Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, 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.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D, and Department of Homeland Security Management Directive 5100.1, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation as this action relates to the promulgation of operating regulations or procedures for drawbridges. Under figure 2–1, paragraph (32)(e) of the Instruction, an ''Environmental Analysis Checklist'' is not required for this rule. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1.

2. From November 5, 2007 to January 15, 2009, revise § 117.787 to read as follows:

§ 117.787 Gowanus Canal.

(a) The draws of the Ninth Street Bridge, mile 1.4, the Third Street Bridge, mile 1.8, the Carroll Street Bridge, mile 2.0, and the Union Street Bridge, mile 2.1, at Brooklyn, shall open on signal if at least a two-hour advance notice is given to the New York City Department of Transportation (NYCDOT), Radio Hotline, or the NYCDOT Bridge Operations Office.

(b) The draw of the Hamilton Avenue Bridge, mile 1.2, shall open on signal after at least a four-hour advance notice is given by calling (201) 400–5243. This paragraph is effective from November 7, 2007 to January 15, 2009.

Dated: September 7 2007.

Timothy S. Sullivan,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. E7–18302 Filed 9–17–07; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 89, and 1039

[EPA–HQ–OAR–2007–0652; FRL–8467–1]

RIN 2060–AO37

Nonroad Diesel Technical Amendments and Tier 3 Technical Relief Provision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: In this proposed rulemaking, EPA is making certain technical corrections to the rules establishing emission standards for nonroad diesel engines. In addition, we are amending those rules to provide nonroad diesel equipment manufacturers with a production technical relief provision for Tier 3 equipment which is similar to the technical relief provision already available for Tier 4 equipment. Like the Tier 4 provisions, the new Tier 3 technical relief provision deals with a situation where an equipment manufacturer which is not vertically integrated with its engine supplier is

unable to complete redesign of the equipment within the time required by rule (here, the Tier 3 rule). To be eligible, the equipment manufacturer must show both that its inability to furnish a compliant equipment design is due to the engine supplier, and that the equipment manufacturer has exhausted other flexibilities already provided by the Tier 3 rule. Unlike the Tier 4 technical relief provision, however, the Tier 3 Technical flexibility will apply up to a maximum of an additional 50% of production beyond the original 80% provided by the Tier 3 production flexibility provision. In addition, each grant of Tier 3 technical relief is associated with the likelihood of earlier use of Tier 4 nonroad diesel engines. The rule thus provides that for each one percent of use of Tier 3 technical relief, some percentage of the automatic Tier 4 production flexibility for the same engine power category, and some percentage of potential Tier 4 technical relief, is no longer available. The percentage varies based on the type of engine for which Tier 3 technical relief is granted, the largest Tier 4 ''penalty'' being associated with use of the

DATES: Written comments must be received by October 18, 2007. Request for a public hearing must be received by October 3, 2007. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. If we receive a request for a public hearing, we will publish information related to the timing and location of the hearing and the timing of a new deadline for public comments.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2007–0652, by one of the following methods:

- *Federal eRulemaking Portal: http://http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-Docket@epa.gov*.
- *Fax:* (202) 566–9744.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket, Mail Code 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Deliveries are only accepted during the Docket's normal hours of operation from 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday, except on government holidays. If your Docket requires the submission of multiple copies, please insert the following here:

► Please include a total of copies.

► If the comment involves an ICR that will be submitted to OMB for review and approval under 5 CFR 1320.11, then you must also include the following language pursuant to 1320.11(a): ''In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St. NW., Washington, DC 20503.''

- *Hand Delivery:* EPA Docket Center (Air Docket), U.S. Environmental Protection Agency, EPA West Building, 1301 Constitution Avenue, NW., Room: 3334, Mail Code 2822T, Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation from 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday, except on government holidays, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2007–0652. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* website is an ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Public Hearing: If a public hearing is held, it will be held at 10 a.m. on October 18, 2007 at the EPA NVFEL Office Building, 2000 Traverwood Drive Ann Arbor, MI, or at an alternate site nearby. Persons interested in presenting oral testimony must contact Zuimdie Guerra, Environmental Protection Agency, Office of Transportation and Air Quality, Assessment and Standards Division, 2000 Traverwood Drive Ann Arbor, MI 48105; e-mail *guerra.zuimdie@epa.gov*; telephone (734) 214–4387; fax number (734) 214–4050, no later than October 15, 2007.

Persons interested in attending the public hearing must also call Zuimdie Guerra to verify the time, date, and location of the hearing. If no one contacts Zuimdie Guerra by October 15, 2007 with a request to present oral testimony at the hearing, the hearing will be cancel.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the EPA Docket Center (EPA/DC), Air Docket, Public Reading Room, Room 3334, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday, except on government holidays. You can reach the Air Docket by telephone at (202) 566–1742 and by facsimile at (202) 566–9744. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

FOR FURTHER INFORMATION CONTACT: Zuimdie Guerra, Environmental Protection Agency, Office of Transportation and Air Quality, Assessment and Standards Division, 2000 Traverwood Drive Ann Arbor, MI 48105; e-mail address *guerra.zuimdie@epa.gov*; telephone (734) 214–4387; fax number (734) 214–4050.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Background

In the ''Rules and Regulations'' section of this **Federal Register**, we are making these revisions as a direct final rule without prior proposal because we

view these revisions as noncontroversial and anticipate no adverse comment.

We have explained our reasons for these revisions in the preamble to the direct final rule. If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment on the rule, or on one or more distinct actions in the rule, we will withdraw the direct final rule, or the portions of the rule receiving adverse comment. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

B. Does This Action Apply to Me?

This action will affect companies that manufacture and certify nonroad equipment powered by diesel engines in the United States.

Category	NAICS code [a]	Examples of potentially affected entities
U.S. Industry	333111	Farm Machinery and Equipment Manufacturing.
U.S. Industry	333112	Lawn and Garden Tractor and Home Lawn and Garden Equipment Manufacturing.
U.S. Industry	333131	Mining Machinery and Equipment Manufacturing.
U.S. Industry	333132	Oil and Gas Field Machinery and Equipment Manufacturing.
Industry	33341	Ventilation, Heating, Air-Conditioning, and Commercial Refrigeration Equipment Manufacturing.
Industry	33361	Engine, Turbine, and Power Transmission Equipment Manufacturing.
U.S. Industry	333911	Pump and Pumping Equipment Manufacturing.
U.S. Industry	333912	Air and Gas Compressor Manufacturing.
Industry	33392	Material Handling Equipment Manufacturing.
U.S. Industry	333924	Industrial Truck, Tractor, Trailer, and Stacker Machinery Manufacturing.
U.S. Industry	333991	Power-Driven Handtool Manufacturing.
U.S. Industry	333992	Welding and Soldering Equipment Manufacturing.

[a] North American Industry Classification System (NAICS).

To determine whether particular activities may be affected by this action, you should carefully examine the regulations. You may direct questions regarding the applicability of this action as noted in **FOR FURTHER INFORMATION CONTACT**.

C. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI). In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

i. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns, and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

D. How Can I Get Copies of This Document and Send Comments?

See the direct final rule EPA has published in the ''Rules and Regulations'' section of today's **Federal Register** for information about accessing these documents. The direct final rule also includes detailed instructions for sending comments to EPA.

II. Summary of Rule

A. EPA is making the following technical amendments to correct a variety of regulatory provisions in the regulations establishing emission standards for nonroad diesel engines:

- *40 CFR 9.1:* Adding the approved information collection for nonroad diesel engines to the summary table in 40 CFR part 9.
- *40 CFR 89.1:* Correcting a typographical error.
- *40 CFR 89.101:* Adding a provision to allow manufacturers to start using the provisions already adopted for Tier 4 engines in the time that Tier 2 or Tier 3 standards continue to apply. We would allow this only to the extent that it does not affect our ability to ensure that manufacturers fully comply with applicable requirements.
- *40 CFR 89.102:* Clarifying the legal status for equipment using engines exempted from current standards under the Transition Program for Equipment Manufacturers. The original language does not clearly exempt the equipment from the otherwise applicable prohibition in § 89.1003, which would be necessary for this whole program.
- *40 CFR 89.102:* Clarifying the limitation of allowances based on engine families. Since these engines are not certified, we clarify that this term relates to the characteristics described for certifying engines in § 89.116.
- *40 CFR 89.102:* Technical relief provision; discussion below in part B.
- *40 CFR 89.108:* Adding a provision for engines to be adjusted outside the normal range of parameter adjustment for applications involving landfill or wellhead gas. We have already adopted this in 40 CFR part 1039 for Tier 4 engines, so this change simply allows manufacturers to implement this provision earlier.
- *40 CFR 89.115:* Requiring manufacturers to name an agent for service in the United States. This simply allows us to ensure that we will have a person in the United States who is able to speak for the company and receive communication regarding any aspect of

our effort to certify engines and oversee compliance of certified products.

• *40 CFR 89.205:* Clarifying provisions in the nonroad diesel engine averaging, banking, and trading (ABT) program. The text change is to clarify that these credits are considered to be Tier 2 credits.

• *40 CFR 89.601:* Requiring importers to complete the EPA declaration form before importing engines, and to keep the forms for five years. This amendment simply restates the provisions that are already in place for the U.S. Customs and Border Patrol at 19 CFR 12.74.

• *40 CFR 89.611:* Defining the initial dates for implementing emission standards for nonroad diesel engines below 37 kW. This corrects an earlier oversight in the definition of the scope of the exemption for importing engines that were built before emission standards started to apply.

• *40 CFR 1039.102:* Clarifying provisions in the nonroad diesel engine averaging, banking, and trading (ABT) program.

• *40 CFR 1039.104:* Clarifying provisions in the nonroad diesel engine averaging, banking, and trading (ABT) program. The change corrects an inconsistency with the existing regulatory text that effectively prevents the use of credit-using Tier 3 engines in the initial years of Tier 4 in certain situations.

• *40 CFR 1039.115:* Specifying that crankcase requirements apply throughout an engine's useful life. Without this clarifying language, it is not clear how long this requirement applies, or whether it ever expires. We are also clarifying that the requirements of this section do not apply to engines that are subject to part 1039 requirements, but have been exempted from the emission standards for any reason.

• *40 CFR 1039.125:* Correcting an inadvertant reference to nonroad equipment, which should refer instead to nonroad engines as is clear from the context.

• *40 CFR 1039.135:* Adding clarifying language to describe when an engine's emission control information label is so obscured as to require the equipment manufacturer to apply a separate duplicate label. To be consistent with all other programs for nonroad engines, we specify that a label that is visible during normal maintenance is not obscured. We are also adding a specification that manufacturers keep records of the engine families for which they send duplicate labels.

• *40 CFR 1039.205:* Requiring submission of emission results for each test mode if manufacturers conduct discrete-mode testing. This does not apply for ramped-modal testing. These measurements would be submitted for demonstrating compliance with not-to-exceed standards, so this should not include any additional testing or reporting burden.

• *40 CFR 1039.205:* Requiring manufacturers to name an agent for service in the United States, as described above for § 89.115.

• *40 CFR 1039.205:* Requiring that manufacturers make good-faith estimates of projected production volumes.

• *40 CFR 1039.210:* Clarifying EPA's role in preliminary approvals to describe that we generally would not reverse a decision without new information supporting a different decision.

• *40 CFR 1039.225:* Revising the language to avoid using the term ''new nonroad engine,'' since that defined term is not appropriate for this section.

• *40 CFR 1039.235:* Clarifying that carryover of emission data is possible for engine families that have engine changes in a new model year, as long there are no changes that might affect emissions.

• *40 CFR 1039.245:* Removing a regulatory provision that was inadvertently included in two separate paragraphs.

• *40 CFR 1039.255:* Narrowing the scope of recordkeeping that would subject an engine manufacturer to an action that could result in the certificate of conformity being revoked or voided, consistent with the similar provisions in our other nonroad engine programs.

• *40 CFR 1039.501:* Clarifying the emission standards to which specific test procedures apply.

• *40 CFR 1039.505:* Clarifying that cycle statistics for discrete-mode testing should be based on a calculation for each mode rather than the sequence of modes.

• *40 CFR 1039.605 and 40 CFR 1039.610:* Amending the regulatory language to address a variety of legal and technical clarifications.

• *40 CFR 1039.625:* Amending the regulatory language to specify the proper engine power lower bound.

• *40 CFR 1039.705:* Amending the description for calculating emission credits to clarify the steps in making the calculation.

• *40 CFR 1039.730:* Revising the description of emission credit calculations to clarify that manufacturers need consider only those families that generate or use emission credits. The emission credit program described in this subpart for these engines is not based on fleet-average compliance.

• *40 CFR 1039.735:* Clarifying the recordkeeping provisions related to emission credits and adding a requirement to keep records as long as the banked credits are considered valid for demonstrating compliance with emission standards.

• *40 CFR 1039.801:* Correcting various definitions to be consistent with more recent rulemakings that used somewhat different wording.

• *40 CFR 1039.810:* Removing the incorporation by reference for the document that defines our rounding conventions, since we are already relying on the same reference established in 40 CFR part 1065.

• *40 CFR 1039.825:* Adding a new section to summarize the information collection requirements in part 1039.

B. This rulemaking also provides nonroad diesel equipment manufacturers that are not vertically integrated with engine suppliers with a production technical relief provision for Tier 3 equipment, modeled on the comparable provision for Tier 4 equipment found in 40 CFR section 1039.625 (m).

Only equipment manufacturers who do not make the engines used in the equipment for which technical relief is sought are eligible to apply for technical relief under this provision (since the engine production and equipment production segments of integrated entities would necessarily be in contact and therefore not experience the type of unexpected redesign changes which could warrant technical relief). This applies exclusively to equipment manufacturers as described in section 1039.626. Engine manufacturers and importers thus may not request this relief.

The Tier 4 nonroad diesel rule applies both to diesel engine manufacturers and to equipment manufacturers who install engines made by engine manufacturers. Equipment manufacturers are ultimately responsible for producing non-road applications which comply with the rule's standards by the rule's compliance date. However, there can be circumstances when equipment manufacturers, through no fault of their own, receive engines from their suppliers too late to meet compliance dates. Although the Tier 4 rule contains a number of equipment manufacturer flexibility provisions which apply automatically (i.e. without any showing of need or any requirement to obtain EPA approval), we were convinced that some additional flexibility was needed to cover circumstances where (a) an equipment manufacturer has exhausted

its automatic flexibilities, and (b) it demonstrates to EPA that it cannot comply with the rule because, through no fault of its own, the engine manufacturer failed to deliver a compliant engine to the equipment manufacturer in sufficient time. The provision is also to be used only as a last resort, so an equipment manufacturer is eligible for relief under the provision only after it exhausts all other flexibility provisions and implementation options. This provision (which we call ''technical relief'' [1]) is explained in the Tier 4 nonroad preamble at 69 FR 3900739–008 (June 29, 2004), and (as noted) is codified at section 1039.625 (m).

The same issue can arise for producers of Tier 3 nonroad diesel equipment, but the Tier 3 rule does not contain the technical relief provision. This rule essentially adds the same technical relief provision to the Tier 3 rule, for the same reasons EPA adopted it in Tier 4.

Tier 3 equipment manufacturers may need this technical relief to address challenges that may occur as engine manufacturers choose to implement technical changes for Tier 3. If an engine manufacturer changes their plan late in the design implementation process, an equipment company with unique or complicated equipment designs could face challenges with their internal redesign process. If the equipment manufacturer has already used its other flexibilities, there thus may still be circumstances warranting technical relief for Tier 3 equipment.

There are two principal differences between the Tier 3 technical relief provision, and the existing provision in Tier 4. The first is that the dirtier the substitute engine used if technical relief is granted for Tier 3 equipment, the more Tier 4 flexibilities (both automatically available flexibilities and potential technical relief) the equipment manufacturer must give up (further details are explained below). This encourages earlier use of Tier 4 engines (the cleanest), and ensures that the net emission reductions from Tier 3 and Tier 4 engines remain the greatest achievable, as required by section 213 of the Act. Another difference between the Tier 3 and Tier 4 technical relief provisions is that for the Tier 3 program, relief is limited to 50% of one year's production volume for each power category (as opposed to 70% under Tier 4). This allows for the transitional nature of this program to be realized, while limiting the potential for abuse beyond the need to facilitate a transition to cleaner engines.

However, for the most part, the Tier 3 technical provision mirrors that in Tier 4. As with the parallel provision in Tier 4, this technical relief provision provides a case-by-case exemption granted by EPA to an equipment manufacturer after evaluating the equipment manufacturer's application. Any engine produced utilizing this relief must be appropriately labeled to avoid the introduction into commerce of engines that are not in compliance. A clearly visible label thus must be provided which indicates the regulatory flexibility under which these engines are being produced. The provision applies to equipment that would otherwise be required to use engines certified to the Tier 3 standard (i.e. model year 2006 to 2008 equipment with 37 to 560 kW nonroad diesel engines). The equipment manufacturer would have the burden of demonstrating existence of an extreme technical or engineering hardship condition that is outside its control, i.e. is essentially due to conduct of the (nonintegrated) engine supplier and therefore out of the equipment manufacturer's control. The equipment manufacturer must also demonstrate that it has exercised reasonable due diligence to try to avoid being in the situation.

In order to meet these criteria, the equipment manufacturer needs to provide to EPA documentation, or a written explanation, addressing the following issues:

- Documentation of the technical or engineering problem that was unsolvable within the lead time provided by the Tier 3 rule.
- A description of the normal design cycle between the engine manufacturer and the equipment manufacturer and why that process did not work in this instance.
- All information (such as written specifications, performance data, prototype engines) received by the equipment manufacturer from the engine manufacturer.
- Comparison of the design process for the equipment model for which the exemption is requested versus those for which the exemption is not needed.
- A description of efforts the equipment maker has made to find other compliant engines for the model.
- Documentation that existing flexibilities will be fully utilized before the need for technical relief.

EPA would then decide on a case by case basis what percentage, if any, of additional relief (i.e. relief above and beyond that afforded by the automatic percent of production flexibility) would be provided.

Applicability of the Tier 3 technical relief provision is restricted to:

- Up to a maximum of an additional 50% beyond original 80% automatic per cent of production technical flexibility (a change from Tier 4, as noted above).
- Full allowance is limited to the first two (2) years of Tier 3.
- Phased-in by power category.
- The Tier 3 automatic flexibility provisions continue to apply for their original seven years or until fully consumed.
- Applies to 56 to 560 kW categories only for the percent of production and only available between 37 to 75 kW for the small volume.

A significant feature of this Tier 3 technical relief provision, which has no counterpart in the Tier 4 provision, is that for every 1% of the equipment production using this relief provision in the Tier 3 timeframe (i.e. equipment that uses engines not conforming to the Tier 3 standard in the Tier 3 timeframe), a percentage of the (automatic) production equipment flexibility allowance for Tier 4 is sacrificed from the comparable Tier 4 power category (i.e. this per cent of the otherwise automatic flexibility is no longer available), and an additional 1% is sacrificed from any potential Tier 4 technical relief that the Agency may grant for that power category. Please see Table 1. In other words, to utilize the Tier 3 technical relief, the equipment manufacturer must give up some amount of its otherwise automatic Tier 4 flexibility and some portion of its potential Tier 4 technical relief. The Tier 4 percent of production sacrifice is based on the percentage of earlier Tier (e.g. Tier 1 or 2) engines utilized in place of Tier 3 engines. Grant of Tier 3 technical relief thus would be linked to earlier use of Tier 4 engines.

[1] The Tier 4 rule uses the phrase 'technical or engineering hardship' to describe this provision, and today's rule uses that same language.

TABLE 1.—TECHNICAL RELIEF USAGE

[In percent]

Use of percent of production allowances by equipment manufacturer during implementation of Tier 2 program	Offsetting deductions required for use of one percent of Tier 3 technical relief	
	Tier 4 percent of production allowance	Tier 4 technical relief
0–20	0	1
20–40	1	1
40–60	2	1
60–80	3	1

For example, if you used 45 percent of your production flexibility for equipment using Tier 2 engines of a given power category (i.e. if in the Tier 2 timeframe you used 45% of the total 80% percent of production flexibility for that power category), you must forfeit 2 percent of the (automatic) production flexibility for Tier 4 engines of that power category for every 1 percent technical relief EPA grants for Tier 3 equipment using engines of that power category. You must also forfeit 1 percent of any potential technical relief which could be granted for Tier 4 engines (i.e. for equipment using Tier 4 engines) for every 1 percent technical relief exemption EPA grants for Tier 3 engines. If you use the Tier 3 technical relief allowances for 5 percent of your equipment for two years, you have used a total allowance of 10 percent. Therefore, as shown in Table 1, you must forfeit a total of 20 percent of production flexibility for Tier 4 engines plus 10 percent of any technical relief which could be granted for Tier 4 engines.

The technical relief will be further adjusted based on the sales volume by power category. Because the Tier 3 and Tier 4 rules have different power category ranges, today's rule specifies which power categories in Tier 4 correspond to those in Tier 3 for purposes of this rule. The Tier 3 power categories of 37kW to 75kW and 75kW to 130kW correspond to the Tier 4 power category of 56kW to 130kW. For the Tier 3 equipment in the 37 to 75kW category, you must only use the sales volume for equipment that uses engines with a rated power greater than 56kW. For example, if you have a Tier 3 piece of equipment that uses a 40 kW engine, the sales of the equipment are counted in the Tier 4 power category of 19kW to 56kW. If you have a Tier 3 piece of equipment that uses a 60kW engine, the sales of the equipment are counted in the Tier 4 power category of 56kW to 130kW. The Tier 3 power categories of 130kW to 225kW, 225kW to 450kW and 450kW to 560kW correspond to the Tier 4 power category of 130kW to 560kW. You will need to sum the sales of the Tier 3 power categories that correspond to the Tier 4 power category. Please see Table 2. If EPA grants technical relief, the sum of all the Tier 3 units that are so exempted are divided by the sum of all the Tier 3 units sold in the corresponding Tier 4 power category to determine the percentage of Tier 4 equipments affected.

TABLE 2.—POWER CATEGORIES

Tier 3 power category	Tier 4 power category
37kW to 75kW *	19kW to 56kW.
37kW to 75kW **, 75kW to 130kW.	56kW to 130kW.
130kW to 225kW, 225kW to 450kW, 450kW to 560kW..	130kW to 560kW

* Applies only to use of engines rated between 37kW and 56kW by small volume equipment manufacturers.

** Includes only equipment that uses engines with a rated power greater than 56kW.

For example, if you produce 50 units using Tier 3 technical relief in the range of 130kW to 225kW, and you produce 50 units using Tier 3 technical relief in the range of 225 to 450kW, and no units are produced in the 450kW to 560kW range, and your overall sales volume for the power ranges of 130kW to 560kW in Tier 3 is 400 units, the amount of Tier 3 technical relief used is 100/400 or 25 percent. Because you forfeit 1 percent of your Tier 4 technical relief for every 1 percent of Tier 3 technical relief used (see Table 1 above), then you will lose 25 percent of your (potential) Tier 4 technical relief in the 130kW to 560kW power range category. If you used 45 percent of your production flexibility for Tier 2 engines, you must forfeit 2 percent of production flexibility for Tier 4 engines for every 1 percent of Tier 3 technical relief. Therefore, you will forfeit 50 percent of your Tier 4 production allowance in the 130kW to 560kW power range category.

Because the technical relief provision was not originally included in the Tier 3 program, we believe it is important to maintain the emission benefits of the Tier 3 rule by requiring a consistent emission trade-off with Tier 4. EPA has already found that the greatest emissions reduction achievable industry-wide for Tier 3 and Tier 4 do not include Tier 3 technical relief plus all of the other Tier 3 and Tier 4 flexibilities. The requirement that certain otherwise-available Tier 4 flexibilities be foregone is designed to ensure protection of the environment, prevent abuse, and encourage earlier introduction of Tier 4 technology. Most basically, as noted above, the linkage is designed to assure that the Tier 3 and Tier 4 rules, in combination, continue to result in the greatest emissions reduction achievable industry-wide, as required by section 213(a) of the Act.

The technical relief for small volume equipment manufacturers is similar to the equipment manufacturer technical relief with the distinction that it applies to small volume equipment manufacturers. The following criteria for small volume apply:

- 100 unit cap.
- Small volume technical relief is only available to the 37 to 56 kW range and the 56 to 75 kW range.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Agency believes this action does not impose information collection burden because this rulemaking only provides a production technical relief provision for nonroad equipment manufactures.

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 in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

Today's proposed rule is not subject to the Regulatory Flexibility Act (RFA), which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. Although the rule is subject to the APA, the Agency has invoked the ''good cause'' exemption under 5 U.S.C. 553(b), therefore it is not subject to the notice and comment requirement.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, 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 to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating 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 EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed 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 EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. Today's final rule contains no Federal mandates for State, local, or Tribal governments or the private sector. The rule imposes no new expenditure or enforceable duty on any State, local or Tribal governments or the private sector, and EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

E. 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 does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rulemaking affects only nonroad equipment manufacturers providing them a production technical relief provision. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 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, as specified in Executive Order 13175. This rulemaking affects only nonroad equipment manufacturers providing them a production technical relief provision. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, Section 5–501 of the Order directs the Agency to evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to the Executive Order because it is not economically significant, and does not involve decisions on environmental health or safety risks that may disproportionately affect children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards 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, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to

provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The technical amendments on this rule do not relax the control measures on sources regulated by the rule and therefore will not cause emissions increases from these sources. The technical relief for the Tier 3 timeframe seeks to compensate for any emissions impact by encouraging earlier use of Tier 4 engines requiring the equipment manufacturer to give up specific Tier 4 flexibilities.

K. Statutory Authority

The statutory authority for this action comes from section 202 of the Clean Air Act as amended (42 U.S.C. 7521). This action is a rulemaking subject to the provisions of Clean Air Act section 307(d). See 42 U.S.C. 7607(d).

List of Subjects

40 CFR Part 9

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

40 CFR Part 89

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

40 CFR Part 1039

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Labeling, Penalties, Reporting and recordkeeping requirements, Warranties.

Dated: September 6, 2007.

Stephen L. Johnson,

Administrator.

[FR Doc. E7–18163 Filed 9–17–07; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-month Finding on a Petition To List *Sclerocactus brevispinus* (Pariette cactus) as an Endangered or Threatened Species; Taxonomic Change From *Sclerocactus glaucus* to *Sclerocactus brevispinus, S. glaucus*, and *S. wetlandicus*

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding and proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list *Sclerocactus brevispinus* (Pariette cactus) as an endangered or threatened species under the Endangered Species Act of 1973, as amended (Act). We also propose to change the taxonomy of the currently threatened *Sclerocactus glaucus* ''complex'' to three distinct species: *Sclerocactus brevispinus*, *S. glaucus*, and *S. wetlandicus.* Because these species make up what was formerly the ''complex'', each will maintain its status of being listed as threatened.

After review of all available scientific and commercial information, we find that reclassifying *S. brevispinus* as endangered is warranted but precluded by higher priority actions to amend the Lists of Endangered and Threatened Wildlife and Plants. However, *S. brevispinus* is currently listed as threatened as part of the *S. glaucus* (Uinta Basin hookless cactus) complex.

We further propose to revise the taxonomy of *S. glaucus* (Uinta Basin hookless cactus) (previously considered a ''complex''), which is currently listed as a threatened species. In accordance with the best available scientific information, we propose to recognize the three distinct species: *S. brevispinus*, *S. glaucus*, and *S. wetlandicus.* Because each of these three species constitute the *S. glaucus* complex, we consider all three species to be threatened under the Act. In addition, we propose common names for *S. glaucus* and *S. wetlandicus.*

DATES: The finding announced in this document was made on September 18, 2007. We will accept comments on the proposed taxonomic change from all interested parties until November 19, 2007.

ADDRESSES: *Comments on Proposed Taxonomic Change:* If you wish to comment on the proposed rule to revise the taxonomy of *S. glaucus*, you may submit your comments and materials by any one of several methods:

1. *By mail or hand-delivery to:* Larry England, Utah Field Office, U.S. Fish and Wildlife Service, 2369 W. Orton Circle, Suite 50, West Valley City, UT 84119.

2. *By electronic mail (e-mail) to: fw6_sclerocactus@fws.gov*. Please see the Public Comments Solicited section for other information about electronic filing.

3. *By fax to:* the attention of Larry England at 801–975–3331.

4. *By the Federal eRulemaking Portal at: http://www.regulations.gov.* Follow the instructions for submitting comments.

Supporting Documents for 12-Month Finding: Supporting documents for this finding are available for public inspection, by appointment, during normal business hours at the Utah Field Office, U.S. Fish and Wildlife Service, 2369 W. Orton Circle, Suite 50, West Valley City, UT 84119. The petition finding, related **Federal Register** notices, the Court Order, and other pertinent information may be obtained on the Internet at *http://www.fws.gov/mountain-prairie/species/plants/Pariettecactus/*. We ask the public to submit any new data or information concerning the status of or threats to *Sclerocactus brevispinus* to us at the above address. This information will help us monitor and encourage the ongoing conservation of this species, and formulate a future proposed listing rule, should one be necessary.

FOR FURTHER INFORMATION CONTACT: Larry England, Utah Field Office (see **ADDRESSES**) (telephone 801–975–3330; facsimile at 801–975–3331). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.