

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 86**

[OAR-2004-0011; FRL-8004-8]

RIN 2060-AM32

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines: Technical Amendments to Evaporative Emissions Regulations, Dynamometer Regulations, and Vehicle Labeling**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice of proposed rulemaking.

In the "Rules and Regulations" section of this **Federal Register**, we are making these technical amendments as a direct final rule without prior proposal, because we view these technical amendments as noncontroversial revisions. We anticipate no adverse comment. We have explained our reasons for these technical amendments 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, we will withdraw the portions of the direct final rule receiving such comment and those portions will not take effect. 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.

DATES: Written comments must be received by January 9, 2006.**ADDRESSES:** Submit your comments, identified by Docket ID No. OAR-2004-0011, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- Agency Web site: <http://www.epa.gov/edocket>. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

- Fax: (202) 566-1741.

- Mail: Docket ID No. OAR-2004-0011, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

- Hand Delivery: Docket ID No. OAR-2004-0011, Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special

arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OAR-2004-0011. 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.epa.gov/edocket>, 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 EDOCKET, [regulations.gov](http://www.epa.gov/edocket), or e-mail. The EPA EDOCKET and the federal [regulations.gov](http://www.regulations.gov) Web sites are "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 EDOCKET or [regulations.gov](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.

Docket: All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the fax number for the Air Docket and Reading Room for OAR-2004-0011 is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT:

Lynn Sohacki, Certification and Compliance Division, Office of Transportation and Air Quality, 2000 Traverwood, Ann Arbor, MI 48105; telephone number: (734) 214-4851; fax number: (734) 214-4053; e-mail address: sohacki.lynn@epa.gov.

SUPPLEMENTARY INFORMATION: EPA is taking direct final action to make changes to certain provisions of the evaporative and refueling emission regulations for light-duty vehicles, light-duty trucks and heavy-duty vehicles up to 14,000 pounds GVWR, the four-wheel drive dynamometer test provisions, and the vehicle labeling regulations. The evaporative changes are intended to (1) Reduce manufacturers' certification evaporative/refueling test burden, (2) clarify existing evaporative/refueling requirements and (3) better harmonize Federal evaporative/refueling test procedures with California evaporative/refueling test procedures. These actions do not affect manufacturer liability; manufacturers must still comply with applicable evaporative standards. Today's action retains EPA's authority to perform all three evaporative tests (two-day, three-day, and ORVR) on any test vehicle, including certification and in-use vehicles. The dynamometer changes are intended to amend outdated regulations to now include four-wheel drive provisions. The labeling changes are intended to amend regulations to remove outdated information. Today's action does not change the stringency of these existing programs.

In the "Rules and Regulations" section of today's **Federal Register**, we are promulgating these 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 action 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 that is located in the "Rules and Regulations" section of this **Federal Register** publication. The direct final rule will be effective on February 6, 2006, unless we receive adverse comment by January 9, 2006, or if we receive a request for a public hearing by December 23, 2005. 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 of those items only 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 the date set out above, notwithstanding any adverse comment on any other distinct amendment, paragraph, or section of the direct final rule.

Regulated Entities: Entities potentially affected by this action are those that

manufacture and sell motor vehicles in the United States. The table below gives some examples of entities that may have to comply with the regulations. However, since these are only examples, you should carefully examine these and other existing regulations in 40 CFR part 86. If you have any questions, please call the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Category	NAICS codes ^a	SIC codes ^b	Examples of potentially regulated entities
Industry	336111 336112 336120	3711	Automobile and Light Duty Motor Vehicle Manufacturing; Heavy Duty Truck Manufacturing.

^a North American Industry Classification System (NAICS).

^b Standard Industrial Classification (SIC) system code.

Access to Rulemaking Documents Through the Internet: Today's action is available electronically on the date 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 final rule are available from the EPA Office of Transportation and Air Quality Web site, listed below, shortly after the rule is signed by the Administrator. These services are 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/fedrgstr/epa-air/> (either select a desired date or use the Search feature).
- EPA Office of Transportation and Air Quality Web site: <http://www.epa.gov/otaq/> (look in What's New or under specific rulemaking topic).

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.

I. 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:

- 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;

- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,
- 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 final rule is not a "significant regulatory action."

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and implementing regulations, 5 CFR Part 1320, do not apply to this action as it does not involve the collection of information as defined therein.

Today's action may reduce testing and reporting burden by allowing the option for waivers and/or alternative test procedures. The current average annual reporting burden is listed as 542,118 hours and \$10,889,000 for 153 respondents by the Office of Management and Budget for light-duty and heavy-duty vehicles. If a manufacturer does not implement any of today's actions, the reporting burden will not change. Otherwise, the burden may be reduced by implementing today's actions but will vary depending upon the options and/or alternative methods chosen. For instance, utilizing the option to waive the two-diurnal diurnal-plus-hot-soak will reduce testing burden by approximately 48 hours and \$5,000 per vehicle. Since no alternative procedures for the running loss test or canister loading have been

approved at this time, the burden reduction cannot be quantified, but they will, in the future, result in decreases in hours and costs. The other options described in today's action cannot be quantified but would not result in any additional burden.

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

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative 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 rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration regulations at 13 CFR 121.201; (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 final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. Sections 603 and 604. Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

Today's rule revises certain provisions of the Evaporative Emissions Compliance Procedure (58 FR 16002, March 24, 1993) and the Onboard Refueling Vapor Recovery Procedure (58 FR 16262, April 6, 1994), such that regulated entities will find it less burdensome to demonstrate compliance with the requirements of the evaporative emissions and ORVR test requirements. More specifically, today's action makes minor revisions to clarify regulations and reduces burdens for manufacturers without reducing stringency. In addition, today's rule revises the dynamometer test provisions (40 CFR 86.135-90, 40 CFR 86.159-00, 40 CFR 86.160-00) and the Vehicle Labeling requirements (40 CFR 86.098-35, 40 CFR 86.1807-01), such that regulated entities will find it less burdensome to test four-wheel drive vehicles and vehicle labels will reflect current information rather than out-dated information. We have therefore concluded that today's final rule will relieve regulatory burden for all small entities.

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.

Today's action contains no federal mandates for state, local, or tribal governments as defined by the provisions of Title II of the UMRA. The rule imposes no enforceable duties on any of these governmental entities. Nothing in the rule will significantly or uniquely affect small governments.

We have determined that today's action 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. This action has the net effect of revising certain provisions of the Evaporative Emissions rule, Dynamometer regulations, and Labeling regulations. Therefore, the requirements of the UMRA do not apply to this action.

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 consults 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.

Today's action 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. Today's action revises certain provisions of earlier rules

that adopted national standards to control vehicle evaporative emissions, dynamometer test provisions, and labeling requirements. 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 today's action.

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 proposed rule does not uniquely affect the communities of American Indian tribal governments since the motor vehicle requirements for private businesses in today's rule will have national applicability. Furthermore, today's 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. Thus, Executive Order 13175 does not apply to today's action.

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 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.

Today's action is not subject to the Executive Order because it is not an economically significant regulatory action as defined by Executive Order 12866. Furthermore, today's action 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

Today's action 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 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.

Today's action references technical standards adopted by us through previous rulemakings. No new technical standards are established in today's rule. The standards referenced in today's action involve the measurement of vehicle evaporative emissions, the allowance for four-wheel dynamometer test capabilities in certification and in-use testing, and labeling requirements revisions.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended 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 Congress and the comptroller General of the United States. We will submit a report containing today's action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). Today's

action will be effective February 6, 2006.

II. Statutory Provisions and Legal Authority

Statutory authority for today's final rule is found in the Clean Air Act, 42 U.S.C. 7401 *et seq.*, in particular, sections 202 of the Act, 42 U.S.C. 7521. Today's action is being promulgated under the administrative and procedural provisions of Clean Air Act section 307(d), 42 U.S.C. 7607(d).

List of Subjects in 40 CFR Part 86

Environmental protection, Administrative practice and procedure, Motor vehicle pollution.

Dated: November 29, 2005.

Stephen L. Johnson,
Administrator.

[FR Doc. 05-23713 Filed 12-7-05; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Revised 12-Month Finding for the Greater Adams Cave Beetle (*Pseudanophthalmus pholeter*) and the Lesser Adams Cave Beetle (*Pseudanophthalmus cataryctos*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of revised 12-month petition finding.

SUMMARY: We, the Fish and Wildlife Service (Service), announce our revised 12-month finding for a petition to list the greater Adams Cave beetle (*Pseudanophthalmus pholeter*) and the lesser Adams Cave beetle (*Pseudanophthalmus cataryctos*) under the Endangered Species Act (Act). After a review of the best available scientific and commercial information, we conclude that these species are not likely to become endangered species within the foreseeable future throughout all or a significant portion of their range. Therefore, we find that proposing a rule to list these species is not warranted, and we no longer consider them to be candidate species for listing. The Service will continue to seek new information on the taxonomy, biology, and ecology of these species, as well as potential threats to their continued existence.

DATES: This finding was made on November 15, 2005. Although no further