paying the tax and interest due on the excess distribution. A shareholder that makes the deemed dividend election after the due date of the return (determined without regard to extensions) for the election year must pay additional interest, pursuant to section 6601, on the amount of underpayment of tax for that year.

(ii) *Attachment to Form 8621.* The shareholder must attach a schedule to Form 8621 that demonstrates the calculation of the shareholder's pro rata share of the post-1986 earnings and profits of the PFIC that is treated as distributed to the shareholder on the termination date pursuant to this paragraph (c). If the shareholder is claiming an exclusion from its pro rata share of the post-1986 earnings and profits for an amount previously included in its income or the income of another U.S. person, the shareholder must include the following information:

(A) The name, address, and taxpayer identification number of each U.S. person that previously included an amount in income, the amount previously included in income by each such U.S. person, the provision of law pursuant to which the amount was previously included in income, and the taxable year or years of inclusion of each amount.

(B) A description of the transaction pursuant to which the shareholder acquired, directly or indirectly, the stock of the PFIC from another U.S. person, and the provision of law pursuant to which the shareholder's holding period includes the period the other U.S. person held the CFC stock.

(6) *Adjustments to basis.* A shareholder that makes the deemed dividend election increases its adjusted basis of the stock of the PFIC owned directly by the shareholder by the amount of the deemed dividend. If the shareholder makes the deemed dividend election with respect to a PFIC of which it is an indirect shareholder, the shareholder's adjusted basis of the stock or other property owned directly by the shareholder, through which ownership of the PFIC is attributed to the shareholder, is increased by the amount of the deemed dividend. In addition, solely for purposes of determining the subsequent treatment under the Code and regulations of a shareholder of the stock of the PFIC, the adjusted basis of the direct owner of the stock of the PFIC is increased by the amount of the deemed dividend.

(7) *Treatment of holding period.* If the shareholder of a foreign corporation has made a deemed dividend election, then, for purposes of applying sections 1291 through 1298 to such shareholder after the deemed dividend, the shareholder's holding period of the stock of the foreign corporation begins on the day following the termination date. For other purposes of the Code and regulations, this holding period rule does not apply.

(8) *Coordination with section 959(e).* For purposes of section 959(e), the entire deemed dividend is treated as having been included in gross income under section 1248(a).

(d) *Termination date.* For purposes of this section, the termination date is the last day of the last taxable year of the foreign corporation during which it qualified as a PFIC under section 1297(a).

(e) *Late purging elections requiring special consent.* [Reserved]. For further guidance, see § 1.1298–3T(e).

(f) *Effective date.* This section applies for taxable years of shareholders beginning on or after December 8, 2005. However, taxpayers may apply the rules of this section to a taxable year beginning prior to December 8, 2005, provided the statute of limitations on the assessment of tax has not expired.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 6.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 7.** In § 602.101, paragraph (b) is amended by adding an entry in numerical order to the table as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.1298–3	1545–1507
* * * * *	

Approved: November 21, 2005.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 05–23629 Filed 12–7–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 346

Department of Defense Education Activity (DoDEA)

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This document removes 32 CFR Part 346, ''DoD Education Activity''. This part has served the purpose for which it was intended and is no longer needed. A copy of DoD Directive 1342.20, ''Department of Defense Education Activity (DoDEA),'' is available at *http://www.dtic.mil/whs/directives/*.

EFFECTIVE DATE: This rule is effective November 28, 2005.

FOR FURTHER INFORMATION CONTACT: L.M. Bynum 703–696–4970.

List of Subjects in 32 CFR Part 346

Education, Military personnel, Organization and functions (Government agencies).

PART 346—[REMOVED]

■ For reasons set forth in the preamble, under the authority of 10 U.S.C. 131, 32 CFR Part 346 is removed.

Dated: December 2, 2005.

L.M. Bynum,

Alternate OSD Federal Register Liaison, Department of Defense.

[FR Doc. 05–23768 Filed 12–7–05; 8:45 am]

BILLING CODE 5001–06–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[OAR–2004–0011; FRL 8004–7]

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: Direct final rule.

SUMMARY: 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: reduce manufacturers' certification evaporative/refueling test burden; clarify existing evaporative/refueling requirements; and better harmonize federal evaporative/refueling test procedures with California evaporative/refueling test procedures. 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.

DATES: Today's action will be effective on February 6, 2006, without further notice unless we receive adverse comment by January 9, 2006, or a request for a public hearing by December 23, 2005. 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.

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, or e-mail. The EPA EDOCKET and the federal 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, 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 publishing this rule without a prior proposal because we view this action as noncontroversial and anticipate no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to adopt the provisions in this Direct Final Rule if adverse comments are filed. We may address all adverse comments in a subsequent final rule based on the 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 today's rule.

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.

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.

Table of Contents

I. Overview

Today's action pertains to the Evaporative Emissions Test Procedure (58 FR 16002, March 24, 1992) and the Onboard Refueling Vapor Recovery Procedure (59 FR 16262, April 6, 1994) for light-duty vehicles, light duty trucks, and heavy-duty gasoline vehicles up to 14,000 GVWR; 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). Today's action includes minor revisions to the evaporative test procedures, which are intended to reduce testing burden associated with conducting evaporative test procedures without affecting the level of stringency. Today's action includes minor revisions to clarify evaporative emissions testing regulations; to harmonize EPA and California evaporative requirements; to allow use of a four-wheel drive dynamometer; and to no longer require out-dated information on vehicle labels. Although we provide some context in the following discussions, a full discussion of the evaporative test procedures is outside the scope of this direct final rule. Readers are advised to consult the documents associated with these rulemakings to obtain the details of these rules.

The remainder of this document is divided into the following sections: Section II provides a detailed description of today's action. Sections III through IV describe the Statutory and Executive Order Reviews and Statutory Provisions and Legal Authority.

Background

1. The 1996 Model Year and Later Enhanced Evaporative Test Procedure

The enhanced evaporative emission test procedure for 1996 model year and later passenger cars, light-duty trucks and heavy-duty vehicles measures emissions from fuel evaporation during simulated overnight parking experiences (diurnal emissions), during vehicle operations (running loss emissions), and immediately following a drive (hot soak emissions).

The enhanced evaporative test procedure includes a sequence of three basic elements: (1) An initial loading of the evaporative canister with fuel vapor; (2) a period of driving to provide an opportunity to purge the canister; and (3) a simulation of repeated hot days of parking. By following this sequence and sampling evaporative emissions during hot soak, running loss and parking simulation, the test ensures that the vehicle can quickly regain canister storage capacity during driving and provides further assurance that vehicles will effectively control evaporative emissions for most in-use events. The enhanced evaporative test procedure also includes a test procedure to measure fuel spillage during refueling, called spitback. The 1996 and later model year enhanced evaporative test procedures follow.

a. Three-Day Diurnal-plus-Hot-Soak Test Sequence. Each of the three-day diurnal plus hot-soak (three-diurnal) test elements corresponds to an aspect of in-use vehicle operation in ozone-prone summertime conditions. The exhaust emission test following vehicle preconditioning corresponds to vehicle operation while vapors from a loaded evaporative canister are purged into the engine, as might occur during driving after a prolonged period of parking. The running loss test element corresponds to sustained vehicle operation on a hot day. The hot soak element corresponds to the emission-prone period immediately following engine shut-off. The diurnal heat builds correspond to successive days of parking in hot weather and also serve to control fuel system permeation emissions, called resting losses.

The purpose of the running loss test is to measure evaporative emissions during vehicle operation to assure that vehicles can control fuel vapors generated in use. In order to perform the running loss test, auto manufacturers must separately develop a fuel temperature profile for the running loss test. The fuel temperature profile is used as a target during the running loss test to duplicate the heating of the vehicle's fuel tank during onroad driving in representative summer conditions. Each fuel temperature profile is generated by obtaining a fuel temperature versus time trace as the vehicle is driven over the prescribed running loss driving cycle, during sunny, summertime conditions, *e.g.* at 95 °F ambient temperature, on the road. During the running loss test, thermocouples are placed inside the fuel tank to measure and monitor the fuel temperature.

b. Two-Day Diurnal-plus-Hot-Soak Test Sequence. The two-day diurnal-plus-hot-soak (two-diurnal) test sequence is a supplemental evaporative test procedure, consisting of vehicle preconditioning, canister preconditioning, FTP exhaust test, hot soak at 68–86 °F, and two diurnal heat builds. The two-diurnal test sequence is similar to the three-diurnal but excludes the running loss test. Instead, without the running loss portion of the test procedure, the two diurnal heat builds after the exhaust emission test verify that the evaporative canister is sufficiently purged during the exhaust emission test, which simulates short trips (58 FR 16003, March 23, 1993). ''Eliminating a diurnal heat build, initially loading the evaporative canister only to breakthrough, measuring a moderate temperature hot soak, and increasing the standard from 2 to 2.5 grams all contribute significantly to making the [two-diurnal test] procedure effective in its limited objective of

ensuring proper purge without requiring additional design modifications'' (58 FR 16001, March 24, 1993). The three-diurnal test sequence does not test for canister purge as effectively as the two-diurnal test sequence due to the addition of the running loss test, which occurs between the FTP exhaust test and diurnal heat builds. Since exhaust emissions are not measured during running loss, it cannot be determined if canister purging occurred only during the FTP exhaust cycle (58 FR 16001, March 24, 1993).

c. Spitback Test Procedure. The spitback test procedure assures that vehicles' fuel fill necks are adequately designed to accommodate in-use fuel fill rates, so as to limit fuel spillage when refueling a vehicle.

2. The 1998 and Later Onboard Refueling Vapor Recovery (ORVR) Test Procedure

A separate evaporative test procedure, the Onboard Refueling Vapor Recovery (ORVR) test procedure, was developed to measure refueling emissions from vehicles. On January 24, 1994, EPA adopted onboard vehicle refueling requirements for passenger cars and light-duty trucks (59 FR 16262, April 6, 1994). EPA also adopted similar ORVR requirements for complete heavy-duty vehicles less than 10,000 lbs. GVWR (65 FR 59896, October 6, 2000). The main purpose of the ORVR test is to limit hydrocarbon vapors released during refueling events. The ORVR test procedure also accounts for spitback emissions in the overall emission measurements, reducing the necessity for a separate spitback test procedure (59 FR 16262, April 6, 1994).

3. Evaporative Test Procedures Similarities

The enhanced evaporative test procedure is important for measuring evaporative emissions from vehicles under numerous drive and park conditions, and the ORVR test is important for measuring refueling emissions from vehicles. In some cases, similar parameters are tested by these test procedures. The two-diurnal and three-diurnal test sequences both test canister capacity, permeation control, and canister purge capacity. The three-diurnal test sequence also tests hot drive vapor generation (running loss) and high temperature vapor generation. The ORVR test procedure tests canister capacity and canister purge capacity, in addition to refueling vapor generation and fill pipe losses. The two-diurnal test procedure takes approximately four days; the three-diurnal takes five days; the spitback takes one day; and the ORVR takes three days. Thus, performing all four test procedures requires a minimum of 12 days since the spitback test is often waived. EPA believes it is appropriate to streamline the evaporative test procedure to reduce testing burden and to reduce overlapping procedures without affecting the level of stringency.

EPA, California Air Resources Board (ARB), and the automobile industry have collaborated since 1996 to identify portions of these test procedures that can be streamlined and/or harmonized, and the discussions culminated in EPA Guidance Letter CCD–02–20, December 31, 2002, available on the Internet at *http://www.epa.gov/otaq/cert/dearmfr/dearmfr.htm.* The Guidance Letter clarified portions of evaporative emission test procedure and also suggested minor modifications to the test procedure which could be made via a direct rulemaking. Today's action codifies the suggested modifications and finalizes the clarifications to the evaporative and refueling test procedures. Today's action does not affect the stringency of the current requirements.

4. Dynamometer Test Provisions

The current dynamometer test procedures (86.139–90, 86.159–00, and 86.160–00) date from a time when four-wheel drive dynamometers were not widely available for measurement of exhaust emissions and fuel economy. Changes in technology for modern four-wheel and all-wheel drive vehicles have heightened the need for testing these vehicles on a four-wheel drive dynamometer. It is no longer easy to configure certain four-wheel or all-wheel drive certification vehicles for testing on a two-wheel drive dynamometer. The need for four-wheel drive dynamometer tests also includes hybrid vehicles with sophisticated regenerative braking systems that cannot receive a representative test on a two-wheel drive dynamometer.

5. Vehicle Labeling

86.1807–01 contains the labeling requirements for vehicles, which include light-duty vehicles, light-duty trucks, medium-duty passenger vehicles, and heavy-duty vehicles which are chassis certified. 86.098–35 previously applied to vehicle and engine labeling, but since the 2001 model year apply only to heavy-duty engine labeling. The labels' basic content requirements date from a time when vehicles were designed with manually adjustable tune-up settings, including idle speed(s), ignition timing, air-fuel mixture, injection timing, and valve lash, and did not use an exhaust catalyst. Modern vehicles and engines are electronically controlled, making a listing of tune-up specifications unnecessary. As well, leaded fuel was still widely available in the U.S. at the time of the label requirements. The labels have not been updated since the introduction of catalyst technology almost 30 years ago.

II. List of Changes to Test Procedures

Today's action describes minor modifications and clarifications made to the evaporative test procedures, dynamometer regulations, and vehicle labeling requirements. Explanation and, where appropriate, EPA's interpretation of the resulting regulatory language is provided.

A. Evaporative Test Procedures

1. Provide Opportunity To Waive the Two-Day Evaporative Test for Certification Tests Under Certain Conditions

a. Current Procedure. The current two-diurnal enhanced evaporative test procedure is part of the overall enhanced evaporative emission test procedure (58 FR 16001, March 24, 1993). Currently, manufacturers are expected to complete three-diurnal, two-diurnal, and ORVR tests on certification vehicles.

b. Today's Action. Today's action provides manufacturers with an option which will allow a waiver from the two-day diurnal-plus-hot-soak evaporative emission certification test. Manufacturers must still perform three-diurnal and ORVR tests for certification vehicles and perform the two-diurnal and ORVR test on vehicles for the In-Use Verification Program (40 CFR 1845–01, 1845–04). EPA may perform at its discretion confirmatory two-diurnal evaporative emission testing on certification test vehicles which are certified using this option, even though the manufacturer may not have performed a two-diurnal test during the certification process.

Manufacturers may use the waiver based on good engineering judgement that the canister will be adequately purged during the FTP exhaust test and comply with the two-diurnal emission standard. Manufacturers will need to provide a statement in the certification application stating: ''Based on the manufacturer's engineering evaluation of appropriate evaporative emission testing, all vehicles in [a specific evaporative/refueling family] will comply with the applicable two-day evaporative emission standard.''

EPA may request data from the manufacturers demonstrating that the purge flow rate calibration on the two-diurnal tests adequately purges the canister to comply with the evaporative emission standard for the supplemental two-day test in lieu of actual two-day evaporative test data. Such information may include, but is not limited to, canister type, canister volume, canister working capacity, fuel tank volume, fuel tank geometry, the type of fuel delivery system (return, returnless, variable flow fuel pump, etc.), a description of the input parameters and software strategy used to control the evaporative canister purge, the nominal purge flow volume (in bed volumes) when vehicles are driven over the 2-day (FTP) driving cycle, the nominal purge flow volume (in bed volumes) when vehicles are driven over the 3-diurnal (FTP + running loss) driving cycle, and other supporting information as necessary. This information will address EPA's concerns about vehicles sufficiently purging the canister, as expressed in 58 FR 16009–11, March 24, 1993. As well, this information will be useful in selecting EPA in-class testing vehicles and be helpful for determining potential evaporative defeat devices.

This testing waiver option will only be available to current technology gasoline-fueled and ethanol-fueled vehicles which use conventional evaporative emission control systems, *e.g.* vehicles equipped with conventional fuel tank materials, liquid seal ORVR systems, and carbon canister(s). Currently all light-duty and heavy-duty up to 14,000 GVWR vehicles certified in the U.S. use an integrated evaporative/refueling emission control system. For this reason, EPA does not expect the waiver to be used for non-integrated evaporative/refueling emission control system. If non-integrated systems become more common and in-use data can demonstrate with confidence that the vast majority of such vehicles are in compliance with evaporative emission standards, then testing waivers may be used for non-integrated systems as well in the future.

c. Reason for Action. EPA believes that there will be very little risk of noncompliance for several reasons.

Manufacturers will continue to be responsible for meeting the two-day diurnal-plus-hot-soak emission standards even if they waive the two-diurnal certification test procedure. In addition, vehicles must still meet the three-diurnal and ORVR test requirements which provide data to EPA on many aspects of the two-diurnal test procedure since the three-diurnal test procedure is similar to the two-diurnal test procedure, except for canister purge. However canister purge assurance is an inherent part of the ORVR test procedure. Thus the combination of three-diurnal and ORVR certification data assure adequate canister purge.

EPA believes that compliance with the two-diurnal standards is further assured because EPA may perform at its discretion confirmatory two-diurnal evaporative emission testing on certification test vehicles which are certified using this option. In addition to EPA's confirmatory testing, a vehicle randomly selected from each evaporative family will be tested using the two-diurnal evaporative test procedure under the In-Use Verification Program, as required in provisions 40 CFR 86.1845–01(a)(5)(ii) and 86.1845–04(a)(5)(ii). If data shows noncompliance, EPA will not normally grant subsequent waivers for the applicable evaporative family. The In-Use vehicle recall program also conducts two-diurnal evaporative testing as an additional compliance check.

This provision reduces testing burden by reducing overlapping requirements of the two-diurnal, three-diurnal and ORVR test procedures. In addition, performing all three tests is time consuming, taking a minimum of 12 days to complete if there are no voids. The evaporative test procedures are very complex and detailed, with specified times for completing each section and, when voids occur, they result in additional time to complete the tests.

2. Allow Opportunities for Alternative Methods for the Running Loss Test Procedure

a. Current Procedure. The purpose of the running loss test is to measure evaporative emissions during vehicle operation to assure that vehicles can control fuel vapors generated in use, in urban driving and low-speed or idle conditions. The current regulations require the installation of two temperature sensors (thermocouples) in the fuel tank to provide an average liquid fuel temperature. This average fuel temperature is used to control the fuel tank temperature profile (FTTP) during the running loss drive portion of the three-day test. This current method can be invasive to a vehicle's fuel system and requires thermocouples to be accurately positioned in the fuel tank.

b. Today's Action. Today's action amends the regulations to allow manufacturers the option for using an alternative running loss test procedure. Prior EPA approval is needed for this option. This provision also allows EPA to conduct certification and in-use testing for a specific vehicle using the alternative method for the running loss test procedure.

In order to obtain EPA approval of an alternative method for the running loss test procedure, manufacturers will be required to provide EPA with data that demonstrates that the alternative method is equal to or more stringent than the current method. Data should include, but is not limited to, multiple tests comparing running loss, hot soak, and diurnal emissions using the current test procedure and the alternative test procedure. The test vehicles used to provide comparison are expected to cover the types of technology for the population of vehicles approved to use the alternative method, including, but not limited to, in-tank fuel return and fuel tank parameters, such as tank material, insulation, size, geometry, and location. If a vehicle fails the running loss portion of the three-diurnal test procedure, the manufacturer normally would not be allowed to treat the failure as an invalid test or request a retest using the standard running loss procedure outlined in 40 CFR 86.134–96.

c. Reasons for Action. Today's action allows an alternative method for the running loss test procedure for several reasons.

The allowance of an alternative method addresses specific concerns related to controlling the fuel tank temperature profile (FTTP) during the running loss portion of the three-diurnal test. Thermocouple installment is especially difficult (and often invasive) to perform for in-use running loss and three-day tests on customer-owned vehicles. To perform in-use tests, the fuel tank often needs to be removed and/or a hole is made in the fuel tank, resulting in having to replace the fuel tank on the customer-owned vehicle, which can jeopardize the integrity of the fuel system and the ability of a capable system to demonstrate compliance. If thermocouples are not properly placed in the fuel tank, they can cause the vehicle to fail the running loss test and, consequently, test results are subject to variability.

EPA is not aware of an alternative method at this time, nor any alternative methods of controlling the in-tank fuel temperature. We encourage the automotive industry to work together to develop a technically accurate method of measuring and controlling in-tank fuel temperatures.

3. Revise EPA Sealed Housing for Evaporative Determination Calibration Procedure

a. Current Procedure. The Sealed Housing for Evaporative Determination (SHED) calibration procedure (retention check) is designed to determine that the SHED enclosure does not have leaks that could result in falsely low hydrocarbon readings during the vehicle evaporative testing sequences. The current calibration requirements, outlined in 40 CFR 86.117–96 (c)(1)(vii), which include evaporative SHED retention checks, were designed for vehicles meeting Tier 1 evaporative emission standards. This regulation requires the injection of two to six grams of methanol and/or propane with a five-minute minimum mixing time for enclosure recovery measurements and a 24-hour time period for retention checks. These calibration requirements were not designed for the more stringent Tier 2 evaporative emission standards.

b. Today's Action. Today's action revises the current SHED calibration procedure to an injection of 0.5 to 6 grams for vehicles meeting three-diurnal standards equal to or above 2.0 grams/test. This provision also revises the SHED calibration procedure to specify the injection of 0.5 to 1.0 gram methane and/or propane for a maximum injection of 1.0 grams for vehicles meeting three-diurnal standards below 2.0 grams/test. Both revisions utilize the five-minute minimum mixing time and 96°F.

c. Reason for Action. EPA believes this action will ensure that manufacturer and EPA evaporative SHEDs are properly calibrated in accordance with testing to more stringent evaporative emission standards for Tier 2 vehicles. It will also harmonize the EPA SHED injection amounts with those of California ARB.[1]

4. Harmonize EPA and California Evaporative Test Data

a. Current Procedure. Current provisions allow EPA to accept California evaporative data based on 40 CFR 86.1811–04(e)(6) for Tier 2 vehicles. However, current regulations do not specifically allow EPA to accept California evaporative data for heavy-duty vehicles and non-Tier 2 vehicles even when the combination of the data, the California test procedures, and the California emission standards are as or more stringent than EPA's requirements.

b. Today's Action. Today's action allows the submission of California evaporative data for heavy-duty vehicles and non-Tier 2 vehicles, which may be submitted in lieu of Federal test data for 50 state evaporative/refueling families and for ''carry across'' data from a California evaporative/refueling family to a federal family. EPA requests that manufacturers notify EPA of their intention to use California test data to demonstrate compliance with applicable federal evaporative emission standards and include a statement in their certification application that based on good engineering judgement the vehicles in an evaporative/refueling family will comply with the applicable federal evaporative standards if tested using California test conditions and procedures. EPA may request comparative test data on a case-by-base basis which clearly demonstrates that a vehicle meeting the California evaporative standard will also meet the appropriate federal evaporative emission standard.

5. Provide the Option for Using Alternative Canister Loading Methods for the Federal Test Procedure

a. Current Procedure. The current methods for canister loading for the Federal Test Procedure (FTP) are described in provisions 40 CFR 86.132–96(h), (j)(1), and (j)(2). During the canister loading, the canister remains in place, but in situations where the canister is inaccessible, the canister may be removed for loading with special care not to damage any components or the integrity of the fuel system. The canister is then loaded with a butane-nitrogen mixture.

b. Today's Action. Today's action allows manufacturers the option of using alternative canister loading methods that are equivalent or more stringent than the applicable canister loading method. Prior approval by EPA is required in order to use alternative methods to preload the canister(s) during the exhaust and evaporative test sequences. Manufacturers must provide data to EPA to prove that alternative methods maintain the current stringency required through the canister loading procedure. This information includes, but is not limited to, location of canister vent hose and whether the canister is routed to a dummy canister or vented during testing. EPA may also use the manufacturer-specified, EPA-approved alternative canister loading method to conduct confirmatory testing and in-use testing or the appropriate method outlined in 40 CFR 86.132–96(h), 86.132–96(j)(1), or 86.132–96(j)(2).

c. Reasons for Action. EPA recognizes that the use of the current methods for canister loading during the FTP can jeopardize the integrity of the evaporative emission control system and, therefore, the ability of a capable system to demonstrate compliance with lower evaporative emission standards. In cases where the canister is inaccessible, the current canister loading procedure can be quite burdensome and difficult to perform, especially on In-Use Verification Program vehicles.

6. In-Use Verification Program Evaporative Emissions Testing Requirements

EPA is clarifying EPA's position regarding the evaporative emission testing requirements for the current In-Use Verification Program (IUVP) (40 CFR 86.1845–01, 86.1845–04). The current provisions imply, but do not specify, that all evaporative tests for all fuel types should be performed, including the two-day diurnal-plus-hot-soak, three-day diurnal-plus-hot-soak, and running loss tests.

As discussed in the preamble to the CAP 2000 Notice of Proposed Rulemaking text (63 FR 39672, July 23, 1998), EPA did not anticipate that more than one evaporative test would be required for IUVP vehicles.

The clarifications for IUVP state that for gasoline- and ethanol-fueled in-use vehicles, running loss and three-day diurnal-plus-hot-soak evaporative emissions tests are not required to be performed. However, while these tests do not have to be performed, gasoline- and ethanol-fueled IUVP vehicles are still required to comply with the applicable standards for the three-diurnal and running loss test procedures. The two-diurnal test procedure must continue to be conducted on gasoline- and ethanol-fueled IUVP vehicles. Note that for compressed natural gas (CNG) and propane (LPG) fueled (also known as gaseous-fueled) vehicles, a three-day diurnal-plus-hot-soak test is required for IUVP testing. However, for gaseous-fueled vehicles the three-diurnal test procedure neither includes a running loss test nor thermocouples placed in the fuel tank, and therefore is not intrusive for IUVP testing of these vehicles. In addition, the two-day test procedure is not applicable to gaseous-fueled vehicles, 40 CFR 86.130–96(a)(2).

[1] California Air Resources Board's SHED calibration procedure for propane injections, for the five minute retention and 24 hour recovery, is outlined in the California Evaporative Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles, adopted August 5, 1999. California's propane injection procedure for LEV–II evaporative vehicles and partial zero emissions vehicles (PZEVs) requires 0.5 to 1.0 grams to be injected with a five minute maximum mixing time, cycling the ambient temperature up to 105°F.

7. CFR Correction for Paragraph 86.1810–01 (m)

Paragraph 86.1810–01 (m) was inadvertently omitted from the July, 2002, Code of Federal Regulations (CFR). This paragraph is necessary as it relates to other modifications and clarification in today's action. Paragraph (m) refers to waivers referenced in today's action.

Today's action resubmits paragraph 86.1810–01 (m) to the CFR, as worded in the original CAP 2000 rule (64 FR 23939, May 4, 1999).

B. Onboard Refueling Vapor Recovery (ORVR) and Spitback Test Procedure

1. Option To Not Disconnect Hoses During ORVR

a. Current Procedure. Currently, 40 CFR 86.152–98(b), 40 CFR 86.153–98(d), and 40 CFR 86.153–98(e)(2) require the canister to be disconnected for integrated and non-integrated systems when draining and refueling the fuel tank to the 10 percent level prior to the initial soak, which precedes the actual refueling and measurement portion of the refueling test. The canister is also required to be disconnected when initially filling the fuel tank to 95 percent of nominal tank capacity in the preconditioning portion of the ORVR test for non-integrated systems.

b. Today's Action. Today's action provides manufacturers the option of not disconnecting the evaporative hoses during the ORVR preconditioning step. The manufacturer shall specify whether or not the canister should be disconnected, and EPA will use the manufacturer specified procedure when performing EPA confirmatory testing.

c. Reasons for Action. The option to not disconnect the ORVR hose is a more stringent test procedure than disconnecting the hose because the hose, while in place, will direct all refueling vapors to the canister during the preconditioning portion of the ORVR test, adding an additional load to the canister. The primary reason manufacturers may use this option is to minimize the chance of the test procedure causing vapor leaks in the evaporative system, minimize the chance of damage that may result from disconnecting the hose, and reduce test variability. If the canister hoses are not re-connected properly, the test procedure could result in vapor leaks in the system, leading to variability in the test data.

2. CFR Correction for Paragraph 86.1810–01(1)

Paragraph 86.1810–01(1) was inadvertently omitted from the July 2002 Code of Federal Regulations (CFR).

Today's action resubmits paragraph 86.1810–01 (l) to the CFR, as worded in the Heavy-Duty ORVR Final Rule (65 FR 59970, October 6, 2000).

C. Four-Wheel Drive Dynamometer Provisions

a. Current Procedure

The current dynamometer test procedures only apply to the use of a two-wheel drive dynamometer and do not include provisions for utilizing a four-wheel drive dynamometer.

b. Today's Action

Today's action revises three sections of 40 CFR Subpart B, all of which have identical wording describing how to test four-wheel drive vehicles on a chassis dynamometer. The three sections which EPA will modify, 86.135–90, 86.159–00, and 86.160–00, all date from a time when four-wheel drive dynamometers were not widely available for measurement of exhaust emissions and fuel economy. EPA has not ruled out future changes in its emission and fuel economy compliance programs, especially as EPA strives to ensure that a dynamometer test for a given vehicle is as representative as possible of the vehicle's actual road experience.

EPA plans to issue a guidance letter prepared by the Certification and Compliance Division announcing in further detail how it will use the four-wheel drive dynamometer in its compliance programs. However, guidance letters are written to clarify EPA policy, and it is not possible to issue a guidance letter on usage of the four-wheel drive dynamometer until the language in the CFR is revised. In the absence of that, EPA has developed the following proposals for the use of four-wheel drive dynamometers in emission and fuel economy compliance programs. The term four-wheel drive vehicle is also meant to include all-wheel drive vehicles.

The regulatory changes described below will give EPA and manufacturers the regulatory authority to test four-wheel drive and all-wheel drive vehicles on four-wheel drive dynamometers. These changes do not impose new stringency in EPA's certification and compliance programs.

Manufacturers may conduct certification testing for four-wheel drive vehicles on either a four-wheel drive or two-wheel drive mode of dynamometer operation. EPA will conduct confirmatory testing on certification and fuel economy test vehicles in the same dynamometer mode of operation, two-wheel drive or four-wheel drive, which the manufacturer used for their vehicle testing.

Manufacturers will normally conduct In-Use Verification Program testing on a four-wheel drive dynamometer for vehicles which were certified in a four-wheel drive test mode. Four-wheel drive vehicles which were certified in a two-wheel drive mode may be tested in either a four-wheel drive or a two-wheel drive mode of operation. Prior approval by EPA is required to test four-wheel drive vehicles, which were certified on a four-wheel drive test mode, on a two-wheel drive dynamometer for the In-Use Verification Program.

EPA conducts in-use surveillance testing on randomly procured vehicles that are not screened with the same rigor that would be used for recall confirmatory class vehicles. EPA may conduct surveillance in-use testing of all-wheel drive vehicles on the four-wheel drive dynamometer as necessary to avoid modifications to the owner's vehicle, regardless of how the vehicles were certified.

If an all-wheel drive vehicle class certified in a two-wheel drive configuration must undergo in-use confirmatory testing, EPA will discuss with the manufacturer options to determine the most practical and appropriate way to conduct the testing. EPA will make the final determination as to whether the vehicles will be tested in the all-wheel drive mode for confirmatory testing.

EPA may conduct defeat device testing in the four-wheel drive mode of operation using four-wheel drive certification and fuel economy vehicles that were tested by the manufacturer on a two-wheel drive dynamometer, and confirmatory tested on a two-wheel drive dynamometer at EPA.

c. Reason for Action

Changes in technology for modern four-wheel and all-wheel drive vehicles have heightened the need for testing these vehicles on a four-wheel drive dynamometer. It is no longer easy to configure certain four-wheel or all-wheel drive certification vehicles for testing on a two-wheel drive dynamometer. The need for four-wheel drive dynamometer tests also includes hybrid vehicles with sophisticated regenerative braking systems that cannot receive a representative test on a two-wheel drive dynamometer.

EPA is also aware of a small but increasing number of in-use vehicles which cannot be modified for testing on

a two-wheel drive dynamometer without intrusive modification to the drive line and/or modifications to the vehicle's electronic control systems. Additionally, there are many more four-wheel and all-wheel drive vehicles in the market place today compared to the time when EPA's policy for testing four-wheel drive vehicles was first drafted. Although four-wheel drive dynamometers have been installed at many test facilities worldwide, EPA realizes that individual manufacturers may have limited experience in compliance testing on these dynamometers, in particular for the most sophisticated new all-wheel drive vehicles. EPA understands that users of four-wheel drive dynamometers are, in some cases, still learning how well four-wheel drive dynamometers can simulate actual road operation. EPA and manufacturers will both benefit as more data are collected and examined.

D. Vehicle Labeling

a. Current Procedure

40 CFR 86.1807–01 contains the labeling requirements for vehicles, which include light-duty vehicles, light-duty trucks, medium-duty passenger vehicles, and heavy-duty vehicles which are chassis certified. 40 CFR 86.098–35 previously applied to vehicle and engine labeling, but since the 2001 model year apply only to heavy-duty engine labeling.

b. Today's Action

Today's action revises the vehicle labeling requirements described in sections 40 CFR 86.1807–01, Vehicle labeling, and 40 CFR 86.098–35, Labeling, for no longer requiring out-dated information to be included on the label.

The Certification and Compliance Division expects to issue a guidance letter after these regulatory changes are completed in order to show an example of an approved label which reflects the new flexibility in label design. Initially, vehicle manufacturers who wish to take advantage of these labeling changes must have their new label designs approved by their EPA vehicle or engine certification representative.

c. Reason for Action

These changes to the regulations allow more flexibility in label content and design, specifically for the objective of improving the labels' clarity and usefulness. This action is desired since the labels' basic content requirements have not been updated since the introduction of catalyst technology almost 30 years ago. Several of the requirements in the labeling sections are no longer necessary or useful for modern vehicles with electronic emission controls. Since modern vehicles and engines are electronically controlled, a listing of tune-up specifications is no longer necessary. Additionally, the requirement for a hose routing diagram dates from pre-electronic controlled vehicles and serves no purpose for modern vehicles and engines. In the unlikely event that vacuum actuated controls are present on modern vehicles, their function and location and routing of hoses are fully described in the vehicle service manual.

By making these changes to the regulations, it is also EPA's expectation that the label designs may be slightly more generic, leading to a reduced number of label types which are required at the time the vehicle or engine is produced, leading to fewer labeling errors. Additionally, by requiring only the necessary information on the label for modern vehicles and engines, it is expected that the size of the label, or the number of them for manufacturers which currently use more than one label to meet the present labeling requirements, may be reduced.

When Tier 2 regulations were implemented, a new vehicle class, medium-duty passenger vehicles, was added. Thus it is necessary to update the regulations so as to clarify that the regulations apply to light-duty vehicle, light-duty trucks, and medium-duty passenger vehicles and heavy duty vehicles.

Accepting alternative labels will permit use of revised formats for heavy-duty engines which are easier to read, while still displaying the important elements of the ''Important Engine Information'' label. In addition, updating the regulations explicitly adds the heavy-duty class of vehicles that are certified to the chassis standards to this part of the labeling requirement section, making it consistent with the requirements for light-duty vehicles and light-duty trucks in 86.1807–01(c)(1).

EPA has no need for the SAE J1892 bar code to be printed on the Vehicle Emission Control Information (VECI) label. By removing this requirement, EPA will also be harmonizing the label information to be consistent with those of California Air Resources Board. In a letter dated June 26, 2002, the California Air Resources Board issued Mail-Out #MSO 2002–06 waived the requirement to print the SAE bar code on the labels for 2003 model year and newer vehicles and engines.

III. 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 Analysis

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule.

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, EPA has concluded 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. 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 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.

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 final rule does not have tribal implications, as specified in Executive Order 13175. Today's action does not uniquely affect the communities of American Indian tribal governments since the motor vehicle requirements for private businesses in today's action will have national applicability. Furthermore, today's action 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.

IV. 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 and 206 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.

■ For the reasons set forth in the preamble, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 86—CONTROL OF EMISSIONS FROM NEW AND IN-USE HIGHWAY VEHICLES AND ENGINES

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

Authority: 42 U.S.C. 7401–7671q.

Subpart A—[Amended]

■ 2. Section 86.005–10 is amended by adding paragraph (a)(5) to read as follows:

§ 86.005–10 Emission Standards for 2005 and later model year Otto-cycle heavy-duty engines and vehicles.

* * * * *

(a) * * *

(5) For certification purposes, where the applicable California evaporative emission standard is as stringent or more stringent than the applicable federal evaporative emission standard, the Administrator may accept California certification test data indicating compliance with the California standard to demonstrate compliance with the appropriate federal certification evaporative emission standard. The Administrator may require the manufacturer to provide comparative test data which clearly demonstrates that a vehicle meeting the California evaporative standard (when tested under California test conditions/test procedures) will also meet the appropriate federal evaporative emission standard when tested under federal test conditions/test procedures described in this Part 86.

* * * * *

■ 3. Section 86.098–35 is amended by adding paragraph (j) to read as follows:

§ 86.098–35 Labeling.

* * * * *

(j) The Administrator may approve in advance other label content and formats provided the alternative label contains information consistent with this section.

Subpart B—[Amended]

■ 4. Section 86.117–96 is amended by revising paragraph (c)(1)(vii) to read as follows:

§ 86.117–96 Evaporative emission enclosure calibrations.

* * * * *

(c) * * *

(1) * * *

(vii) For evaporative emission enclosures which will be used to measure evaporative emissions from vehicles meeting evaporative standards equal to or above 2.0 grams, inject into the enclosure 0.5 to 6 grams of pure methanol at a temperature of at least 150°F (65°C) and/or 0.5 to 6 grams of pure propane at lab ambient temperatures. For evaporative emission enclosures which will be used to measure evaporative emissions from vehicles meeting evaporative standards below 2.0 grams, inject into the enclosure 0.5 to 1.0 grams of pure methanol at a temperature of at least 150°F (65°C) and/or 0.5 to 1.0 grams of pure propane at lab ambient temperature. The injected quantity may be measured by volume flow or by mass measurement. The method used to measure the quantity of methanol and propane shall have an accuracy of ±0.2 percent of measured value (less accurate methods may be used with the advance approval of the Administrator).

* * * * *

■ 5. Section 86.132–96 is amended by adding paragraph (n) to read as follows:

§ 86.132–96 Vehicle preconditioning.

* * * * *

(n) With prior approval of the Administrator, manufacturers may use an alternative canister loading method in lieu of the applicable canister loading method described in the provisions of paragraphs (h), (j)(1) and (j)(2) of this section, provided the alternative method is shown to be equivalent or result in a more fully loaded canister (a canister that has adsorbed an equal or greater amount of hydrocarbon vapors) than the applicable canister loading method required by the provisions of paragraphs (h), (j)(1) and (j)(2) of this section. Additionally, the Administrator may conduct confirmatory certification testing and in-use testing using the alternative canister loading method used by the manufacturer to test applicable certification and/or in-use vehicles or the appropriate method outlined in the provisions of paragraphs (h), (j)(1) and (j)(2) of this section.

■ 6. Section 86.134–96 is amended by adding paragraph (g)(3) to read as follows:

§ 86.134–96 Running loss test.

* * * * *

(g) * * *

(3) With prior approval of the Administrator, manufacturers may use an alternative running loss test procedure, provided the alternative test procedure is shown to yield equivalent or superior emission results (in terms of quality control, accuracy and repeatability) for the running loss, hot soak and diurnal portions of the three diurnal-plus-hot-soak test sequence. Additionally, the Administrator may conduct certification and in-use testing using the test procedures outlined in paragraph (g)(1) of this section, paragraph (g)(2) of this section or the alternative running loss test procedure as approved for a specific vehicle.

* * * * *

■ 7. Section 86.135–90 is amended by revising paragraph (i) to read as follows:

§ 86.135–90 Dynamometer procedure.

* * * * *

(i) Four-wheel drive and all-wheel drive vehicles may be tested either in a four-wheel drive or a two-wheel drive mode of operation. In order to test in the two-wheel drive mode, four-wheel drive and all-wheel drive vehicles may have one set of drive wheels disengaged; four-wheel and all-wheel drive vehicles which can be shifted to a two-wheel mode by the driver may be tested in a two-wheel drive mode of operation.

■ 8. Section 86.152–98 is amended by revising paragraph (b) to read as follows:

§ 86.152–98 Vehicle preparation; refueling test.

* * * * *

(b) Optionally, provide valving or other means to allow the venting of the refueling vapor line to the atmosphere rather than to the refueling emissions canister(s) when allowed by this test procedure.

* * * * *

■ 9. Section 86.153–98 is amended by revising paragraphs (d) introductory text and (e)(2) to read as follows:

§ 86.153–98 Vehicle and canister preconditioning; refueling test.

* * * * *

(d) *Canister purging: non-integrated systems.* Within one hour of completion of canister loading to breakthrough, the fuel tank(s) shall be further filled to 95 percent of nominal tank capacity determined to the nearest one-tenth of a U.S. gallon (0.38 liter) with the fuel specified in § 86.113–94. During this fueling operation, the refueling emissions canister(s) shall be disconnected, unless the manufacturer specifies that the canister(s) should not be disconnected. Following completion of refueling, the refueling emissions canister(s) shall be reconnected, if the canister was disconnected during refueling. Special care shall be taken during this step to avoid damage to the components and the integrity of the fuel system. Vehicle driving to purge the refueling canister(s) shall be performed using either the chassis dynamometer procedure or the test track procedure, as described in paragraphs (d)(1) and (d)(2) of this section. The Administrator may choose to shorten the vehicle driving for a partial refueling test as described in paragraph (d)(3) of this section. For vehicles equipped with dual fuel tanks, the required volume of fuel shall be driven out of one tank, the second tank shall be selected as the fuel source, and the required volume of fuel shall be driven out of the second tank.

* * * * *

(e) * * *

(2) *For all other refueling emission tests.* Within 10 minutes of completion of refueling emissions canister stabilization (see paragraph (c) or (d) of this section), the refueling emissions canister(s) shall be disconnected, unless the manufacturer specifies that the refueling canister(s) should not be disconnected. Within 60 minutes of completion of refueling emissions canister stabilization (see paragraph (c) or (d) of this section), the vehicle fuel tank(s) shall be drained, the fuel tank(s) fueled to 10 percent of nominal tank capacity determined to the nearest one-tenth of a U.S. gallon (0.38 liter) with the specified fuel, and the vehicle parked (without starting the engine) and soaked at 80±3°F (27±1.7°C) for a minimum of 6 hours and a maximum of 24 hours.

■ 10. Section 86.159–00 is amended by revising paragraph (b)(8) to read as follows:

§ 86.159–00 Exhaust emission test procedures for US06 emissions.

* * * * *

(b) * * *

(8) Four-wheel drive and all-wheel drive vehicles may be tested either in a four-wheel drive or a two-wheel drive mode of operation. In order to test in the two-wheel drive mode, four-wheel drive and all-wheel drive vehicles may have one set of drive wheels disengaged; four-wheel and all-wheel drive vehicles which can be shifted to a two-wheel mode by the driver may be tested in a two-wheel drive mode of operation.

* * * * *

■ 11. Section 86.160–00 is amended by revising paragraph (b)(8) to read as follows:

§ 86.160–00 Exhaust emission test procedure for SC03 emissions.

* * * * *

(b) * * *

(8) Four-wheel drive and all-wheel drive vehicles may be tested either in a four-wheel drive or a two-wheel drive mode of operation. In order to test in the two-wheel drive mode, four-wheel drive and all-wheel drive vehicles may have one set of drive wheels disengaged; four-wheel and all-wheel drive vehicles which can be shifted to a two-wheel mode by the driver may be tested in a two-wheel drive mode of operation.

* * * * *

Subpart M—[Amended]

■ 12. Section 86.1232–96 is amended by adding paragraph (n) to read as follows:

§ 86.1232–96 Vehicle preconditioning.

* * * * *

(n) With prior approval of the Administrator, manufacturers may use an alternative canister loading method in lieu of the applicable canister loading method described in the provisions of § 86.1232–96(h), § 86.1232–96 (j)(1) and § 86.1232–96 (j)(2), provided the alternative method is shown to be equivalent or result in a more fully loaded canister (a canister that has adsorbed an equal or greater amount of hydrocarbon vapors) than the applicable canister loading method required by the provisions of paragraphs (h), (j)(1), and (j)(2) of this section. Additionally, the Administrator may conduct confirmatory certification testing and in-use testing using the alternative canister loading method used by the manufacturer to test applicable certification and/or in-use vehicles or one of the methods outlined in the provisions of paragraphs (h), (j)(1), and (j)(2) of this section.

■ 13. Section 86.1234–96 is amended by adding paragraph (g)(3) to read as follows:

§ 86.1234–96 Running loss test.

* * * * *

(g) * * *

(3) With prior approval of the Administrator, manufacturers may use an alternative running loss test procedure, provided the alternative test procedure is shown to yield equivalent or superior emission results (in terms of quality control, accuracy and repeatability) for the running loss, hot soak and diurnal portions of the three diurnal-plus-hot-soak test sequence. Additionally, the Administrator may conduct certification and in-use testing using the test procedures outlined in paragraph (g)(1) of this section, paragraph (g)(2) of this section or the alternative running loss test procedure as approved for a specific vehicle.

* * * * *

Subpart S—[Amended]

■ 14. Section 86.1807–01 is amended as follows:

■ a. by removing and reserving paragraphs (a)(3)(iv).

■ b. by revising (a)(3)(v).

■ c. by removing and reserving (a)(3)(vii).

■ d. by revising paragraph (c)(1) introductory text.

■ e. by adding paragraphs (c)(1)(ii)(C) and (D).

■ f. by removing and reserving paragraphs (c)(1)(iii), (c)(2), and (c)(3).

■ g. by revising paragraphs (f) and (g).

§ 86.1807–01 Vehicle labeling.

* * * * *

(a) * * *

(3) * * *

(iv) [Reserved]

(v) An unconditional statement of compliance with the appropriate model year U.S. EPA regulations which apply to light-duty vehicles, light-duty trucks, medium-duty passenger vehicles, or complete heavy-duty vehicles;

* * * * *

(vii) [Reserved]

* * * * *

(c)(1) The manufacturer of any light-duty vehicle, light-duty truck, medium-duty passenger vehicle, or heavy-duty vehicle subject to the emission standards of this subpart shall, in addition and subsequent to setting forth those statements on the label required by the Department of Transportation (DOT) pursuant to 49 CFR 567.4 set forth on the DOT label or on an additional label located in proximity to the DOT label and affixed as described in 49 CFR 567.4(b), the following information in the English language, lettered in block letters and numbers not less than three thirty-seconds of an inch high, of a color that contrasts with the background of the label:

* * * * *

(ii) * * *

(C) For medium-duty passenger vehicles, the statement: ''This Vehicle Conforms to U.S. EPA Regulations Applicable to XXX-fueled 20XX Model Year New Medium-Duty Passenger Vehicles.''

(D) For heavy-duty vehicles, the statement: ''This Vehicle Conforms to U.S. EPA Regulations Applicable to XXX-fueled 20XX Model Year Chassis-Certified New Heavy-Duty Vehicles.''

(iii) [Reserved]

(2) [Reserved]

(3) [Reserved]

(f) All light-duty vehicles, light-duty trucks, medium-duty passenger vehicles, and complete heavy-duty vehicles shall comply with SAE Recommended Practices J1877 ''Recommended Practice for Bar-Coded Vehicle Identification Number Label,'' (July 1994). SAE J1877 is incorporated by reference (see § 86.1).

(g) The Administrator may approve in advance other label content and formats provided the alternative label contains information consistent with this section.

■ 15. Section 86.1810–01 is amended as follows:

■ a. by adding paragraph (j)(4);

■ b. by revising paragraph (l)(1) introductory text;

■ c. by removing paragraphs (l)(2)(i), (l)(2)(ii), the second paragraph designated as (l)(2), and (l)(3); and

■ d. by adding paragraph (m).

§ 86.1810–01 General standards; increase in emissions; unsafe conditions; waivers.

* * * * *

(j) * * *

(4) For certification purposes, where the applicable California evaporative emission standard is as stringent or more stringent than the applicable federal evaporative emission standard, the Administrator may accept California certification test data indicating compliance with the California standard to demonstrate compliance with the appropriate federal certification evaporative emission standard. The Administrator may require the manufacturer to provide comparative test data which clearly demonstrates that a vehicle meeting the California evaporative standard (when tested under California test conditions/test procedures) will also meet the appropriate federal evaporative emission standard when tested under federal test conditions/test procedures described in this Part 86.

* * * * *

(l) *Fuel dispensing spitback testing waiver.* (1) Vehicles certified to the refueling emission standards set forth in § 86.1811–04(e), § 86.1812–01(e), § 86.1813–01(e), § 86.1816–05(e) are not required to demonstrate compliance with the fuel dispensing spitback standard contained in that section provided that:

(i) * * *

(ii) * * *

(2) * * *

(m) Inherently low refueling emission testing waiver. (1) Vehicles using fuels/fuel systems inherently low in refueling emissions are not required to conduct testing to demonstrate compliance with the refueling emission standards set forth in § 86.1811–04(e), § 86.1812–01(e), § 86.1813–01(e) and § 86.1816–05(e) provided that:

(i) This provision is only available for petroleum diesel fuel. It is only available if the Reid Vapor Pressure of in-use diesel fuel is equal to or less than 1 psi (7 kPa) and for diesel vehicles whose fuel tank temperatures do not exceed 130 deg. F (54 deg. C); and

(ii) To certify using this provision the manufacturer must attest to the following evaluation: ''Due to the low vapor pressure of diesel fuel and the vehicle tank temperatures, hydrocarbon vapor concentrations are low and the vehicle meets the 0.20 grams/gallon refueling emission standard without a control system.''

(2) The certification required in paragraph (m)(1)(ii) of this section must be provided in writing and must apply for the full useful life of the vehicle.

(3) EPA reserves the authority to require testing to enforce compliance and to prevent noncompliance with the refueling emission standard.

* * * * *

■ 16. Section 86.1829–01 is amended by adding paragraph (b)(2)(iii) to read as follows:

§ 86.1829–01 Durability and emission testing requirements; waivers.

(b) * * *

(2) * * *

(iii) Optional waiver of two-diurnal evaporative certification test for gasoline- and ethanol-fueled vehicles. In lieu of testing gasoline-fueled and ethanol-fueled vehicles for the supplemental two-diurnal test sequence according to the provisions of paragraphs (b)(2)(i) and (b)(2)(ii) of this section, a manufacturer may optionally provide a statement of compliance in its application for certification that, based on the manufacturer's good engineering judgement, all light-duty vehicles, light-duty trucks and complete heavy-duty vehicles in the applicable evaporative/refueling emission family comply with the evaporative emission standard for the supplemental two-diurnal test sequence.

(A) The option to provide a statement of compliance in lieu of 2-diurnal evaporative certification test data outlined in paragraph (b)(2)(iii) of this section is limited to vehicles with conventional evaporative emission control systems (as determined by the Administrator). This option may be used for vehicles in evaporative/refueling families which are certified to the applicable two-diurnal, three-diurnal, running loss, and refueling emission standards. EPA may perform confirmatory 2-diurnal evaporative emission testing on certification test vehicles which are certified using this option (even though the manufacturer may not have performed a 2-diurnal evaporative test during the certification process). If data shows noncompliance, noncompliance will be addressed through 86.1851. As well, if data shows noncompliance, EPA may not normally allow for subsequent waivers for the applicable evaporative family.

(B) Manufacturers shall supply information if requested by EPA in support of the statement of compliance outlined in paragraph (b)(2)(iii) of this section. This information shall include evaporative calibration information for the emission-data test vehicle and for other vehicles in the evaporative/refueling family, including, but not limited to, canister type, canister volume, canister working capacity, fuel tank volume, fuel tank geometry, the type of fuel delivery system (return, returnless, variable flow fuel pump, etc.), a description of the input parameters and software strategy used to control the evaporative canister purge, the nominal purge flow volume (in bed volumes) when vehicles are driven over the 2-diurnal (FTP) driving cycle, the nominal purge flow volume (in bed volumes) when vehicles are driven over the 3-diurnal (FTP + running loss) driving cycle, and other supporting information as necessary to demonstrate that the purge flow rate calibration on the 2-diurnal test sequence is adequate to comply with the evaporative emission standard for the supplemental two-diurnal test sequence.

* * * * *

■ 17. Section 86.1845–01 is amended by revising paragraph (c)(5)(ii) to read as follows:

§ 86.1845–01 Manufacturer in-use verification testing requirements.

* * * * *

(c) * * *

(5) * * *

(ii) For non-gaseous fueled vehicles, one test vehicle of each evaporative/refueling family shall be tested in accordance with the supplemental 2-diurnal-plus-hot-soak evaporative emission and refueling emission procedures described in subpart B of this part, when such test vehicle is tested for compliance with applicable evaporative emission and refueling standards under this subpart. For gaseous fueled vehicles, one test vehicle of each evaporative/refueling family shall be tested in accordance with the 3-diurnal-plus-hot-soak evaporative emission and refueling emission procedures described in subpart B of this part, when such test vehicle is tested for compliance with applicable evaporative emission and refueling standards under this subpart. The test vehicles tested to fulfill the evaporative/refueling testing requirement of this paragraph (c)(5)(ii) will be counted when determining compliance with the minimum number of vehicles as specified in Table S01–06 and Table S01–07 in paragraph (c)(3) of this section for testing under paragraph (c)(5)(i) of this section only if the vehicle is also tested for exhaust emissions under the requirements of paragraph (c)(5)(i) of this section.

* * * * *

■ 18. Section 86.1845–04 is amended by revising paragraph (b)(5)(ii) and (c)(5)(ii) to read as follows:

§ 86.1845–04 Manufacturer in-use verification testing requirements.

* * * * *

(b) * * *

(5) * * *

(ii) For non-gaseous fueled vehicles, one test vehicle of each evaporative/refueling family shall be tested in accordance with the supplemental 2-diurnal-plus-hot-soak evaporative emission and refueling emission procedures described in subpart B of this part, when such test vehicle is tested for compliance with applicable evaporative emission and refueling standards under this subpart. For gaseous fueled vehicles, one test vehicle of each evaporative/refueling family shall be tested in accordance with the 3-diurnal-plus-hot-soak evaporative emission and refueling emission procedures described in subpart B of this part, when such test vehicle is tested for compliance with applicable evaporative emission and refueling standards under this subpart. The test vehicles tested to fulfill the evaporative/refueling testing requirement of this paragraph (b)(5)(ii) will be counted when determining compliance with the minimum number of vehicles as specified in Table S04–06 and Table S04–07 in paragraph (b)(3) of this section for testing under paragraph (b)(5)(i) of this section only if the vehicle is also tested for exhaust emissions under the requirements of paragraph (b)(5)(i) of this section.

* * * * *

(c) * * *

(5) * * *

(ii) For non-gaseous fueled vehicles, one test vehicle of each evaporative/refueling family shall be tested in accordance with the supplemental 2-diurnal-plus-hot-soak evaporative emission procedures described in subpart B of this part, when such test vehicle is tested for compliance with applicable evaporative emission and refueling standards under this subpart. For gaseous fueled vehicles, one test vehicle of each evaporative/refueling family shall be tested in accordance with the 3-diurnal-plus-hot-soak evaporative emission procedures described in subpart B of this part, when such test vehicle is tested for compliance with applicable evaporative emission and refueling standards under this subpart. The test vehicles tested to fulfill the evaporative/refueling testing requirement of this paragraph (b)(5)(ii) will be counted when determining compliance with the minimum number of vehicles as specified in Table S04–06 and table S04–07 in paragraph (b)(3) of this section for testing under paragraph (b)(5)(i) of this section only if the vehicle is also tested for exhaust emissions under the requirements of paragraph (b)(5)(i) of this section.

* * * * *

[FR Doc. 05–23714 Filed 12–7–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 173

Shippers—General Requirements for Shipments and Packagings

CFR Correction

In Title 49 of the Code of Federal Regulations, parts 100 to 185, revised as of October 1, 2004, on page 591, § 173.315 is corrected by adding paragraph (i)(8) to read as follows:

§ 173.315 Compressed gases in cargo tanks and portable tanks.

* * * * *

(i) * * *

(8) Each pressure relief valve outlet must be provided with a protective device to prevent the entrance and accumulation of dirt and water. This device must not impede flow through the valve. Pressure relief devices must be designed to prevent the entry of foreign matter, the leakage of liquid and the development of any dangerous excess pressure.

[FR Doc. 05–55517 Filed 12–7–05; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

49 CFR Part 1540

RIN 1652–ZA09

Prohibited Items; Allowing Small Scissors and Small Tools

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Interpretive rule.

SUMMARY: To enable transportation security officers to concentrate on more effectively confronting the threat of concealed explosives being taken into the cabin of an aircraft, the Transportation Security Administration (TSA) is removing certain low threat, high volume, and easily identified items from the prohibited items list. This document amends the TSA interpretive rule that provides guidance to the public on the types of items that TSA considers to be weapons, explosives, and incendiaries, and which are therefore prohibited in airport sterile areas, in the cabins of aircraft, or in passengers' checked baggage. This document removes small scissors and certain small tools from the prohibited items list and adds them to the permitted items list.

DATES: Effective December 22, 2005.

FOR FURTHER INFORMATION CONTACT: John Randol, Security Operations, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220; telephone (571) 227–1796.

SUPPLEMENTARY INFORMATION:

Availability of Documents

You can get an electronic copy using the Internet by—

(1) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html;* or

(2) Visiting TSA's Law and Policy Web page at *http://www.tsa.gov* and accessing the link for ''Law and Policy'' at the top of the page.

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this rulemaking.

Statutory and Regulatory Background

TSA is responsible for security in all modes of transportation, including aviation. See 49 U.S.C. 114(d). TSA restricts what passengers may carry into the sterile areas of airports and into the cabins of air carrier aircraft. Under TSA's regulation for acceptance and screening of individuals and accessible property, 49 CFR 1540.111, an individual (other than a law enforcement or other authorized individual) may not have a weapon, explosive, or incendiary, on or about the individual's person or accessible property—

- When performance has begun of the inspection of the individual's person or accessible property before entering a sterile area, or before boarding an aircraft for which screening is conducted under § 1544.201 or § 1546.201 of this chapter;
- When the individual is entering or in a sterile area; or
- When the individual is attempting to board or onboard an aircraft for which screening is conducted under § 1544.201 or § 1546.201 of this chapter.

On February 14, 2003, TSA published an interpretive rule that provided guidance to the public on the types of