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Environmental Protection Agency

40 CFR Part 86

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

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS-FRL-3967-9]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: Today's action proposes that 40 CFR part 86 be amended to add provisions which would authorize the Environmental Protection Agency (EPA) to collect fees for certain activities required of the Agency pursuant to the Clean Air Act (CAA) (42 U.S.C. 7401 *et seq.*), as amended by Public Law 101-549, the Energy Policy and Conservation Act (EPCA) (42 U.S.C. 6201 *et seq.*), and the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2001 *et seq.*). The authority for this rulemaking is the Independent Offices Appropriations Act (IOAA) (31 U.S.C. 9701), section 217 of the Clean Air Act, as amended, and the *Omnibus Budget Reconciliation Act* (OBRA) of 1990, Public Law 101-508, section 6501.

The fee program proposed today would cover EPA's Motor Vehicle and Engine Compliance Program (MVECP). The MVECP includes all compliance and enforcement activities performed by EPA which are associated with certification, fuel economy, Selective Enforcement Auditing (SEA), and in-use compliance activities. The proposed fee would recover those compliance costs which the government incurs in providing manufacturers or Independent Commercial Importers (ICIs) with certificates of conformity, fuel economy labels, and Corporate Average Fuel Economy (CAFE) calculations necessary to market vehicles in the United States and to meet requirements otherwise imposed by statute. This program would apply to all manufacturers and ICIs of light-duty vehicles (LDVs), light-duty trucks (LDTs), heavy-duty vehicles (HDVs), heavy-duty engines (HDEs), and motorcycles (MCs).

When a manufacturer or an ICI decides to market vehicles or engines in the United States, EPA must perform certain activities necessary to ensure compliance with regulations pertaining to the MVECP. In doing so, EPA incurs costs which it is authorized to recover by the CAA and IOAA. This rulemaking would enable EPA to recover these costs through fees.

DATES: Written comments on this notice will be accepted for 30 days following the hearing, until August 22, 1991. EPA will conduct a public hearing on this notice of Proposed Rulemaking on July 23, 1991, in Ann Arbor, Michigan. The hearing will convene at 10 a.m. and will adjourn at such time as necessary to complete the testimony. Further information on the public hearing can be found in section VI, Public Participation, in **SUPPLEMENTARY INFORMATION.**

ADDRESSES: Written comments should be submitted (in duplicate if possible) to: The Air Docket, room M-1500 (LE-131), Waterside Mall, Attention: Docket No. A-91-15, 401 M Street SW., Washington, DC 20460. The public hearing will be held in the conference room of the Environmental Protection Agency, Motor Vehicle Emission Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan 48105.

Materials relevant to this proposed rulemaking are contained in Docket No. A-91-15. The docket is located at the above address and may be inspected from 8 a.m. until noon and from 1:30 p.m. until 3:30 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket material.

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

SUPPLEMENTARY INFORMATION:

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I. Introduction

Section 217 of the CAA, as amended in 1990, 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,[1] (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. In addition, the IOAA permits a government agency to establish fees for a service or thing of value provided by the agency to an identifiable recipient. The OBRA requires EPA to assess and collect fees for services and activities carried out pursuant to laws administered by the EPA.

Today's proposed action would establish a fee program to recover those costs incurred by EPA in administering the MVECP, including manufacturer [2] certification, SEA, certification compliance audits and investigations, in-use compliance monitoring, fuel economy labeling, and CAFE calculations. This fee program would be based on all recoverable direct and indirect costs associated with administering these activities.

The event which triggers EPA costs is the certification request.[3] Certification requests can be divided into three types corresponding to the three major divisions of regulated mobile sources: Light-duty vehicles and trucks (LDVs/LDTs); heavy-duty vehicles and engines (HDVs/HDEs); and motorcycles (MCs). Within each certification request type, all activities associated with the MVECP (certification, fuel economy, SEA, and in-use compliance programs) can be grouped together. By determining the costs and events associated with the MVECP, a fee can be calculated for each certification request type.

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

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

[3] 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.

For each certification request type, costs may vary within certain activities, such as confirmatory testing, auditing of manufacturer's testing and data, SEA, and in-use compliance monitoring and testing. However, every certification request is subject potentially to an equal amount of compliance review, testing, and auditing. Further, under the provisions authorizing manufacturer or confirmatory testing, EPA decisions on such testing are to be based on their merits and are not to be influenced by the fee program. Therefore, EPA proposes that a fair and equitable method of calculating costs is to determine the average cost to EPA, including all related activities, of providing each certification request type.

The goal of today's regulation is to make the MVECP self-sustaining to the extent possible. Those manufacturers benefiting from the services provided would bear the government's cost of administering the program on their behalf.

II. Background

A. Legal Authority

EPA is authorized under section 217 of the Clean Air Act, as amended by Public Law 101–549, section 225, to establish fees for specific services it provides to vehicle manufacturers. The CAA provides in pertinent part:

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

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

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

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

OBRA requires EPA to assess and collect fees for services and activities carried out pursuant to laws administered by the EPA. OBRA also requires that EPA collect in aggregate fees of not less than $38,000,000 in fiscal years 1992, 1993, 1994, and 1995. The proposed MVECP fees would represent part of the aggregate EPA fees collected in each of these fiscal years. The Act further states that section 6501 neither increases nor diminishes EPA's authority to promulgate regulations pursuant to the IOAA.

EPA, as an independent regulatory agency, is also authorized under the Independent Offices Appropriation Act of 1952 to establish fees for other services and benefits it provides. This provision, originally designated as 31 U.S.C. 483(a), was codified into law on September 13, 1982, at 31 U.S.C. 9701. This provision encourages Federal regulatory agencies to recover, to the fullest extent possible, costs provided to identifiable recipients. The relevant text states:

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

The proper measure of a fee imposed under the IOAA reflects the value of the service to the recipient and the cost to the government. In *National Cable Television Ass'n* v. *United States*, 415 U.S. 336 (1974), the Supreme Court determined that fees were to be measured by the value of the service to the recipient. Subsequent court decisions have held that a fee under the IOAA may also be based on the costs incurred by the government in providing a service, so long as the imposed fee does not exceed such costs. See *Central & S. Motor Tariff Ass'n* v. *United States* 777 F.2d 722 (D.C. Cir. 1985); *Mississippi Power & Light Co.* v. *United States Nuclear Regulatory Comm'n*, 601 F.2d 223 (5th Cir. 1979); *Public Service Co.* v. *Andrus*, 433 F.Supp. 144 (D. Colo. 1977); and *Electronic Industries Ass'n* v. *Federal Communications Comm'n*, 554 F.2d 1109 (D.C. Cir. 1976).

Several court decisions have interpreted the IOAA and set forth the general standards that agencies must meet in establishing fees under this Act. In 1974, the Supreme Court found that absent a clear Congressional intent a fee may only be charged for a special benefit provided to identifiable beneficiaries measured by its value to the recipient. See *National Cable Television Association* v. *United States*, 415 U.S. 336 (1974) and *Federal Power Comm'n* v. *New England Power Co.*, 415 U.S. 345 (1974). Congress may constitutionally authorize agencies to recover the total cost of administering a program from those regulated under the normal delegation standards. *Skinner* v. *Mid-Atlantic Pipeline Co.*, 490 U.S. 212 (1989). Congress may also authorize fees to be charged on a basis "reasonable related" to services and not on the basis of a special benefit. *Florida Power & Light Co.* v. *United States*, 846 F.2d 765 (D.C. Cir. 1988), *cert. denied*, 109 S.Ct. 1952 (1989). The Bureau of the Budget Circular A–25 (Circular) has traditionally provided administrative guidance for implementation of the IOAA when user fees are being charged only for special benefits. The Circular states the general policy that a "reasonable charge * * * should be made to each identifiable recipient for a measurable unit or amount of Government services or property from which he derives a special benefit."

Judicial decisions have provided guidance to federal agencies in determining which services provide "special benefits" to a recipient. Specifically, "special benefits" include services rendered at the request of a recipient or services which assist a person in complying with statutory or regulatory obligations. *National Cable Television Association* v. *Federal Communications Comm'n*, 554 F.2d 1109; *Mississippi Power & Light* v. *United States Nuclear Regulatory Comm'n*, 601 F.2d 223 (1979); *Nevada Power Co.* v. *Watt*, 711 F.2d 913 (1983).

"Special benefits" also result from services which assist manufacturers in marketing a quality product and gives them credibility in the marketplace. This view receives support in the Circular which states that a special benefit accrues when a service "provides business stability or contributes to public confidence in the business activity of the beneficiary." In recognition of the fact that manufacturers receive specific benefits from EPA activities, EPA proposes to implement fees for certain services it provides.

Court decisions have 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, also needs to 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 the following, EPA believes it has fulfilled all of these aims in developing this proposal.

EPA believes the fees included in this proposal are justified based on the tests for fee recovery relating to special benefits applicable under IOAA. EPA also 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 IOAA "to recover all reasonable costs to the Administrator associated" with certification, recall and SEA testing. 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 IOAA. 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 IOAA. See *Florida Power & Light Co.* v. *United States*, 846 F.2d 765 (D.C. 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 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.

B. Motor Vehicle and Engine Compliance Program Description

The CAA requires that motor vehicles, prior to being distributed or offered for sale in the United States, be covered by a certificate of conformity indicating compliance with the emission standards set forth in the Act. Each model year, EPA receives approximately 577 certification requests for LDVs/LDTs engine-system combinations, 135 for heavy-duty engine-system combinations, and 85 for motorcycle engine-system combinations. EPA processes these applications and makes a determination of conformance with the CAA and related regulations. If the vehicle or engine satisfies the prescribed emission standards, EPA issues a certificate of conformity for the relevant engine-system combination.[4]

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

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

Based on the above activities, EPA determines whether a manufacturer meets the CAA requirements and should thereby be permitted to market vehicles for sale in the United States.

C. Fuel Economy Program Description

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

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

The fuel economy program is intertwined with the certification process of the MVECP for LDVs and LDTs. This interrelationship is demonstrated by the fact that both programs collect fuel economy and emissions data. Emission-data vehicles provide both emissions and fuel economy data. Further, fuel economy-data vehicles are tested for emissions and must comply with the emission standards. Only then can the fuel economy data be used in the fuel economy program. Thus, each program generates data to support the other and to support decisions on both certification and fuel economy. 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.

Since EPA costs for fuel economy are interrelated and closely parallel those of certification, it is unnecessary, for fee purposes, to distinguish between the efforts expended on fuel economy and certification. Therefore, EPA costs per certificate and costs per fuel economy basic engine [6] can be combined and a fee assessed only on a certification request basis. The proposed fee encompasses the costs from both the certification and fuel economy activities

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

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

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

associated with the request for certification.

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

Even though there is a combined fee, the fuel economy portion of the fee would go to the general fund of the U.S. Treasury, while the certification portion of the fee would go to a special fund as required by the CAA. These Treasury funds are described later, under the section on fee collection.

D. Identification of Special Benefits

The CAA expressly authorizes the collection of fees for specific services, namely certification, SEA and in-use compliance monitoring and testing. Even without this express authority, EPA could impose fees for the services specified in the CAA, as well as other services included in this rule, pursuant to the IOAA. The IOAA allows agencies to impose fees for services which provide "special benefits" to identifiable recipients. The services provided by EPA under the MVECP result in "special benefits" to manufacturers.

By issuing a certificate of conformity, EPA assists the manufacturers in carrying out their responsibilities to comply with statutory and regulatory requirements which must be met in order to market vehicles in the U.S. In addition, certification assists manufacturers by reducing potential costs which could be incurred due to recall of noncompliant vehicles.

SEA testing helps provide assurances to manufacturers, as well as EPA, that production vehicles and engines actually meet emission standards. Similarly, the in-use compliance program provides manufacturers with information on the durability of their products. Both programs help maintain a "level playing field" by providing strong incentives for manufacturers to produce actual production vehicles and engines that meet emission standards when new as well as throughout their useful lives.

Fees for the fuel economy and CAFE calculations and labeling are not specifically authorized by the CAA since these programs are authorized under statutes directly concerned with fuel economy rather than pollution. The fuel economy and CAFE programs clearly provide a benefit to the manufacturers and, as such, fees for these programs are authorized by IOAA. The fuel economy labeling program benefits manufacturers as evidenced by the use of fuel economy figures in advertising campaigns to promote sales. Further, the availability of EPA's standardized procedure for calculating these figures provides manufacturers with an assured and equitable method for comparing fuel economy values. In addition, fuel economy and CAFE calculations enable manufacturers to comply with the regulatory requirements of EPCA.

III. Proposed Fee System

A. Activity Costs Proposed for Recovery Through This Rule

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

B. Activity Costs Not Recovered Through This Rule

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

C. Cost Determination

To calculate all direct and indirect costs specifically attributed to the fee categories in this proposed rule, EPA conducted an in-depth analysis of the resources expended on the MVECP. This analysis details all direct and indirect costs incurred by EPA to operate the MVECP. Using fiscal year 1991 budget data, EPA calculated costs for activities which are to be included in or excluded from the fee program. Budget data from 1991 was used since it is the most current data available.

Beginning in fiscal year 1992, pursuant to the CAA, new initiatives will be implemented, for example Tier I tailpipe standards, on-board diagnostics, cold temperature carbon monoxide (CO) standards, and certification short test procedures. These initiatives are expected to result in increased EPA services related to the MVECP. This, in turn, would both increase EPA's costs of conducting compliance activities and the fee charged manufacturers. These increased costs and subsequent changes in the fee schedule would be addressed in future rulemakings, as discussed below in the fee updating section.

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

D. Fee Schedule Objectives

To be consistent with the provisions of the IOAA and the CAA, EPA designed the proposed fee schedule following certain objectives:

1. Appropriate

The fee program should be fair, equitable, and easy to administer. The fee schedule should be sufficiently detailed to distribute the costs equitably across similar certification request types and should be based on general groupings within each certificate type. This would lessen administrative costs (and fees) to both EPA and industry. In addition, the fee, itself, should reflect the costs incurred by EPA to perform the MVECP activities.

2. Recovers Costs

EPA's goal is to design a fee schedule which would recover all direct and indirect costs associated with operating the MVECP. Cost recovery would also reasonably reflect EPA efforts and obligations to review, maintain, and ensure compliance with the MVECP.

3. Reflects Costs

Three factors could affect the proposed fee schedule: (1) Changes within the MVECP, (2) changes in the number of certification requests, and (3) inflation (including pay scale adjustments). As these factors change, the fee schedule would be revised. The method for revising the fee schedule is

discussed later in the Fee Updating section. The proposed fee schedule represents the most current MVECP data on EPA activities, costs, and number of certification requests.

4. Distributes Costs

The level of EPA review, auditing, confirmatory testing, and in-use compliance testing and monitoring may vary within each certification request type. However, each request potentially represents an equivalent amount of effort to other requests in the same certification request type and is subject to the same level of EPA scrutiny. Therefore, it is appropriate to distribute these costs across all certification requests of a similar type. This approach also makes administration of the fee program more manageable.

5. Retains Testing Authority

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

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

Section 208(a) provides, in part, that manufacturers shall "* * * perform tests where such testing is not otherwise reasonably available under this part and part C (including fees for testing)." Testing is considered "reasonably available" if it is included in the base in-use testing program which is covered by fees or if other data are available which EPA has determined are adequate for enforcement purposes. When testing is "not otherwise reasonably available" under parts A and C of title II, EPA would have authority to require manufacturers to test. Thus, testing is considered "not otherwise reasonably available" if the Agency determines that additional testing is necessary beyond the base program that is not covered by fees.

Some examples of testing which manufacturers may be asked to perform, that may not be sufficiently included in the base year costs used for fee setting, are listed below:

1. It is necessary or desirable to increase the size or scope of the recall program beyond that of the applicable base year. This could occur if the non-conformity rate is found to be significantly higher than for the testing conducted during or immediately preceding the base year. It could also occur when new regulated pollutants or technologies not in place during the base year must be evaluated in use.

2. A systematic emission problem, such as a defective part or a deteriorating emission control system, occurs in several classes and the investigation of such occurrences was not sufficiently included in EPA testing during the base year.

For purposes of determining funds "available" from fees for in-use testing during a particular fiscal year, an amount equal to recoverable costs calculated during the appropriate base fiscal year (adjusted appropriately for inflation) is available during the subject fiscal year. For example, if 1991 is the base fiscal year for the 1995 model year fees, recoverable costs calculated during the 1991 fiscal year and adjusted for inflation are considered to be available for EPA programs during the 1995 fiscal year.

The parenthetical "(including fees for testing)" guards against duplicative payment for testing and assures that a manufacturer is not required to test when that testing was anticipated and covered by the fee. The time for determining whether tests are "reasonably available" under section 208 is the time when the need for testing is identified, and not the time when the base testing program was established for setting fees under section 217.

E. Fee Schedule Determination

1. Event Which Triggers EPA Costs

The event which triggers EPA costs related to the MVECP is the certification request. By seeking certification, a manufacturer potentially becomes involved in a number of EPA activities, including certification, fuel economy, SEA, and in-use compliance. The proposed fee structure which is based on criteria determined at the time of certification would recover EPA costs for all the activities associated with the MVECP.

2. Types of Certification Requests

Basically three types of certification requests initiate EPA activities:

(a) Light-duty vehicles/light-duty trucks (LDV/LDT)

(b) Heavy-duty engines/heavy-duty vehicles (HDE/HDV)

(c) Motorcycles (MC)

EPA costs incurred for each of the above certification request types are different. However, within each type, EPA conducts approximately the same level of activity for each certification request.

3. Grouping of Activities by Certification Request Type and Event

The certification request triggers EPA efforts and costs on behalf of manufacturer compliance. The proposed fee schedule would group activities performed and costs incurred in responding to each certification request. Each fee would combine as many activities and associated costs as practical under one fee structure. This method of grouping activities and costs limits both the cost to EPA and the fee to industry by keeping administrative costs to a minimum. Further, the grouping would not impact EPA's process for determining and ensuring compliance in accordance with the CAA and EPCA.

The EPA cost analysis presents the total cost to EPA for each certification request type. The proposed fee for each certification request type includes all EPA costs associated with certification, fuel economy, SEA, and in-use compliance activities where appropriate.

The LDV/LDT certification request type may also include an evaporative emission family certification request. While a separate fee could be charged for each unique evaporative emission family, it is unnecessary to do so. This is due to the fact that the certification requests for evaporative emission families closely parallel requests for engine-system combinations. The single fee which is proposed for LDVs and LDTs includes the cost of both evaporative emission family compliance and engine-system combination compliance. The proposed fee for each unique engine-system combination includes all combinations of evaporative emission families.

Conversely, EPA is proposing a separate fee for HDV evaporative certification requests. HDV evaporative certification requests may include HDEs which were certified previously by a manufacturer different from the one requesting HDV evaporative certification. To ensure that each manufacturer is responsible for an appropriate portion of certification costs, EPA believes it is necessary to separate the activities for the HDE certification request from the HDV evaporative certification request.

4. Division of Costs Within Certification Request Type

The proposed fee for each certification request type includes all costs related to that type. Within each type, not all certification requests result in the same costs being incurred by EPA, as shown by the cost analysis. Specifically, requests for California-only certificates, heavy-duty vehicle evaporative certificates, and unsigned certificates [7] incur only a portion of the costs associated with each certification request type. Therefore, for all certification request types, the proposed fee schedule separates the costs for federal and California-only certificates, [8] and signed and unsigned certificates. Further, for the heavy-duty certification request type, the proposed fee schedule also separates the costs for heavy-duty vehicle evaporative certificates.

The EPA cost analysis shows that within each certification request type the activities and costs may be divided into three parts: Base level certification, final level certification, and SEA and in-use compliance. The base level of certification activities includes initial computer processing, initial review of manufacturers data, scheduling of confirmatory testing, and other activities necessary to initiate the certification process. The final level of certification activities includes all additional certification activities which result in a signed certificate, as well as associated fuel economy activities. SEA includes activities associated with the conduct of an audit, as well as subsequent data storage and analysis. In-use compliance activities include vehicle procurement, maintenance, and testing of vehicles, as well as subsequent data storage and review. Further included in the cost study under SEA and in-use compliance are the related activities associated with certification investigations and ICI review.

The cost analysis values for certification activities have been divided into base certification and final certification levels. This division of costs was obtained by allocating all certification processing, review, and scheduling costs to the base level. All certification testing and fuel economy costs were assigned to the final level.

All requests for certification, regardless of type, receive the base level certification portion of services. In those cases where either a certification request does not receive approval or a manufacturer elects to withdraw the certification request prior to receiving a signed certificate, the proposed fee is for the base level of certification activities only. All signed certificates also receive the final level certification portion of services. All signed federal certificates receive base level, final level, and SEA and in-use compliance services.

As stated above, this division of costs is also applicable to heavy-duty and motorcycle certification request types. Further, HDV evaporative certification requests include HDEs which were certified previously. Therefore, to recover only the incremental costs of the HDV evaporative certification activities, from the HDV manufacturer, EPA is proposing a separate fee for HDV evaporative certification requests since this request type generally involves no associated SEA or in-use compliance activities and costs.

5. Fee Determination

Using the number of certification requests [9] and the total cost for each request type, a fee schedule was determined for each certification request type. The proposed fee schedule is as follows:

Certification request type	No. of requests	Fee	Cost recovered
LDV/LDT:			
Fed Signed	322	$23,731	$7,641,382
Cal-only Signed	174	9,127	1,588,098
Fed Unsigned	67	2,190	146,730
Cal-only Unsigned	14	2,190	30,660
Total	577		9,406,870
HDE/HDV:			
Fed Signed	116	$12,584	$1,459,744
Cal-only Signed	2	2,145	4,290
Fed Unsigned	0	2,145	0
Cal-only Unsigned	0	2,145	0
All Evaporative-only	17	2,145	36,465
Total	135		1,500,499
Motorcycles:			
Fed Signed	80	$840	$67,200
Cal-only Signed	5	840	4,200
Fed Unsigned	0	840	0
Cal-only Unsigned	0	840	0
Total	85		71,400

It should be noted that in the above table, the number of certification requests was used rather than actual certificates signed. This was done to equitably distribute EPA costs over each request. Occasionally, a manufacturer will initiate a certification request, but not receive a signed certificate. The failure to receive a certificate may result from either withdrawal of the request or failure to pass the certification process. Where the certification process is not completed, EPA proposes to refund the SEA and in-use compliance portions of

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

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

[9] EPA determined that for heavy-duty and MC certification requests the fee schedule should be based on a three year average (1988–1990) of the number of requests submitted for each. EPA believes that using a three year average for these request types is necessary due to the low annual number of such requests it receives, especially for California-only. For LDVs/LDTs, the fee schedule is based only on MY 1990. This is due to the fact that prior to 1990, the number of such certification requests was significantly lower. EPA believes that the number of requests received in 1990 more accurately reflects the number of requests expected in future years than do the number of requests received in years prior to 1990.

the fee. In this way, EPA is assured that the appropriate costs would be both recovered and fairly distributed over those manufacturers requesting certification regardless of whether an actual certificate is produced.

The allocation of costs for HDVs and HDEs satisfies the requirement of section 217(c) of the CAA, as amended. Section 217(c) provides that "* * * In the case of heavy duty engine and vehicle manufacturers, such fees shall not exceed a reasonable amount to recover an appropriate portion of such reasonable costs." By separating the costs for HDVs/HDEs, including heavy-duty vehicle evaporative certification requests, from the costs of LDVs/LDTs and MCs, and determining the fee schedule accordingly, EFA has met the requirement of section 217(a) that only an "appropriate portion" of the reasonable costs associated with certification of HDVs/HDEs be recovered. Thus the fee for HDVs/HDEs certification recovers only the costs incurred by EPA to administer HD compliance activities.

6. Special Cases

Under the proposed fee schedule, two special cases exist which warrant additional clarification.

First, in the same model year, fees would not be collected for certification requests made for an engine-system combination which is not unique. This occurs upon receipt of a certification request which represents a previously certified engine-system combination of the same model year with either a new evaporative emission family or corrections to a previously submitted certification request for running changes or averaging. An engine-system combination which is carried-over to a new model year or carried-across from another engine-system combination is unique and would be subject to a fee.

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

F. Fee Collection

1. Procedure for Paying Fees

Section 217 of the CAA leaves to EPA's discretion the method through which fees will be collected. EPA's initial review of possible procedures and policies has been guided by three principles: (1) The fee collection process should not have an adverse impact on EPA's motor vehicle compliance program; (2) fees should be collected and deposited in the most cost effective manner possible; and (3) fees should impose little additional paperwork burden on the public. In accordance with these principles, EPA proposes the following procedure for payment of fees:

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

To ensure proper identification and handling, the check and accompanying filing form would indicate the manufacturer's corporate name, the EPA standardized engine family name, and the engine system number that identifies unique engine-system combinations. Further, to expedite the payment procedure, the ESI or certification application would contain a place for each manufacturer to indicate when the filing form and fee were submitted and the amount paid.

This proposal requires that the full fee accompany the filing form. Partial payments or installment payments would not be permitted. If a filing form were submitted with an insufficient remittance, the applicant would be notified and given the opportunity to either submit the difference or withdraw the application and receive a refund of the amount paid. Processing of an ESI or application would not proceed until the Certification Division of EPA received notification from EPA Headquarters Accounting Operations Branch that full payment had been made.

EPA believes that allowing an application to enter EPA's processing system prior to payment of the full fee would result in additional administrative costs to the government, delay Treasury's receipt of funds, and, ultimately, decrease the amount of regulatory costs recovered by the government. Further, if the full fee is required as a prerequisite to processing certification requests, EPA ensures that it would recover the cost of processing from unsuccessful applicants without the need for further collection efforts. It is EPA's view that this is consistent with Congressional intent to impose fees for the cost of processing certification requests, regardless of the ultimate disposition of the request by EPA.

2. Fee Refund

Instances may occur in which an applicant submits a filing form with the appropriate fee, has an engine-system combination undergo the certification process, but then fails to receive a signed certificate. In this situation, the Agency would still have incurred those costs associated with processing the certification request and would be entitled to recover such costs. However, absent a certificate, the engine-system combination would not be subject to the final level of certification, and SEA and in-use compliance. Further, the incremental cost of the final level of certification would not be incurred and should also be refunded. Therefore, where a certificate is not issued, the applicant would be eligible to receive, upon request, a refund of that portion of the fee attributable to the final level of certification, and SEA and in-use compliance. Refunds would be the percentage of the fee paid attributable to the final level of certification, SEA and in-use compliance. The percentage of the fee to be refunded for each certification request type would be as follows:

Certification request type	Percentage of payment to be refunded	
	Federal (percent)	California only (percent)
LDV/LDT	90.8	76.0
HDE/HDV	83.0	0
—Evaporative only	0	0
MC	0	0

Where a refund is shown as 0% in the above table, it is due to the fact that no costs are incurred by EPA for the refundable portion (e.g. SEA and recall) of the fee. Therefore, as detailed in the cost analysis, a refund would not be appropriate.

3. Deposit of Fees: Special and General Treasury Funds

All fees which are collected would be deposited in the United States Treasury. Specifically, in accordance with section 217(b) of the CAA, all fees which are collected for services specified in section 217(a) of the CAA "shall be deposited in a special fund in the United States Treasury." This "special" fund would be used to carry out the programs for which the fee is collected. Fees for services which are imposed solely pursuant to the IOAA, such as fuel economy labeling, would be deposited

in the General Treasury Fund. For the LDV/LDT certification request type, this would mean that 19.6% [10] of each LDV/LDT fee collected would be deposited in the General Treasury Fund. The HD and MC certification request types do not involve fuel economy costs and as such the entire fee for these types would go into the special Treasury fund.

G. Implementation Schedule

It is EPA's intent that the Final Rule on fees be published in October 1991, with the rule being effective and fees being collected beginning late in calendar year 1991 for certification of all vehicle and engine Model Years (MYs) 1993 and beyond. EPA recognizes that the final rule may not become effective until after some manufacturers have submitted certification requests for MY93. Further, some applicants may attempt to avoid payment of the appropriate fee by submitting incomplete applications prior to the time the final rule becomes effective. In these instances, applicants would be billed subsequent to submitting the certification request and would be expected to pay the fee prior to receiving a signed certificate.

Should the Final Rule be delayed until January 1, 1992, or later, manufacturers would not be required to pay a fee for MY93 certificates issued prior to the date the Final Rule becomes effective.

H. Fee Phase-In

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

MY93—50%
MY94—100%

I. Waiver or Adjustment of Fees

EPA believes that a liberal waiver policy would violate the very premise underlying section 217 of the CAA: to reimburse the government for the specific regulatory services provided to an applicant. However, EPA recognizes that there may be instances in which an applicant is unable to pay the full fee due to the severe economic hardship such payment would impose. Therefore, EPA is proposing a three part test which, if met, would qualify an applicant for a waiver of a certification fee.

To obtain a waiver, an applicant would need to demonstrate that:

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

2. The worldwide aggregate sales for all vehicles and engines produced by the applicant, including all affiliates (as described in 40 CFR 86.092–14(b)(2)(i)–(iv)), were less than 10,000 units for the most recent MY for which sales data is available preceding the MY year for which certification is requested. If the applicant's first year of operation is the same as the year for which certification is requested, projected aggregate sales would be accepted in lieu of actual sales; and

3. The full fee for a certification request for a MY exceeds 1% of the retail sales value of all vehicles or, where applicable, all engines covered by that certificate. The retail sales value would be based on projected sales of all vehicles under a certificate, including vehicles modified under the modification and test option in 40 CFR 85.1509. The applicant would be expected to demonstrate the basis of its claimed projected sales through various factors, such as prior actual sales and previous waiver requests.

Request for a waiver would be submitted to EPA prior to the certification request. The applicant would have the burden of providing all documentation which would be necessary for EPA to verify that the three requirements were satisfied. As stated by the D.C. Circuit:

> The applicant for waiver must articulate a specific pleading, and adduce concrete support, preferably documentary.[11]

If sufficient documentation is presented and a waiver granted, the fee to be paid by the applicant would be 1% of the retail sales value of the vehicles to be covered by the certification request for the relevant MY. The fee paid would be based on projected sales for the MY for which certification is requested. However, in no case would the fee be less than 25% of the full fee required for the applicable certification request type. EPA believes that the 25% minimum payment requirement is small enough so that it does not impose an undue economic hardship on small manufacturers, but is significant enough to prevent taxpayers from subsidizing an inappropriate portion of the costs incurred by small manufacturers. Similarly, EPA does not believe that a waiver based on 1% of the retail sales value would impose an adverse economic impact on small manufacturers.

For vehicles imported under an ICI certificate, the retail sales value would be based on a vehicle's average retail value listed in the National Automobile Dealer's Association (NADA) price guide. By using the NADA price guide to establish a vehicle's retail sales 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 value of a vehicle, the applicant for waiver must demonstrate, to the satisfaction of the Administrator, the actual market value of the vehicle in the United States at the time of final importation.

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

EPA recognizes that it would be inequitable to have applicants who pay the full fee subsidize the regulatory costs of those applicants granted a partial waiver. Therefore, such costs would be covered by the government.

J. Fee Updating Procedure

EPA's intent is to charge fees which continue to reasonably reflect the cost of providing certification services. This would require adjustments in the fee schedule which reflect changes in the level of services, as well as operating costs. Therefore, EPA proposes to make adjustments to the fee schedule through two updating procedures.

First, to reflect changes in operating costs, fees would be adjusted automatically every year by the same percentage as the percent change in the Consumer Price Index (CPI). When automatic adjustments are made, based on the CPI, the new fee schedule would be published in the **Federal Register** as a final rule to become effective 30 days or more after publication, as specified in the Rule.

Second, the fee schedule would be revisited approximately every two years to determine whether it accurately reflects the (1) level of EPA's motor vehicle and engine compliance activities being provided at the time of review, (2) costs of conducting the MVECP, and (3) number of certification requests. Changes would be made in the fee schedule accordingly. When changes are made based on such periodic reviews,

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

[11] *United Gas Pipe Line Co. v. Federal Energy Regulatory Comm'n*, 707 F.2d 1507, 1511 (D.C. Cir. 1983).

the changes would be subject to public comment.

IV. Options Considered

EPA has considered, but is not proposing, several alternatives to the proposed fee system. Comments on these alternatives are requested.

A. Alternatives to Certification Request as Basis for Fee

EPA considered several alternatives to charging a fee by certification request. One alternative would be to charge according to the aggregate number of vehicles and engines produced for sale in the U.S. by all manufacturers in a MY. This would involve dividing the total cost of the MVECP by the aggregate number of vehicles and engines produced for sale in the U.S. In other words, the total amount recoverable by EPA would be distributed evenly among the number of vehicles or engines covered by certificates.

A variation of the above alternative would be to divide the cost of the MVECP by certification request type. The resulting amount would then be divided equally among the total number of vehicles and engines produced under each certification request type.

The proposed fee schedule and both alternative fee schedules would recover the government's costs equally. However, EPA's costs are based on certification requests, not units sold under those requests. Thus, a fee per unit sold, whether by overall production or production within certification request type, does not accurately reflect the cost to EPA of providing services associated with the MVECP. In addition, both alternatives would result in large manufacturers paying a disproportionate amount of reimbursable costs, while smaller manufacturers would obtain certification services for a fee far less than the cost incurred by EPA.

A third alternative would be to charge a fee for each sub-event which is a part of the MVECP (e.g. each confirmatory test, data entry request, etc.). This alternative would require maintaining an extensive tracking mechanism throughout the entire process. EPA believes that such a tracking mechanism would increase administrative costs, thereby resulting in increased fees to manufacturers. Further, under this alternative, fees could not be collected until it had been determined which sub-events applied to an applicant. This would result in substantial delays in the MVECP since a signed certificate would not be issued until such a determination was made, a charge was submitted to the applicant, and payment was received by EPA. Therefore, categorizing EPA services at a sub-event level finer than the certification request event is impractical.

B. Higher Fees for Large or Combined Families

EPA considered requiring additional fees for large or combined families under the theory that these might cause EPA to incur greater MVECP costs. However, presently, this would not significantly affect the fee proposed for each certification request type. If warranted, this issue would be addressed in future revisions to the fee schedule.

C. Additional Fees for Extra Certificates for Revised Engine-System Combinations

A separate fee could be charged for each LDV/LDT evaporative emission family certification request. A separate fee would be assessed for each engine-system combination as well as each evaporative emission family.

However, EPA costs for evaporative certification can be grouped together with certification, fuel economy, SEA, and in-use compliance costs within each certification request type. Further, combining the fee minimizes administrative costs, keeps the fee structure simple, and maintains a reasonable method of assessing the fee. Also, separate fees for evaporative certification would increase the administrative costs to EPA and, thus, the total fees assessed to industry.

Similarly, each running change or certificate revision, or an additional certificate issued for a change in the averaging family emission limit (FEL), does not result in significant additional EPA costs. Thus, these costs were combined with the costs for an engine-system combination certification request to minimize EPA's administrative burden.

D. Fee for Signed Certificates Only

EPA considered charging a fee for each signed certificate. This would be a convenient method of assessing the proposed fee. However, significant costs arise from each certification request, regardless of whether it results in a signed certificate. By charging a fee based on signed certificates only, such costs would not be recovered, and those manufacturers receiving a certificate would be subsidizing certification activities of other manufacturers not receiving a certificate.

E. Separate Fee for Fuel Economy

EPA considered charging a separate fee for fuel economy program costs. EPA believes this alternative presents no advantages and would result in higher fees to manufacturers. When a certification request is received by EPA, certification and fuel economy activities are initiated. In the certification process, these activities are intertwined. Bifurcation of these activities would increase EPA's administrative burden and, thereby, increase the fee charged manufacturers.

V. Economic Impact

A. Cost to Industry

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

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

B. Cost to the Government

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

VI. Public Participation

A. Comments and the Public Docket

EPA requests comments on any aspect of this proposed rulemaking. Persons making comments are especially encouraged to provide suggestions for modification of any aspects of the proposal that they find objectionable. All comments should be directed to the Air Docket, Docket No. A-91-15 (see "ADDRESSES").

Persons with comments containing proprietary information must distinguish such information from other comments to the greatest possible extent and label it as "Confidential Business Information." To ensure that proprietary information is not inadvertently placed in the docket, submissions containing such information should be sent directly

to the contact person listed above and not to the public docket. If a person making comments wants EPA to base the final rule in part on a submission labeled as confidential business information, then a non-confidential version of the document which summarizes the key data or information should be placed in the public 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 it is received by EPA, it may be made available to the public without further notice to the person making comments.

B. Public Participation

Any person desiring to present testimony regarding this proposal at the public hearing (see "Dates") should, if possible, notify the contact person listed above of such intent at least seven days prior to the opening day of the hearing. The contact person should also be given an estimate of the time required for the presentation of the testimony and notification of any need for audio/visual equipment. A sign-up sheet will be available at the registration table the morning of the hearing for scheduling testimony for those who have not notified the contact person. This testimony will be scheduled on a first come, first serve basis to follow the previously scheduled testimony.

EPA suggests 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 advance copy of any statement or material to be presented at the hearing at least one week before the scheduled hearing date, in order to give EPA staff adequate time to review such material before the hearing. Such advance copies should be submitted to the contact person listed previously.

The official records of the hearing will be kept open for 30 days following the hearing to allow submission of rebuttal and supplementary testimony. All such submittals should be directed to the Air Docket, Docket No. A-91-15 (see "**ADDRESSES**").

Mr. Richard D. Wilson, Director of the Office of Mobile Sources, is hereby designated Presiding Officer of the hearing. 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 proceeding.

VII. Other Statutory Requirements

A. Executive Order 12291

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

Also, in accordance with E.O. 12291, the proposed rule was submitted to the Office of Management and Budget (OMB) for review. Any written comments from OMB and any EPA response to those comments are in the public docket for this rulemaking.

B. Paperwork Reduction Act

The information collection requirements in this 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 document has been prepared by EPA (ICR No. 2060-0104) and a copy may be obtained from Sandy Farmer, Information Policy Branch; EPA; 401 M St., SW. (PM-223Y); Washington, DC 20460 or by calling (202) 382-2740.

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

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch; EPA; 401 M St., SW. (PM-223Y); Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final Rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires federal agencies to identify potentially adverse impacts of federal regulations upon small entities. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to perform a Regulatory Flexibility Analysis (RFA). EPA has determined that the regulations proposed today would not have a significant impact on a substantial number of small entities. This regulation would affect manufacturers of motor vehicles and motor vehicle engines, a group which does not contain a substantial number of small entities.

In the case of small manufacturers or ICIs, the proposed regulation includes a waiver provision. In cases of economic hardship, this waiver provision would reduce the fee imposed based on the number of vehicles or engines covered by a certificate of conformity. This inclusion should alleviate the concerns about impacts on small business as expressed in the Regulatory Flexibility Act.

Therefore, as required under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* I certify that this regulation does not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 86

Administrative practice and procedure, Air pollution control, Motor vehicles, Motor vehicle pollution, Gasoline, Diesel, Reporting and recordkeeping requirements, Fees.

Dated: June 6, 1991.

William K. Reilly,

Administrator.

Therefore, it is proposed that 40 CFR part 86 be amended as set forth below:

PART 86—[AMENDED]

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

Authority: Secs. 202, 203, 205, 206, 207, 208, 215, 216, 217, and 301 of the Clean Air Act, as amended (42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, 7552, 7545 and 7601); and Sec. 9701 of the Independent Offices Appropriations Act (31 U.S.C. 9701).

2. Subpart J is added to part 86 to read as follows:

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

Sec.

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

§ 86.901–93 Abbreviations.

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

CAFE—Corporate Average Fuel Economy
Cal—California
CPI—Consumer Price Index
ESI—Engine System Information
Fed—Federal
HDE—Heavy-duty engine
HDV—Heavy-duty vehicle
ICI—Independent Commercial Importer
LDV—Light-duty vehicle
LDT—Light-duty truck
MC—Motorcycle
MVEPC—Motor Vehicle and Engine Compliance Program
MY—Model Year
OEM—Original equipment manufacturer

§ 86.902–93 Definitions.

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 Carry-Over data sheet.

Engine-system combination as defined in 40 CFR 86.082–2, means an engine family-exhaust emission control system combination.

Federal certificate is a certificate of conformity issued by EPA which signifies compliance with emission standards in 40 CFR part 86 subpart A.

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.

Signed means a certification request which results in a signed certificate of conformity.

Unsigned means a certification request which does not result in a signed certificate of conformity because it is either voluntarily withdrawn by the manufacturer or does not receive approval from the EPA.

§ 86.903–93 Applicability.

This subpart prescribes fees to be charged for the MVECP for 1993 and later model years. 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 Act, including authority to require manufacturer in-use testing as provided in section 208.

§ 86.904–93 Section numbering; construction.

(a) The MY of initial applicability is indicated by the section number. The two digits following the hyphen designate the first MY for which a section is effective. A section remains effective until superseded.

Example: Section 86.901–93 applies to the 1993 and subsequent MYs until superseded. If section 86.901–96 is promulgated, it would take effect beginning with the 1996 MY; section 86.901–93 would apply to model years 1993 through 1995.

(b) A section reference without a MY suffix refers to the section applicable for the appropriate MY.

§ 86.905–93 Purpose.

The MVECP includes all compliance, enforcement, and related activities performed by EPA which are associated with certification, fuel economy, Selective Enforcement Auditing (SEA), and in-use compliance programs. The fee will recover those compliance, investigation and review costs which the EPA incurs in providing vehicle and engine manufacturers or ICIs with certificates of conformity, fuel economy labels, CAFE calculations, and ICI review necessary to market vehicles in the United States and to meet requirements otherwise imposed by statute.

§ 86.906–93 MVEPC certification request types.

Certification requests are grouped into three types corresponding to the three major divisions of regulated mobile sources: LDVs/LDTs; HDVs/HDEs; and MCs.

§ 86.907–93 Fee amounts.

The fee for each certification request type is:

	MY 1993	MY 1994 (and later)
LDV/LDT:		
Fed Signed	$11,865	$23,731
Cal-only Signed	4,569	9,127
Fed Unsigned	1,095	2,190
Cal-only Unsigned	1,095	2,190
HDE/HDV:		
Fed Signed	$6,292	$12,584
Cal-only Signed	1,072	2,145
Fed Unsigned	1,072	2,145
Cal-only Unsigned	1,072	2,145
All Evaporative-only	1,072	2,145
MCs:		
Fed Signed	420	840
Cal-only Signed	420	840
Fed Unsigned	420	840
Cal-only Unsigned	420	840

§ 86.908–93 Waivers and refunds.

(a) *Request for Waiver.* The Administrator may waive part of any fee imposed by § 86.907 of this subpart.

(1) A waiver will be granted to an applicant if the Administrator determines that:

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

(ii) The applicant's worldwide sales for all vehicles and engines produced by the applicant, including all affiliates (as described in 40 CFR 86.092–14(b)(2) (i) through (iv)], was less than 10,000 units for the most recent MY for which sales data is available preceding the MY for which certification is requested; and

(iii) The full fee for a certification request for a MY exceeds 1% of the projected retail sales price of all vehicles covered by that certificate.

(2) The request for waiver must be submitted prior to the payment of any fee and shall include evidence, such as prior actual sales and previous waiver requests, clearly showing that the applicant satisfies the three waiver criteria.

(3) If a waiver is granted, the fee to be paid by the applicant shall be 1% of the projected retail sales price of the vehicles or engines to be covered by the certification request.

(4) Any reduction in the fee which is granted as a result of a waiver shall not exceed 75% of the full fee for the applicable certification request type.

(5)(i) EPA or its designee will analyze each waiver request to determine whether the applicant has met the standards for a waiver and then will notify the applicant of its grant or denial.

(ii) If the request is denied, 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.

(b) *Request for refund.* The Administrator may refund a specified part of any fee imposed by § 86.907 of this subpart if the applicant fails to obtain a signed certificate, and requests a refund.

(1) That portion of the total fee to be refunded would be as follows:

	Federal (percent)	California-only (percent)
LDV/LDT	90.8	76.0
HDE/HDV	83.0	0
—Evaporative only	0	0
MC	0	0

(2) A request for a waiver or refund of part of a fee shall be submitted in writing by the applicant to the Environmental Protection Agency, Motor Vehicle and Engine Compliance Program, Certification Division, 2565 Plymouth Road, Ann Arbor, MI 48105.

§ 86.909–93 Payment.

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

(b) All fees shall be forwarded with the Fee Filing Form to the Environmental Protection Agency to the address designated on the Fee Filing Form.

(c) An application for which a partial waiver of the fee has been requested will not be accepted for processing until the appropriate fee has been determined and the balance waived or, if the waiver has been denied, the proper fee is submitted after notice of denial.

§ 86.910–93 Deficiencies.

(a) Any filing pursuant to § 86.909 of this subpart that is not accompanied by the appropriate filing fee is deficient.

(b) The Administrator will inform any person who submits a deficient filing that:

(1) Such filing will be rejected and the amount paid refunded, unless the appropriate fee is submitted within a specified time;

(2) EPA will not process any filing that is deficient under this section; and

(3) The date of filing will be deemed the date on which EPA receives the appropriate fee.

§ 86.911–93 Adjustments of fees.

(a) The fee schedule will be changed annually by the same percentage as the percent change in the Consumer Price Index (CPI) for all urban consumers.

(b) This annual change will occur within 60 days following release of the final estimates of the annual average for the CPI for all urban consumers by the Department of Labor.

(c) MVECP costs and fees will periodically be reviewed and changes will be made to the schedule as necessary.

(d) When automatic adjustments are made, based on the CPI, the new fee will be published in the **Federal Register** as a final rule to become effective 30 days or more after publication, as specified in the Rule.

(e) When changes are made based on periodic reviews, the changes will be subject to public comment.

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