacturers, we found the costs associated with administering the light-duty ICI program was lower than for light-duty OEM manufacturers. Consequently, today's proposal includes lower fees for light-duty ICI certificate requests.

EPA considered calculating separate fees for other ICI industries beyond light-duty. Currently, EPA has issued ICI certificates only for highway motorcycles in addition to light-duty. In this case, the costs to the Agency for the MVECP for motorcycles and ICI motorcycles are essentially the same. EPA expects that when other industries have ICI certification requests that the Agency will a similar amount of effort on the ICI manufacturers as the OEM manufacturers. Consequently, the Agency believes that ICI and OEM fees would be similar for all the categories other than light-duty. For that reason, today's proposal does not establish separate fees for ICI manufacturers other than the for the light-duty ICIs.

B. Start Updating Fees for Cost of Inflation in 2004 Model Year

EPA considered updating MVECP fees for the cost of inflation at the start of model year (MY) 2004. We also considered waiting one year to apply inflation costs to fees. We are proposing to postpone this update for one year and apply inflation costs in 2005 MY. The Agency invites comment on updating the fees before the start of MY 2005.

VI. What Is the Economic Impact of This Proposed Rule?

This proposed 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 18 million dollars annually. This averages out to approximately 50 cents 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 reduced fee provision for small volume engine families to reduce the burden of fees. These provisions should alleviate concerns about undue economic hardship on small volume manufacturers. Refer to the Regulatory Flexibility Act section, Section VIII.B, below, for more discussion on this topic.

VII. How Can I Participate in the Rulemaking Process?

A. How To Make Comments and Use the Public Docket

EPA welcomes comments on all aspects of this proposed rulemaking. Commenters are especially encouraged to give suggestions for changing any aspects of the proposal. All comments, with the exception of proprietary information should be addressed to the EPA Air Docket Section, Docket No. A–2001–09 (see **ADDRESSES**).

Commenters who wish to submit proprietary information for consideration should clearly separate such information from other comments by (1) labeling proprietary information ''Confidential Business Information'' and (2) sending proprietary information directly to the contact person listed (see **FOR FURTHER INFORMATION CONTACT**) and not to the public docket. This will help insure that proprietary information is not inadvertently placed in the docket. If a commenter wants EPA to use a submission labeled as confidential business information as part of the basis for the final rule, then a nonconfidential version of the document, which summarizes the key data or information, should be sent to the docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when EPA receives it, the submission may be made available to the public without notifying the commenters.

B. Public Hearings

Anyone wishing to present testimony about this proposal at the public hearing (see **DATES**) should, if possible, notify the contact person (see **FOR FURTHER INFORMATION CONTACT**) by September 12, 2002. The contact person should be given an estimate of the time required for the presentation of testimony and notification of any need for audio/visual equipment. Testimony will be scheduled on a first-come, first-serve basis. A sign-up sheet will be available at the registration table the morning of the hearing for scheduling those who have not notified the contact earlier. This testimony will be scheduled on a first-come, first-serve basis to follow the previously scheduled testimony.

EPA requests that approximately 50 copies of the statement or material to be presented be brought to the hearing for distribution to the audience. In addition, EPA would find it helpful to receive an advanced copy of any statement or material to be presented at the hearing at least one week before the scheduled hearing date. This is to give EPA staff adequate time to review such material before the hearing. Such advanced copies should be submitted to the contact person listed.

The comment period will be kept open until October 19, 2002, and therefore will remain open for 30 days following the hearing. All such submittals should be directed to the Air Docket Section, Docket No. A–2001–09 (see **ADDRESSES**). The hearing will be conducted informally, and technical rules of evidence will not apply. A written transcript of the hearing will be placed in the above docket for review. Anyone desiring to purchase a copy of the transcript should make individual arrangements with the court reporter recording the proceedings.

VIII. What Are the Administrative Requirements for This Proposal?

A. Executive Order 12866: Administrative Designation and Regulatory Analysis

Under Executive Order 12866 (58 FR 51735 October 4, 1993), EPA must determine whether this proposed regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of this Executive Order. The Order defines a ''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.

Pursuant to the terms of the Executive Order 12866, it has been determined that this rule is a ''significant regulatory action'' because this rulemaking materially alters user fees. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations

will be documented in the public record.

B. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business that meets the definition for business based on SBA size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Table VIII.B–1 provides an overview of the primary SBA small business categories potentially affected by this regulation. This list is not intended to be exhaustive, but rather provides a guide regarding entities likely to be regulated by this proposed action.

TABLE VIII.B–1.—PRIMARY SBA SMALL BUSINESS CATEGORIES POTENTIALLY AFFECTED BY THIS PROPOSED REGULATION

Industry	NAICS [a] Codes	Defined by SBA as a small business If: [b]
Farm Machinery and Equipment Manufacturing	333111	<500 employees.
Lawn and Garden Tractor and Home Lawn and Garden Equipment Manufacturing	333112	<500 employees.
Construction Machinery Manufacturing	333120	<750 employees.
Mining Machinery and Equipment Manufacturing	333131	<500 employees.
Turbine and Turbine Generator Set Unit Manufacturing	333611	<1,000 employees.
Speed Changer, Industrial High-speed Drive and Gear Manufacturing	333612	<500 employees.
Mechanical Power Transmission Equipment Manufacturing	333613	<500 employees.
Other Engine Equipment Manufacturing	333618	<1,000 employees.
Nonroad SI engines	333618	<1,000 employees.
Internal Combustion Engines	333618	<1,000 employees.
Industrial Truck, Tractor, Trailer, and Stacker Machinery	333924	<750 employees.
Power-Driven Handtool Manufacturing	333991	<500 employees.
Automobile Manufacturing	336111	<1000 employees.
Light Truck and Utility Vehicle Manufacturing	336112	<1000 employees.
Heavy-Duty Truck Manufacturing	336120	<1000 employees.
Fuel Tank Manufacturers	336211	<1000 employees.
Gasoline Engine and Engine Parts Manufacturing	336312	<750 employees.
Aircraft Engine and Engine Parts Manufacturing	336412	<1000 employees.
Railroad Rolling Stock Manufacturing	336510	<1000 employees.
Boat Building and Repairing	336612	< 500 employees.
Motorcycles and motorcycle parts manufacturers	336991	<500 employees.
Snowmobile and ATV manufacturers	336999	<500 employees.
Independent Commercial Importers of Vehicles and parts	421110	<100 employees.
Engine Repair and Maintenance	811310	<$5 million annual receipts.

Notes:
[a] North American Industry Classification System.
[b] According to SBA's regulations (13 CFR part 121), businesses with no more than the listed number of employees or dollars in annual receipts are considered ''small entities'' for purposes of a regulatory flexibility analysis.

After considering the economic impacts of today's proposed rule on small entities, I certify that this proposed action will not have a significant economic impact on a substantial number of small entities.

A review of rulemakings that set emissions standards for the industries affected by today's proposed rule, including those manufacturers affected by the recreational vehicle proposed rule, showed that approximately 108 small businesses that will be paying fees. EPA examined the cost of the proposed fees and determined that the average cost for manufacturers of all sizes, across industry sectors, is approximately $.41 per vehicle or engine.[15] In addition, under the reduced fee provisions described above in Section IV.D., the fee a manufacturer would pay will not exceed 1.0 percent of the aggregate retail sales price of the vehicles or engines covered by a certificate request or a minimum fee of $300. The reduced fee provision limits the impact of this proposed rule on small entities to 1.0 percent of the aggregate retail sales price or a minimum fee of $300.

EPA believes that in a very small number of cases, the 1.0 percent reduced fee amount will be less than the $300 minimum fee. The minimum, $300 fee is a modest amount and will only be required when engine families have less than $30,000 aggregate retail sales price. While the minimum fee would represent an impact greater than 1.0 percent of the aggregate retail sales price, the $300 amount will not have a significant economic impact on the manufacturers that pay it. This amount would represent a modest cost of doing business.

The following is an example of a reduced fee calculation: If a light-duty vehicle manufacturer has an engine family of 2 vehicles that are sold for $35,000 per vehicle, under the proposed fee schedule the full fee would be $33,911, or $16,958 per engine family ($16,956 or $8,479 per vehicle, respectively), depending upon whether the engine family is certified as a Federal vehicle or California-only engine family. Under the proposal, the

[15] The average costs of the fees per vehicle or engine (fee per unit) for the specific fee categories of Highway Motorcycle, Light-Duty, Light-Duty ICI, Heavy-Duty Highway CI and SI and Nonroad CI categories are shown in Worksheet 2, Appendix C, of the Motor Vehicle and Engine Compliance Program Cost Analysis available in EPA Air Docket No. A–2001–09.

reduced fee would be 1.0 percent of the aggregate retail sales price of the vehicles ($70,000), or $700 (or $350 per vehicle) as shown below:

2 * $35,000 * 0.01 = $700

In another example, a manufacturer of small nonroad spark ignition engines certifies an engine family of 500 engines that are sold for $50 apiece. In this case, under the proposed fee schedule the full fee would be $827. Under the reduced fee provisions, the manufacturer would determine 1 percent of the total retail sales price of the engines and determine whether this amount is less than the full fee or the minimum fee of $300. The aggregated retail sales price of the engines is $25,000; 1.0 percent of that is $250. Therefore, the manufacturer pays the minimum fee of $300 (or $.60 per engine).

500 * $50 * .01 = $250
$250 < $300 minimum fee
Fee = $300

EPA also had a fees rule briefing which was offered in Ann Arbor, MI, to regulated industries on August 29, 2001. The purpose of the briefing was to give businesses enough time to plan for fees in their 2003 FY budgets. We continue to be interested in the potential impacts of the proposed fees on small entities and welcome comments on issues related to such impacts.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No.) and a copy may be obtained from Susan Auby by mail at Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW, Washington, DC 20460, by email at farmer.sandy@epamail.epa.gov, or by calling (202) 260–4901. A copy may also be downloaded off the internet at *http://www.epa.gov/icr.*

The information to be collected is necessary to assure that the fees collected are properly credited to the both the firm paying them and the specific product to be certified. In addition, under some circumstances, a fee may be reduced or refunded; information collected will be used to verify that such action is appropriate. Except for reduced fees and refunds, the submission of information is mandatory.

The collection is authorized by the Clean Air Act (42 U.S.C. 7552) and the Independent Offices Appropriations Act (31 U.S.C. 9701). Information collected will be available to the public.

EPA estimates that 1600 certifications will be requested annually of which 180 will qualify for a reduced fee. In addition, approximately 50 fee refunds will be processed each year. The total burden of these projected responses per year is 500 hours; an average of 18 minutes per response. There are no capital, start-up, operation, maintenance or other costs associated with this collection.

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

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after August 7, 2002, a comment to OMB is best assured of having its full effect if OMB receives it by September 6, 2002. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

D. Unfunded Mandates Reform Act

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

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

Today's proposed rule contains no Federal mandates for state, local, or tribal governments. Nor does this proposed rule have Federal mandates that may result in the expenditures of $100 million or more in any year by the private sector as defined by the provisions of Title II of the UMRA as the total cost of the fee program is estimated to be below 20 million dollars. Nothing in the proposed rule would significantly or uniquely affect small governments.

E. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12(d) (15 U.S.C. 272), directs the EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

F. Executive Order 13045: Children's Health Protection

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

EPA believes this proposed rule is not subject to the Executive Order because it is not an economically significant regulatory action as defined by Executive Order 12866. In addition, this proposed rule is not subject to the Executive Order because it does not involve decisions based on environmental health or safety risks that may disproportionately affect children. Today's proposed rule seeks to implement a fees program and is expected to have no impact on environmental health or safety risks that would affect the public or disproportionately affect children.

G. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule will not have federalism implications. It will not have direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed rule will impose no direct compliance costs on states. Thus, the requirements of section 6 of Executive Order 13132 do not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

H. Executive Order 13211: Energy Effects

This proposed rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001) because it will not have a significant adverse effect on the supply, distribution, or use of energy. Further, we have determined that this proposed rule is not likely to have any adverse energy effects.

I. Executive Order 13175: Consultation With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. The requirements proposed by this action impact private sector businesses, particularly the vehicle and engine manufacturing industries. Thus, Executive Order 13175 does not apply to this rule.

List of Subjects

40 CFR Part 85

Environmental protection, Confidential business information, Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Warranties.

40 CFR Part 86

Environmental protection, Administrative practice and procedure, Air Pollution Control, Confidential business information, Diesel, Gasoline, Fees, Imports, Incorporation by reference, Labeling, Motor vehicle pollution, Motor vehicles, Reporting and recordkeeping requirements.

Dated: July 17, 2002.

Christine Todd Whitman,

Administrator.

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

PART 85—CONTROL OF AIR POLLUTION FROM MOBILE SOURCES

1. The Authority for part 85 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Add a new Subpart Y to Part 85 to read as follows:

Subpart Y—Fees for the Motor Vehicle and Engine Compliance Program

Sec.

Subpart Y—Fees for the Motor Vehicle and Engine Compliance Program

§ 85.2401 To whom do these requirements apply?

(a) This subpart prescribes fees manufacturers must pay for the motor vehicle and engine compliance program (MVECP) activities performed by the EPA. The prescribed fees and the provisions of this subpart apply to manufacturers of:

(1) Light-duty vehicles (cars and trucks) (See 40 CFR Part 86);

(2) Medium Duty Passenger Vehicles (See 40 CFR Part 86);

(3) Complete gasoline-fueled highway heavy duty vehicles (See 40 CFR Part 86);

(4) Heavy-duty highway diesel and gasoline engines (See 40 CFR Part 86);

(5) On-highway motorcycles (See 40 CFR Part 86);

(6) Nonroad compression ignition engines (See 40 CFR Part 89);

(7) Locomotives (See 40 CFR Part 92);

(8) Marine diesel and gasoline engines (See 40 CFR Parts 91, 94, or 1045 and MARPOL 73/78, as applicable);

(9) Small nonroad spark ignition engines (engines ≤ 19kW) (See 40 CFR Part 90);

(10) Recreational vehicles (including, but not limited to, snowmobiles, all-terrain vehicles and off-highway motorcycles) (See 40 CFR Part 1051);

(11) Heavy-duty highway gasoline vehicles (evaporative emissions certification only) (See 40 CFR Part 86); and

(12) Large nonroad spark ignition engines (engines > 19 kW) (See 40 CFR Part 1048).

(b) This subpart applies to manufacturers that submit 2003 and later model year certification requests received on or after [60 days after the date of publication of the final rule].

(c) Certification requests for the 2003 model year which are complete, contain all required data, and are received prior to [60 days after the date of publication of the final rule] are subject to the provisions of 40 CFR part 86, subpart J.

(d) Nothing in this subpart will be construed to limit the Administrator's authority to require manufacturer or confirmatory testing as provided in the Clean Air Act, including authority to require manufacturer in-use testing as provided in section 208 of the Clean Air Act.

§ 85.2402 [Reserved]

§ 85.2403 What definitions apply to this subpart?

(a) The following definitions apply to this subpart:

Agency or EPA means the U.S. Environmental Protection Agency.

Body Builder means a manufacturer, other than the OEM, who installs certified on-highway HD engines into equipment such as trucks.

California-only certificate is a Certificate of Conformity issued by EPA which only signifies compliance with the emission standards established by California.

Certification request means a manufacturer's request for certification evidenced by the submission of an application for certification, ESI data sheet, or ICI Carryover data sheet. A single certification request covers one test group, engine family, or engine system combination as applicable. For HDV evaporative certification, the certification request covers one evaporative family.

Consumer Price Index means the consumer price index for all U.S. cities using the ''U.S. city average'' area , ''all items'' and ''not seasonally adjusted'' numbers calculated by the Department of Labor.

Federal certificate is a Certificate of Conformity issued by EPA which signifies compliance with emission requirements in 40 CFR part 85, 86, 89, 90, 91, 92, 94, 1045, 1048, and/or 1051 as applicable.

Filing form means the MVECP Fee Filing Form to be sent with payment of the MVECP fee.

Fuel economy basic engine means a unique combination of manufacturer, engine displacement, number of cylinders, fuel system, catalyst usage, and other characteristics specified by the Administrator.

MARPOL 73/78 is the international treaty regulating disposal of wastes generated by normal operation of vessels (Title: International Convention for the Prevention of Pollution from Ships).

Recreational means the engines subject to 40 CFR 1051 which includes off road motorcycles, all-terrain vehicles, and snowmobiles.

(b) The definitions contained in the following parts also apply to this subpart. If the term is defined in paragraph (a) of this section then that definition will take precedence.

(1) 40 CFR Part 85;
(2) 40 CFR Part 86;
(3) 40 CFR Part 89;
(4) 40 CFR Part 90;
(5) 40 CFR Part 91;
(6) 40 CFR Part 92;
(7) 40 CFR Part 94;
(8) 40 CFR Part 1045;
(9) 40 CFR Part 1048; and
(10) 40 CFR Part 1051.

§ 85.2404 What abbreviations apply to this subpart?

The abbreviations in this section apply to this subpart and have the following meanings:

Cal—California;
CI—Compression Ignition (Diesel) cycle engine;
CPI—Consumer Price Index;
ESI—Engine System Information;
EPA—U.S. Environmental Protection Agency;
Evap—Evaporative Emissions;
Fed—Federal;
HD—Heavy-duty engine;
HDV—Heavy-duty vehicle;
HW—On Highway versions of a vehicle or engine;
ICI—Independent Commercial Importer;
IMO—International Maritime Organization;
LD—Light-Duty including both LDT and LDV;
LDT—Light-duty truck;
LDV—Light-duty vehicle;
MARPOL—An IMO treaty for the control of marine pollution;
MC—Motorcycle;
MDPV—Medium-Duty Passenger Vehicle;
MVECP—Motor Vehicle and Engine Compliance Program;
MY—Model Year;
NR—Nonroad version of a vehicle or engine;
OEM—Original equipment manufacturer;
SI—Spark Ignition (Otto) cycle engine.

§ 85.2405 How much are the fees?

(a) *Fees for the 2003 and 2004 model years.* The fee for each certification request is in the following table:

Category	Certificate type	Fee
(1) LD, excluding ICIs	Fed Certificate	33,911
(2) LD, excluding ICIs	Cal-only Certificate	16,958
(3) MDPV, excluding ICIs	Fed Certificate	33,911
(4) MDPV, excluding ICIs	Cal-only Certificate	16,958
(5) Complete SI HDVs, excluding ICIs	Fed Certificate	33,911
(6) Complete SI HDVs, excluding ICIs	Cal-only Certificate	16,958

Category	Certificate type	Fee
(7) ICIs for the following industries: LD, MDPV, or Complete SI HDVs.	All Types	8,394
(8) MC HW, including ICIs	All Types	2,416
(9) HD HW, including ICIs	Fed Certificate	30,437
(10) HD HW, including ICIs	Cal-only Certificate	827
(11) HDV (evap), including ICIs	Evap Certificate	827
(12) NR CI, including ICIs, but excluding Locomotives, Marine and Recreational engines.	All Types	2,156
(13) NR SI, including ICIs	All Types	827
(14) All Marine, including ICIs	All Types and IMO	827
(15) All Recreational, including ICIs, but excluding marine engines.	All Types	827
(16) Locomotives, including ICIs	All Types	827

(b) *Fees for 2005 model year and beyond.*

(1) Starting with the 2005 model year, the fees due for each certification request will be calculated using an equation which adjusts the fees in paragraph (a) of this section for the change in the consumer price index.

(2) Fees for 2005 model year and later certification requests will be calculated using the following equation.

$$Fees_{MY} = Fees_{base} \times (CPI_{MY-2} / CPI_{2002})$$

Where:

$Fees_{MY}$ is the applicable fee for the model year of the certification request.

$Fees_{base}$ is the applicable fee from paragraph (a) of this section.

CPI_{MY-2} is the consumer price index for all U.S. cities using the ''U.S. city average'' area , ''all items'' and ''not seasonally adjusted'' numbers calculated by the Department of Labor listed for the month of July of the year two years before the model year. (*e.g.*, for the 2005 MY use the CPI based on the date of July, 2003).

CPI_{2002} is the consumer price index for all U.S. cities using the ''U.S. city average'' area , ''all items'' and ''not seasonally adjusted'' numbers calculated by the Department of Labor for December, 2002.

(c) A single fee will be charged when a manufacturer seeks to certify multiple evaporative families within a single engine family or test group.

(d) A body builder, who exceeds the maximum fuel tank size for a HDV that has been certified by an OEM and consequently makes a request for HDV certification, must pay a separate fee for each certification request. The fee will be that listed in paragraphs (a) and (b) of this section, paragraph (c) does not apply.

§ 85.2406 Can I qualify for reduced fees?

(a) *Eligibility Requirements.* To be eligible for a reduced fee, the following conditions must be satisfied:

(1) The certificate is to be used for sale of vehicles or engines within the United States; and

(2) The full fee for certification request for a MY exceeds 1.0% of the aggregate projected retail sales price of all vehicles or engines covered by that certificate.

(b) *Initial Reduced Fee Calculation.*

(1) If the requirements of paragraph (a) of this section are satisfied, the fee to be paid by the applicant (the ''initial reduced fee'') will be the greater of:

(i) 1.0% of the aggregate projected retail sales price of all the vehicles or engines to be covered by the certification request; or

(ii) A minimum fee of $300.

(2) For vehicles or engines that are converted to operate on an alternative fuel using as the basis for the conversion a vehicle or engine which is covered by an existing OEM certificate of conformity, the cost basis used in this section must be the aggregate projected retail value-added to the vehicle or engine by the conversion rather than the full cost of the vehicle or engine. To qualify for this provision, the applicable OEM certificate must cover the same sales area and model year as requested certificate for the converted vehicle or engine.

(3) For ICI certification requests, the cost basis of this section must be the aggregate projected retail cost of the entire vehicle(s) or engine(s), not just the value added by the conversion. If the vehicles/engines covered by an ICI certificate are not being offered for sale, the manufacturer shall use the fair retail market value of the vehicles/engines as the retail sale price required in this section. For an ICI certification request, the retail sales price (or fair retail market value) must be based on the applicable National Automobile Dealer's Association (NADA) appraisal guide and/or other evidence of the actual market value.

(4) The aggregate cost used in this section must be based on the total projected sales of all vehicles and engines under a certificate, including vehicles and engines modified under the modification and test option in 40 CFR 85.1509 and 89.609. The projection of the number of vehicles or engines to be covered by the certificate and their projected retail selling price must be based on the latest information available at the time of the fee payment.

(5) A manufacturer may submit a reduced fee as described in paragraphs (a) and (b)(1) through (b)(4) of this section if it is accompanied by a certification from the manufacturer that the reduced fee is appropriate under this section. The reduced fee shall be deemed approved, unless EPA determines that the criteria of this section have not been met. The Agency may make such determination either before or after EPA issues a certificate of conformity. If the Agency determines that the requirements of this section have not been met, EPA may:

(i) Require that future reduced fee eligibility determinations be made by the Agency;

(ii) Require that the manufacturer for future reduced fee requests use the special provisions contained in paragraph (b) (7); or

(iii) Deny future reduced fee requests and require submission of the full fee payment until such time as the manufacturer demonstrates to the satisfaction of the Administrator that its reduced fee submissions are based on accurate date and that final fee payments are made within 45 days of the end of the model year.

(6) If the reduced fee is denied by the Administrator, the applicant will have 30 days from the date of notification of the denial to submit the appropriate fee to EPA or appeal the denial.

(7) The following special provisions are available for manufacturers which meet the requirements of paragraph (a) of this section but, due to the nature of their business, are unable to make good estimates of the aggregate projected retail sales price of all the vehicles or engines to be covered by the

certification request as required in paragraph (b)(1) of this section. EPA may also require a manufacturer to use these special provisions rather than the process described in paragraph (b)(5) of this section if EPA makes such a determination under paragraph (b)(5)(ii) of this section.

(i) A manufacturer's request to use of these provisions requires advance Agency approval and will be based on a determination of whether the requirements of this section have been met. The request to use these provisions shall be made prior to the submission of its application for certification. The manufacturer shall provide as part of this request:

(A) A statement that the eligibility requirements of paragraph (a) of this section are satisfied; and

(B) The reasons why it is unable to make a good estimate of the aggregate projected retail sales price of all the vehicles or engines to be covered by the certification request as required in paragraph (b)(1) of this section.

(ii) If the request is approved, the initial reduced fee is the greater of:

(A) 1% of the retail selling price of 5 vehicles, engines, or conversions, as appropriate; or

(B) A minimum fee of $300.

(c) *Final Reduced Fee Calculation and Adjustment.*

(1) Within 30 days of the end of the model year, the manufacturer shall submit a model year reduced fee payment report covering all certificates issued in the model year for which the manufacturer has paid a reduced fee. This report will include:

(i) The fee amount paid at certification time;

(ii) The total actual number of vehicles covered by the certificate;

(iii) A calculation of the actual final reduced fee due for each certificate; and

(iv) A difference between the total fees paid and the total final fees due for the manufacturer.

(2) The final reduced fee shall be calculated using the procedures of paragraph (b) of this section but using actual numbers rather than projections.

(3) If the difference calculated in paragraph (c)(1)(iv) of this section exceeds $500 which is due to the Agency, then the manufacturer shall pay any difference due between the initial reduced fee and the final reduced fee using the provisions of § 85.2408. This payment shall be paid within 45 days of the end of the model year. The total fees paid for a certificate shall not exceed the applicable full fee of § 85.2405. If a manufacturer fails to make complete payment within 45 days or to submit the report under paragraph (c)(1) of this section then the Agency may void *ab initio* the applicable certificate. EPA may also refuse to grant reduced fee requests submitted under paragraph (b)(5) or (b)(7) of this section.

(4) If the initial reduced fee paid exceeds the final reduced fee then the manufacturer may request a refund using the procedures of § 85.2407.

(5) Manufacturers must retain in their records the basis used to calculate the projected sales and fair retail market value and the actual sales and retail price for the vehicles and engines covered by each certificate that is issued under the reduced fee provisions of this section. This information must be retained for a period of at least three years after the issuance of the certificate and must be provided to the Agency within 30 days of request. Manufacturers are also subject to the applicable maintenance of records requirements of Part 86, Subpart A. If a manufacturer fails to maintain the records or provide such records to EPA as required by this paragraph then EPA may void *ab initio* the certificate for which such records shall be kept.

§ 85.2407 Can I get a refund if I don't get a certificate or overpay?

(a) *Full Refund.* The Administrator may refund the total fee imposed by § 85.2405 if the applicant fails to obtain a certificate and requests a refund.

(b) *Partial Refund.* The Administrator may refund a portion of a reduced fee, paid under § 85.2406, due to a decrease in the aggregate projected retail sales price of the vehicles or engines covered by the certification request.

(1) Partial refunds are only available for certificates which were used for the sale of vehicles or engines within the United States.

(2) Requests for a partial refund may only be made once the model year for the applicable certificate has ended. Requests for a partial refund must be submitted no later than six months after the model year has ended.

(3) EPA will only consider requests which result in at least a $500 refund. Smaller amounts of money will not be refunded, nor can they be credited to other certification fee payments due to the Agency.

(4) Requests for a partial refund must include all the following:

(i) A statement that the applicable certificate was used for the sale of vehicles or engines within the United States.

(ii) A statement of the fee amount paid (the reduced fee) under the applicable certificate.

(iii) The actual number of vehicles or engines produced under the certificate (whether or not the vehicles/engines have been actually sold).

(iv) The actual retail selling or asking price for the vehicles or engines produced under the certificate.

(v) The calculation of the reduced fee amount using actual production levels and retail prices. The calculated reduced fee amount may not be less than $300 under the provisions of § 85.2406(b)(1)(ii).

(vi) The calculated amount of the refund. Refund requests for less than $500 will not be considered under the provisions of paragraph (b)(3) of this section.

(c) *Refunds due to errors in submission.* The Agency will approve requests from manufacturers to correct errors in the amount or application of fees if the manufacturer provides satisfactory evidence that the change is due to an accidental error rather than a change in plans. Requests to correct errors must be made to the Administrator as soon as possible after identifying the error. The Agency will not consider requests to reduce fee amounts due to errors that are reported more than 90 days after the issuance of the applicable certificate of conformity.

(d) In lieu of a refund, the manufacturer may apply the refund amount to the amount due on another certification request.

(e) A request for a full or partial refund of a fee or a report of an error in the fee payment or its application must be submitted in writing to: U.S. Environmental Protection Agency, Vehicle Programs and Compliance Division, Fee Program Specialist, National Vehicle and Fuel Emission Laboratory, 2000 Traverwood, Ann Arbor, MI 48105.

§ 85.2408 How do I make a fee payment?

(a) All fees required by this subpart must be paid by money order, bank draft, certified check, corporate check, or electronic funds transfer payable in U.S. dollars to the order of the Environmental Protection Agency.

(b) A completed fee filing form must be sent to the address designated on the form for each fee payment made.

(c) Fees must be paid prior to submission of an application for certification. The Agency will not process applications for which the appropriate fee (or reduced fee amount) has not been fully paid.

(d) If EPA denies a reduced fee, the proper fee must be submitted within 30 days after the notice of denial, unless the decision is appealed. If the appeal is denied, then the proper fee must be submitted within 30 days after the notice of the appeal denial.

§ 85.2409 Deficiencies.

(a) Any filing pursuant to this subpart that is not accompanied by a completed fee filing form and full payment of the appropriate fee is deemed to be deficient.

(b) A deficient filing will be rejected and the amount paid refunded, unless the full appropriate fee is submitted within a time limit specified by the Administrator.

(c) EPA will not process a request for certification associated with any filing that is deficient under this section.

(d) The date of filing will be deemed the date on which EPA receives the full appropriate fee and the completed fee filing form.

§ 85.2410 Special provisions applicable to the 2003 model year only.

(a) For the 2003 model year, the fees specified in sec. 85.2405 of this part will be waived for any light-duty vehicle, light-duty truck, or heavy-duty engine certification request that meets the small volume sales requirements of 40 CFR 86.1838–01 or 86.098–14, as applicable, and:

(1) Is a dedicated gaseous-fueled vehicle or engine; or

(2) Receives a certificate of conformity with the LEV, ILEV, ULEV, or ZEV emissions standards in 40 CFR part 88.

(b) This section does not apply to 2004 model year and later vehicles or engines.

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

3. The Authority for Part 86 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart J—[Amended]

4. Section 86.903–93 is revised to read as follows:

§ 86.903–93 Applicability.

(a) This subpart prescribes fees to be charged for the MVECP for the 1993 through 2003 model year. The fees charged will apply to all manufacturers' and ICIs', LDVs, LDTs, HDVs, HDEs, and MCs. Nothing in this subpart shall be construed to limit the Administrator's authority to require manufacturer or confirmatory testing as provided in the Clean Air Act, including authority to require manufacturer in-use testing as provided in section 208 of the Clean Air Act.

(b) The fees prescribed in this subpart are replaced by the requirements of 40 CFR part 85, subpart Y for 2003 and later certification requests received on or after [60 days after the date of publication of the final rule].

(c) The fees prescribed in this subpart will only apply to those 2003 model year certification requests which are complete, include all data required by this title, and are received by the Agency prior to [60 days after the date of publication of the final rule].

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