

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[FRL-7492-7]

RIN 2060-AJ77

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Modification of Federal On-board Diagnostic Regulations for: Light-Duty Vehicles, Light-Duty Trucks, Medium-Duty Passenger Vehicles, Complete Heavy-Duty Vehicles and Engines Intended for Use in Heavy-Duty Vehicles Weighing 14,000 Pounds GVWR or Less; Extension of Acceptance of California OBD II Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to amend and revise certain requirements associated with the federal on-board diagnostic (OBD) system regulations. EPA previously promulgated an OBD rulemaking on December 22, 1998 (63 FR 70681), which indefinitely extended the provision allowing compliance with California OBD II requirements to satisfy federal OBD requirements. The California Air Resources Board (CARB) has recently revised their OBD II requirements. Accordingly, today's action proposes appropriate revisions to federal OBD regulations including: updating the reference to the allowed version of the California OBD II regulations to the most recently adopted version such that compliance with the recently revised California OBD II requirements will satisfy certain federal OBD requirements; allowing compliance with California OBD II catalyst monitoring requirements; updating the incorporation by reference of several recommended practices developed by the Society of Automotive Engineers (SAE) and the International Organization for Standardization (ISO) to incorporate recently published

versions, while also incorporating by reference a new standardized protocol developed by the International Organization for Standardization (ISO) and establishing a future date by which this protocol will be the only acceptable protocol; and issuing a technical amendment to the optional heavy-duty (HD) vehicle weighing 14,000 pounds GVWR or less chassis certification requirements. OBD systems in general provide substantial benefits to the environment by diagnosing and alerting operators, vehicle inspection and maintenance (I/M) personnel, and service providers to deterioration or malfunction of emission control related systems.

DATES: Written comments must be received by July 17, 2003, and requests for a public hearing must be received by July 2, 2003. If EPA receives a request for a public hearing then the hearing will take place on July 17, 2003, and the written comment period will then close on September 2, 2003. By July 14, 2003, any person who plans to attend the hearing should call Arvon Mitcham at (734) 214-4522 to learn if the hearing will be held. If EPA receives a request for a public hearing, EPA will hold the public hearing in the first floor conference room at 501 3rd Street, NW., Washington, DC.

ADDRESSES: *Comments:* All comments and materials relevant to today's action should be submitted to Public Docket No. A-2002-20 at EPA's Air and Radiation Docket and Information Center (Air Docket) at the following address: EPA Docket Center (EPA/DC), Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC 20460. Dockets may be inspected from 8:30 a.m. to 4:30 p.m., Monday through Friday, except on government holidays. You can reach the Air Docket by telephone at (202) 566-1742 and by facsimile at (202) 566-1741. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

FOR FURTHER INFORMATION CONTACT: Arvon Mitcham, U.S. EPA, National Vehicle and Fuels Emission Laboratory, Certification and Compliance Division, 2000 Traverwood, Ann Arbor MI 48105; telephone (734) 214-4522, e-mail *mitcham.arvon@epa.gov*.

SUPPLEMENTARY INFORMATION: This document concerns proposed amendments and revisions to EPA's OBD regulations. In the "Rules and Regulations" section of today's **Federal Register**, we are approving these amendments and revisions as a direct final rule without a prior proposal because we view this as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this approval in the preamble to the direct final rule. This proposal incorporates by reference all of the reasoning, explanation and regulatory text from the direct final rule. For further information, including the regulatory text for this proposal, please refer 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 one or more distinct amendments, paragraphs, or sections of this rulemaking, we will publish a timely withdrawal in the **Federal Register** indicating which provisions are being withdrawn due to adverse comment. We may address all adverse 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. Any distinct amendment, paragraph, or section of today's rulemaking for which we do not receive adverse comment will become effective on August 18, 2003, notwithstanding any adverse comment on any other distinct amendment, paragraph, or section of today's rule.

Regulated Entities

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

Category	Examples of regulated entities	NAICS codes ^a	SIC codes ^b
Industry	New motor vehicle and engine manufacturers	33611, 336112, 336120	3711

^aNorth American Industry Classification System (NAICS) Code.

^bStandard Industrial Classification (SIC) System Code.

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

be regulated. To determine whether your product is regulated by this action, you should carefully examine the applicability criteria in § 86.005-17 and § 86.1806-05 of title 40 of the Code of Federal Regulations. If you have

questions regarding the applicability of this action to a particular product, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Access to Rulemaking Documents Through the Internet

Today's action is available electronically on the day of publication from EPA's **Federal Register** Internet Web site listed below. Electronic copies of this preamble, regulatory language, and other documents associated with today's proposal are available from the EPA Office of Transportation and Air Quality Web site listed below shortly after the rule is signed by the Administrator. This service is free of charge, except any cost that you already incur for connecting to the Internet.

EPA **Federal Register** Web site: <http://www.epa.gov/docs/fedrgrstr/epa-air/>. (Either select a desired date or use the Search feature.)

On-board diagnostics home page: <http://www.epa.gov/otaq/obd.htm>.

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

Statutory and Executive Order Reviews:

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency is required to determine whether this regulatory action would be "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The order defines a "significant regulatory action" as any regulatory action 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, we have determined that this proposed rule is not a "significant regulatory action."

B. Paperwork Reduction Act

Today's action does not impose any new information collection burden. The modifications noted above do not change the information collection requirements submitted to and approved by OMB in association with the OBD final rulemakings (58 FR 9468, February 19, 1993; and 59 FR 38372, July 28, 1994).

C. Regulatory Flexibility Act

The RFA generally requires an agency to prepare an initial regulatory flexibility analysis of any proposed rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's direct final rule on small entities, small entity is defined as: (1) Those businesses meeting the definition provided by the Small Business Administration; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's direct final rule on small entities, EPA determines that this action will not have a significant economic impact on a substantial number of small entities. This rulemaking will provide regulatory relief to both large and small volume automobile and heavy-duty vehicle and engine manufacturers by maintaining consistency with California OBDII requirements. This rulemaking will not have a significant impact on businesses that manufacture, rebuild, distribute, or sell automotive parts, nor those involved in automotive service and repair, as the revisions affect only requirements on automobile and heavy-duty truck and engine manufacturers. See *United Distribution Companies v. FERC*, 88 F. 3rd 1005, 1170 (D.C. Cir. 1996). Most manufacturers have thus far chosen to reduce their costs by producing vehicle OBD systems to California specifications, thereby avoiding the necessity of developing significantly different OBD calibrations meeting the existing federal specifications for the non-California

markets. Today's continuation of the optional compliance option to California's OBDII requirements continues this cost reduction.

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, we 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 for any single year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires us 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 us to adopt an alternative that is not the least costly, most cost-effective, or least burdensome alternative if we provide an explanation in the final rule of why such an alternative was adopted.

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

This proposed rule contains no Federal mandates for State, local, or tribal governments as defined by the provisions of title II of the UMRA. The proposed rule imposes no enforceable duties on any of these governmental entities. Nothing in the proposal will significantly or uniquely affect small governments.

We have determined that this proposed rule does not contain a Federal mandate that may result in estimated expenditures of more than \$100 million to the private sector in any single year.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires us 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."

Under section 6 of Executive Order 13132, we may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or we consult with State and local officials early in the process of developing the proposed regulation. We also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

Section 4 of the Executive Order contains additional requirements for rules that preempt State or local law, even if those rules do not have federalism implications (*i.e.*, the rules 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). Those requirements include providing all affected State and local officials notice and an opportunity for appropriate participation in the development of the regulation. If the preemption is not based on express or implied statutory authority, we also must consult, to the extent practicable, with appropriate State and local officials regarding the conflict between State law and federally protected interests within the agency's area of regulatory responsibility.

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 proposed rule updates provisions of an earlier

rule that adopted national standards relating to OBD systems and the ability of manufacturers to demonstrate Federal compliance based on demonstration of compliance with California OBD II regulations. The requirements of the rule will be enforced by the Federal government at the national level. Thus, the requirements of section 6 of the Executive Order do 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 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This proposed rule does not have tribal implications, as specified in Executive Order 13175. Today's rule would not uniquely affect the communities of American Indian tribal governments since the motor vehicle fuel and other related requirements for private businesses in today's rule have national applicability. Furthermore, today's proposed rule does not impose any direct compliance costs on these communities and no circumstances specific to such communities exist that will cause an impact on these communities beyond those discussed in the other sections of today's document.

This proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. As noted above, this rule will be implemented at the federal level and imposes compliance obligations and options on private industry. Thus, Executive Order 13175 does not apply to this proposed rule.

G. Executive Order 13045: Protection of Children From Environmental Health & 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 we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, section 5–501 of the Executive Order directs us 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 us.

This proposed rule is not subject to the Executive Order because it is not an economically significant regulatory action as defined by Executive Order 12866. Furthermore, this proposed rule does not concern an environmental health or safety risk that we have reason to believe may have a disproportionate effect on 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), section 12(d) of Public Law 104–113, directs us to use voluntary consensus standards in our regulatory activities unless it 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) developed or adopted by voluntary consensus standards bodies. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

This proposed rule references technical standards adopted by us through previous rulemakings. No new technical standards are established in today's proposed rule.

Statutory and Legal Authority

Statutory authority for today's proposed rule comes from the Clean Air Act, 42 U.S.C. 7401 *et seq.*, in particular, section 202(m) of the Act (42 U.S.C. 7521(m)).

List of Subjects in 40 CFR Part 86

Environmental protection, Incorporation by reference, Administrative practice and procedure, Motor vehicle pollution, On-board diagnostics.

Dated: April 25, 2003.

Christine Todd Whitman,
Administrator.

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