

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

SUMMARY: On July 3, 1997 (62 FR 35972), the Environmental Protection Agency published in the **Federal Register** a direct final action to correct entries to the table in § 81.331 of Title 40 of the Code of Federal Regulations (CFR) for "New Jersey-Carbon Monoxide," which established an effective date of July 3, 1997. This document corrects the effective date of the rule to May 4, 1998 to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATE: This rule is effective on May 4, 1998.

FOR FURTHER INFORMATION CONTACT: Tom Eagles, Office of Air at (202) 250-5585.

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on the date stated in the July 3, 1997, **Federal Register** document, by operation of law, the rule did not take effect on July 3, 1997, as stated therein. Now that EPA has discovered its error, the rule has been submitted to both Houses of Congress and the GAO. This document amends the effective date the rule consistent with the provisions of the CRA.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause

under 5 U.S.C. 553(b)(B). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since July 3, 1997, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2).

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the July 3, 1997, **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on May 4, 1998. This rule is not a "major rule" as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date.

Dated: April 22, 1998.

Carol Browner,
Administrator.

[FR Doc. 98-11546 Filed 5-1-98; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[FRL-5999-7]

Amendments to the Test Procedures for Heavy-Duty Engines, and Light-Duty Vehicles and Trucks and Amendments to the Emission Standard Provisions for Gaseous Fueled Vehicles and Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On September 5, 1997, EPA promulgated a direct final rulemaking that amended several sections of the heavy-duty engine test procedure regulations. These changes were needed in order to accommodate the use of new testing equipment, to provide greater flexibility in the type of testing equipment used and to ensure uniform calibration and use of the testing equipment. EPA stated that it would withdraw any provisions that received adverse or critical comments. EPA also published a notice of proposed rulemaking at that time proposing the same amendments. Due to adverse comments that were received regarding three provisions of the final rule, EPA is removing those three provisions in this action. The Agency intends to issue in the near future a final rule addressing these provisions.

EFFECTIVE DATE: June 3, 1998.

ADDRESSES: Materials relevant to this rulemaking are contained in Docket No. A-96-07, and are available for public inspection and photocopying between 8 a.m. and 5:30 p.m. Monday through Friday. EPA may charge a reasonable fee for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. Jaime Pagán, U.S. EPA, Engine Programs and Compliance Division, 2565 Plymouth Road, Ann Arbor, MI 48105. Telephone (734) 668-4574.

SUPPLEMENTARY INFORMATION:

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I. Introduction

On September 5, 1997, EPA published a direct final rule (62 FR 47114) and accompanying notice of proposed rule

(62 FR 46937) making amendments to the test procedures for heavy-duty engines and light duty vehicles and trucks. The changes were made in order to accommodate the use of new testing equipment and clarify certain issues that had been identified since the test procedures were first promulgated. Although EPA believed that the action was non-controversial, adverse comments were received from the Engine Manufacturers Association (EMA) and from the American Automobile Manufacturers Association (AAMA). Their respective adverse comments have been placed in the public docket for viewing.

Both of the comments received by EPA referred to changes made to §§ 86.1333-90, 86.119-90, 86-1319-84 and 86.1319-90. In § 86.1333-90 EPA provided a new requirement for cycle verification at idle conditions. The new requirement stated that for idle segments that are seven seconds or longer, the average feedback torque must fall within ± 10 ft-lb of CITT. Both EMA and AAMA commented that current dynamometer systems utilized might not be capable of controlling torque to this specification and thus the time period might have to be lengthened or modifications made to dynamometer control systems.

EPA also revised §§ 86.119-90, 86.1319-84 and 86.1390-90 to require manufacturers to verify that the critical flow venturi is achieving critical flow when using a CFV-CVS sampling system during the emissions test. Both EMA and AAMA commented that, although they agree with the technical merits of such requirement, more lead time would be needed to make the software and hardware changes necessary to comply.

Finally, EPA made a correction to its light-duty diesel fuel cetane specification in § 86.113-94. In the Gaseous Fuels Rule (59 FR 48472) modifications to the section specifying certification fuel parameters for light-duty vehicles and trucks resulted in inadvertent changes to the diesel fuel specifications. In its comments, AAMA expressed concern that the change will not provide sufficient lead time for manufacturers to comply and that, in addition, diesel hydrocarbon emissions are sensitive to cetane levels and thus in-use compliance issues could be created in the future.

As a result of these adverse comments, EPA is removing the provisions of the direct final rule that pertain to the comments received. EPA is thus reinstating the regulatory language in those provisions as it was prior to the publication of the direct

final rule on September 5, 1997. EPA's decision to remove these regulatory changes is not based on EPA's agreement or disagreement with the adverse comments received. The removal is based solely on the receipt of the comments themselves. As stated in the September 5, 1997 rule, the provisions would become effective only if no persons submitted adverse comments or requested an opportunity to comment.

As noted above, EPA published a notice of proposed rulemaking on September 5, 1997 (62 FR 46937) to accompany the direct final rule published on that date. As noted in that notice of proposed rulemaking, if EPA received adverse comments, all public comments received regarding the direct final rule would be addressed in a subsequent final rule based on the proposed rule. The Agency would not institute a second comment period on the proposed rule.

Therefore, EPA intends to issue a final rule in the near future regarding the portions of the direct final rule that the commenters addressed, and that are removed today. EPA will take the comments it has received into account in promulgating this final rule. No further comment period is contemplated prior to completion of the final rule.

II. Administrative Designation and Regulatory Analysis

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

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, EPA has determined that this action is not a "significant"

regulatory action within the meaning of the Executive Order and is therefore not subject to OMB review.

III. Regulatory Flexibility

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. In support of its proposed rule entitled *Control of Emissions of Air Pollution from Highway Heavy-Duty Engines* (61 FR 33421, June 27, 1996), EPA characterized the heavy-duty engine manufacturing industry in Chapter 3 of its Regulatory Impact Analysis (RIA). Based on that characterization, EPA has determined that these technical amendments will not have a significant impact on a substantial number of small entities.

IV. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a written statement to accompany any rule where the estimated costs to State, local, or tribal governments, or to the private sector will be \$100 million or more in any one year. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objective of the rule and that is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly and uniquely impacted by the rule. EPA has determined that the costs to State, local, or tribal governments, or the private sector, from this rule will be less than \$100 million.

V. Paperwork Reduction Act

The technical amendments promulgated by this action do not create or change the information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Office of Management and Budget (OMB) has previously approved the information collection requirements already contained in all the Part 86 sections amended by this action and has assigned OMB control numbers 2060-0104 and 2060-0064.

VI. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report which includes a copy of the rule, to each House of

Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" defined by 5 U.S.C. 804(2).

VII. Copies of Rulemaking Documents

Electronic copies of the preamble and the regulatory text of this rule are available via the Internet on the Office of Mobile Sources (OMS) Home Page (<http://www.epa.gov/OMSWWW/>). This service is free of charge, except for any cost you already incur for Internet connectivity. An electronic version is made available on the day of publication on the primary Web site (<http://www.epa.gov/docs/fedrgstr/EPA-AIR/>).

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

List of Subjects in 40 CFR Part 86

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

Dated: April 14, 1998.

Carol M. Browner,
Administrator.

For the reasons set forth in the preamble, part 86 of chapter I of title 40

of the Code of Federal Regulations is amended as follows:

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

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

Authority: 42 U.S.C. 7401–7671q.

2. Section 86.113–94 of subpart B is amended by revising the table after paragraph (b)(2) to read as follows:

§ 86.113–94 Fuel specifications.

* * * * *

(b) * * *

(2) * * *

Item		ASTM test method No.	Type 2–D
Cetane Number		D613	42–50
Distillation range:		
IBP	°F	D86	340–400
10 pct. point	(°C)	D86	(171.1–204.4)
50 pct. point	°F	D86	400–460
90 pct. point	(°C)	D86	(204.4–237.8)
EP	°F	D86	470–540
Gravity	(°C)	D86	(243.3–282.2)
Total sulfur	°F	D86	560–630
Hydrocarbon composition:	(°C)	D86	(293.3–332.2)
Aromatics, min.	°API	D287	32–37
Paraffins,	pct.	D2622	0.03–0.05
Naphthenes,	pct.	D1319	27
Olefins	pct.	D1319	(1)
Flashpoint, min.	°F	D93	130
Viscosity, centistokes	(°C)	D445	(54.4)
			2.0–3.2

¹ Remainder.

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3. Section 86.119–90 of Subpart B is amended by revising paragraph (b)(3) and removing paragraph (b)(8) to read as follows:

§ 86.119–90 CVS calibration.

* * * * *

(b) * * *

(3) Measurements necessary for flow calibration are as follows:

CALIBRATION DATA MEASUREMENTS

Parameter	Symbol	Units	Tolerances
Barometric pressure (corrected)	P _b	Inches Hg (kPa)	±.01 in Hg (±.034 kPa).
Air temperature, flowmeter	ETI	°F (°C)	±.25°F (±.14°C).
Pressure depression upstream of LFE	EPI	Inches H ₂ O (kPa)	±.05 in H ₂ O (±.012 kPa).
Pressure drop across LFE matrix	EDP	Inches H ₂ O (kPa)	±.005 in H ₂ O (±.001 kPa).
Air flow	Q _s	Ft ³ /min. (m ³ /min.)	±.5 pct.

CALIBRATION DATA MEASUREMENTS—Continued

Parameter	Symbol	Units	Tolerances
CFV inlet depression	PPI	Inches fluid (kPa)	±.13 in fluid (±.055 kPa).
Temperature at venturi inlet	T _v	°F (°C)	±0.5°F (±.28°C).
Specific gravity of manometer fluid (1.75 oil)	Sp. Gr		

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4. Section 86.1319–84 of Subpart N is amended by revising paragraph (d)(3) and removing paragraph (d)(8) to read as follows:

§ 86.1319–84 CVS calibration.

* * * * *

(d) * * *

(3) Measurements necessary for flow calibration are as follows:

CALIBRATION DATA MEASUREMENTS

Parameter	Symbol	Units	Tolerances
Barometric pressure (corrected)	P _b	Inches Hg (kPa)	±.01 in Hg (±.034 kPa).
Air temperature, flowmeter	ETI	°F (°C)	±.25°F (±.14°C).
Pressure depression upstream of LFE	EPI	Inches H ₂ O (kPa)	±.05 in H ₂ O (±.012 kPa).
Pressure drop across LFE matrix	EDP	Inches H ₂ O (kPa)	±.005 in H ₂ O (±.001 kPa).
Air flow	Q _s	Ft ³ /min. (m ³ /min.)	±.5 pct.
CFV inlet depression	PPI	Inches fluid (kPa)	±.13 in fluid (±.055 kPa).
Temperature at venturi inlet	T _v	°F (°C)	±0.5°F (±0.28°C).
Specific gravity of manometer fluid (1.75 oil)	Sp. Gr		

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5. Section 86.1319–90 of Subpart N is amended by revising paragraph (d)(3) and removing paragraph (d)(8) to read as follows:

§ 86.1319–90 CVS calibration.

* * * * *

(d) * * *

(3) Measurements necessary for flow calibration are as follows:

CALIBRATION DATA MEASUREMENTS

Parameter	Symbol	Units	Sensor-readout tolerances
Barometric pressure (corrected)	P _b	in Hg (kPa)	±.01 in Hg (±.034 kPa).
Air temperature, into flowmeter	ETI	°F (°C)	±0.5 °F (±0.28 °C).
Pressure drop between the inlet and throat of metering venturi	EDP	Inches H ₂ O (kPa)	±0.05 in H ₂ O (±0.012 kPa).
Air flow	Q _s	Ft ³ /min. (m ³ /min.)	±.5% of NBS "true" value.
CFV inlet depression	PPI	Inches fluid (kPa)	±.13 in fluid (±.055 kPa).
Temperature at venturi inlet	T _v	°F (°C)	±4.0 °F (±2.22 °C).
Specific gravity of manometer fluid (1.75 oil)	Sp. Gr		

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6. Section 86.1333–90 of Subpart N is amended by revising paragraphs (d) heading and introductory text, (d)(1) and (d)(2) to read as follows:

§ 86.1333–90 Transient test cycle generation.

* * * * *

(d) *Cold start enhancement devices.* The zero percent speed specified in the engine dynamometer schedules (appendix I (f)(1), (f)(2) or (f)(3) to this part) shall be superseded by proper

operation of the engine's automatic cold start enhancement device.

(1) During automatic cold start enhancement device operation, a manual transmission engine shall be allowed to idle at whatever speed is required to produce a feedback torque of 0 ft-lbs. ±10 ft-lbs. (using, for example, clutch disengagement, speed to torque control switching, software overrides, etc.) at those points in appendix I (f)(1), (f)(2), or (f)(3) to this part where both reference speed and reference torque are zero percent values.

(2) During automatic cold start enhancement device operation, an automatic transmission engine shall be allowed to idle at whatever speed is required to produce a feedback torque of CITT ft-lbs. ±10 ft-lbs. (see paragraph (e)(2) of this section for definition of CITT) at those points in appendix I (f)(1), (f)(2), or (f)(3) to this part where both reference speed and reference torque are zero percent values.