

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 86**

[FRL-8019-1]

RIN 2060-AN01

Component Durability Procedures for New Light-Duty Vehicles, Light-Duty Trucks and Heavy-Duty Vehicles**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Supplemental Notice of Proposed Rulemaking.

SUMMARY: On April 2, 2004 (69 FR 17531), EPA issued a notice of proposed rulemaking (NPRM) to propose procedures to be used by manufacturers of light-duty vehicles, light-duty trucks and heavy-duty vehicles to demonstrate, for purposes of emission certification, that new motor vehicles will comply with EPA emissions standards throughout their useful lives. The NPRM proposed emissions certification durability procedures to be used by manufacturers to demonstrate the expected rate of deterioration of the emission levels of their vehicles. The Agency received several comments concerning the component durability portion of the durability process. Options for addressing component durability were not discussed in the April 2004 proposal, and EPA believes it is appropriate to address component durability in a supplemental proposal. Therefore, EPA is issuing this action to request comments on three options for addressing component durability during the vehicle emissions certification process.

DATES: Written comments on this SNPRM must be submitted on or before February 16, 2006. A public hearing will be held on February 1, 2006. Requests to present oral testimony must be received on or before January 27, 2006. If EPA receives no requests to present oral testimony by this date, the hearing will be canceled.

ADDRESSES: *Comments:* Comments may be submitted by mail to: Air Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OAR-2002-0079. Comments may also be submitted electronically, by facsimile, or through hand delivery/courier. For more information submitting comments and on the comment procedure and public hearings, follow the detailed instructions as provided in Section XI, "Public Participation" section. We must receive them by the date indicated

under **DATES** above. Paper copies of written comments (in duplicate if possible) should also be sent to the general contact person listed below.

Docket: EPA's Air Docket makes materials related to this rulemaking available for review in Public Docket No. A-2002-0079 at the following address: U.S. Environmental Protection Agency (EPA), Air Docket (6102), Room M-1500 (on the ground floor in Waterside Mall), 401 M Street, SW., Washington, DC 20460 between 8 a.m. to 5:30 p.m., Monday through Friday, except on government holidays. You can reach the Air Docket by telephone at (202) 260-7548, and by facsimile (202) 260-4400. We may charge a reasonable fee for copying docket materials, as provided in 40 CFR part 2.

FOR FURTHER INFORMATION CONTACT:

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I. Why is this Action being taken?

The demonstration of light-duty vehicle emission durability for purposes of certification consists of two elements: Emission deterioration and component durability. On April 2, 2004, EPA published an NPRM that proposed durability procedures to be used by manufacturers to demonstrate the expected rate of deterioration of the emission levels of their vehicles. The proposal did not make any changes to component durability procedures. It carried over the component durability requirements from the updated certification regulations for light-duty vehicles and light-duty trucks published in 1999 known as "CAP 2000" (Compliance Assurance Program). EPA received several comments on the NPRM pertaining to component durability.

Because of the complex nature of the comments, we determined that the issue of component durability warranted further consideration and discussion. EPA intends to proceed with finalization of the emission deterioration procedures discussed in the NPRM, but will consider issues regarding component durability in this supplemental proposal.

II. History of EPA's Component Durability Requirements**A. Pre-1994 Component Durability**

Prior to 1994, EPA's regulations (ref. 40 CFR part 86) specified the method to demonstrate a vehicle's emission durability. The method used a whole vehicle mileage accumulation cycle, commonly referred to as the Approved Mileage Accumulation (AMA) cycle.¹ It required manufacturers to accumulate mileage on a pre-production vehicle, known as a durability data vehicle (DDV), by driving it over the prescribed AMA driving cycle for the full useful life mileage.² This was to simulate the real-world aging of the vehicle's emissions control systems and components over the useful life. The AMA whole vehicle mileage accumulation was used to develop evidence to demonstrate both component durability and emission deterioration. Component durability is a demonstration that all emission-related components are designed to operate properly for the full useful life of the vehicles in actual use. Successful

¹ Ref. 40 CFR Part 86 Appendix IV.

² Useful life is the period of use (mileage) or time during which an emission standard applies to light-duty vehicles and light-duty trucks. For most light-duty vehicles and light-duty trucks, the useful life requirement is 120,000 miles or 10 years, which ever comes first (86.1805-01 and 86.1805-04).

completion of the required whole vehicle useful life mileage accumulation without the need to replace or adjust those components (beyond that allowed by regulation) provided evidence that those components could be considered durable and would operate properly for the full useful life. Separate or additional evidence of component durability was not developed.

B. Revised Durability Program (RDP) and Component Durability

EPA's first separate component durability demonstration requirements came with the promulgation of the revised durability program (RDP)³. Under these provisions (which took effect in 1994), manufacturers were given options for demonstrating emission deterioration. One option allowed rapid bench-aging techniques instead of mileage accumulation on a whole vehicle to conduct emission deterioration evaluation. In the preamble to the proposed RDP rule, EPA stated that "accumulation of mileage by the DDVs provides valuable information on the physical durability of individual emission-related components, because these components are exercised during the operation of the DDV." [57 FR 18545, April 30, 1992.] EPA went on to propose conditions under which it would issue a certificate of conformity for manufacturers using the rapid aging techniques. One of these conditions was that "the manufacturer provides data that shows to the satisfaction of the Administrator that all emission-related components are designed to properly operate for the useful life of the vehicles in actual use (or such minimum intervals, as specified in allowable scheduled maintenance regulations)." "[Id. at 18548]" EPA adopted this condition in its final RDP rule. The regulations required that manufacturers using the rapid aging option were required to "provide reliability data that shows to the Administrator's satisfaction that all emission-related components are designed to operate properly for the durability useful life of the vehicles in actual use (or such shorter intervals as permitted in section § 86.094-25)." [40 CFR 86.094-13(e)(7)(ii)].

When implementing the RDP regulations, EPA issued a guidance letter which provided further instructions to manufacturers on the process to obtain EPA approval to use alternate durability processes.⁴ The

guidance addressed component durability by stating that "[F]or each ASADP [Alternate Service Accumulation Durability Process, also known as "RDP"] engine family, the manufacturer should submit a plan to demonstrate component durability for that engine family. Sources of data for component durability are defect reports, bench testing of components, and other similar data." In meeting these requirements, many manufacturers demonstrated to us their own extensive validation process to ensure the durability of the components used in production vehicles.⁵ It was clear that the scope of this validation work far exceeded in rigor the durability demonstration requirement of running a single pre-production prototype vehicle on a driving cycle for the full useful life mileage. Thus, the manufacturer component validation processes added significant assurance of component durability, and in fact is the primary source of such assurance.

C. CAP 2000 Regulations and Component Durability

The CAP 2000 rulemaking (applicable beginning with the 2001 model year), was a comprehensive update to the entire light-duty vehicle certification process. A major part of this involved the manufacturer's required demonstration of emission durability. The Agency eliminated the use of the AMA cycle as the default mileage accumulation cycle. In CAP 2000, the Agency replaced the AMA-based durability program with a durability process similar to the optional Revised Durability Program (RDP). Each manufacturer, except small manufacturers, was required to develop an emission durability process which would accurately predict in-use deterioration of the vehicles they produce. The manufacturer had the flexibility to design an efficient program that met that objective.

The manufacturer's plan was then reviewed by EPA for approval. Many manufacturers continued using the

processes previously approved under the RDP program. Approval from the Agency for purposes of CAP 2000 required a demonstration that the emission deterioration process was designed to generate emission deterioration factors (DFs) representative of in-use deterioration. This demonstration was more than simply matching average in-use deterioration with DFs. Manufacturers needed to demonstrate to EPA's satisfaction that their durability process would result in the same or more emissions deterioration than is reflected by the in-use data for a significant majority of their vehicles. If, in the course of EPA's review, we found that certain aspects of a manufacturer's plan were inadequate, we would make recommendations to the manufacturer as to how to improve their plan and the manufacturer would make the appropriate modifications. Upon the conclusion of our extensive review, we would approve the plan.

EPA also adopted a component durability provision applicable to all vehicles that required manufacturers to "use good engineering judgment to determine that all emission-related components are designed to operate properly for the full useful life of the vehicles in actual use."⁶ While the manufacturer did not need to submit the underlying engineering evaluation with its certification application, EPA reserved the right to evaluate the basis underlying this engineering determination. 40 CFR 86.1823-01(e), 86.1824-01(d), 86.1825-01(e), 86.1826-01(c).

This component durability requirement was based on our experience under RDP, in which we obtained significant information about manufacturers' internal component validation processes. In general, information from defect reports, in-use testing, and in-use on-board diagnostics (OBD) data indicated that problems usually occurred at the production stage or later.⁷ EPA was confident that

⁶ Ref. 40 CFR 18.1823-01(e) and EPA Guidance Letter No. CD-94-13, "Alternative Durability Guidance for MY94 through MY98", dated July 29, 1994.

⁷ The On-Board Diagnostic (OBD) systems regulations (40 CFR 86.1808-01) require the on-board computer to monitor most emission control components and illuminate a dashboard light when the components fail or operate improperly. The defect reporting regulations (40 CFR 86.1903) require manufacturers to report occurrences of a significant number of defective emission control components to the Agency. The recall provisions (40 CFR 85 Subpart S) allow EPA to order recalls when properly maintained and used vehicles fail to comply with the applicable regulations promulgated under section 202 of the Clean Air Act. All of these are important means for

³ Ref. 59 FR 36368 (July 18, 1994), 62 FR 11082 (March 11, 1997), 62 FR 11138 (March 11, 1997) and 62 FR 44872 (August 22, 1997).

⁴ CD-94-13 July 24, 1994.

⁵ Emission related parts and systems are evaluated for durability by manufacturers during the vehicle and emission control system development process. Evaluations can take several forms including mileage accumulation, engineering evaluations, validation testing, and computer simulations. Manufacturers use these processes to develop performance and design specifications that are supplied to part vendors and/or used during their own manufacturing processes. During production of these parts, manufacturers evaluate random samples of parts to assure compliance with design specifications. The supplier who designs the emission components for the vehicle manufacturer perform extensive product validation testing to ensure that the component design is durable before it is ever used on the vehicle.

manufacturers would continue using their component validation processes and other component-related information for component durability as a basis to develop the good engineering judgement that was required. The CAP 2000 regulations include a provision allowing EPA to review and evaluate the basis for a manufacturer's engineering judgment decision, when appropriate.

III. What comments has EPA received on component durability?

Comments related to component durability were submitted to the EPA Docket A-2002-0079 during the comment period for the proposed emissions deterioration rule being finalized in a separate action today. These comments are summarized below. In today's SNPRM, EPA is seeking comments in addition to those already submitted.

The comments were submitted by the Afton Corporation (Afton, formerly Ethyl Corporation) and jointly by the Alliance of Automobile Manufacturers (Alliance and the Association of International Automobile Manufacturers (AIAM)).

Afton comments (May 17):

- Based on recent events pointing to an emission component failure allegedly caused by one of Afton's products and Afton's investigation of emission-related component defect reports from recent model years, Afton questions whether an exclusive focus on thermal aging of the catalytic converter and oxygen sensor provides an adequate means to ensure proper vehicle operation in the field.

- EPA has failed to propose test methods and procedures for assessing the durability of emission control system components as required under Section 206 of the CAA as ordered by the Court in *Ethyl Corp. v. EPA*. EPA has clearly recognized that certification requires "testing of emission system component durability". CAP 2000 regulations require manufacturers to provide a description of the procedures used to establish durability *and* exhaust * * * deterioration factors; indicating that component durability is a necessary part of certification.

- EPA's component durability requirements of good engineering judgment allow EPA and manufacturers to agree on the methods and procedures for testing component durability on a

case-by-case basis is in violation of CAA Section 206(d), thus falling on the Court's "forbidden side of the line".

- EPA has instead proposed that manufacturers continue to develop test methods and procedures for component durability on a case-by-case basis, without rulemaking.

- EPA should focus on emission control components as a system, rather than as individual components. How the system performs as a whole in the field cannot be captured by thermal aging of the catalytic converter.

- Evidence that components are failing in use is found in the defect reports submitted by manufacturers, showing that millions of vehicles are affected by defects, but very few are recalled.

- Component durability must include insurance (1) the durability of each component, (2) the durability of the entire emission control system operated in an integrated manner and (3) any deterioration in an otherwise durable system of components will not cause emissions to exceed the useful life standards.

- A catalyst cannot be "overaged" to mimic component defects when such defect would cause an emission failure, because this would preclude certification.

- EPA provided no factual basis in the docket supporting its presumption that all components will be durable. Defect reports submitted by manufacturers indicate otherwise.

- Congress intended certification to include assurance of component durability. By limiting the warranty period Congress was recognizing that other elements of the regulatory program would protect the consumer, citing H.R. Rep. No. 101-490 at 308 (1990).

Alliance/AIAM comments (June 17):

- CAA provisions are clear that Congress' concern was the ability of vehicles to comply with standards over useful life. Durability NPRM complies with this by implementing SRC as a baseline stringency for demonstrating emission control system durability, similar to how the AMA had done prior to CAP 2000. System durability is a function of the durability of its components.

- Nothing in CAA purports to require separate durability tests for each and every component of a system.

- Contrary to Afton contention, component durability has never been done as a separate analysis of each individual component, nor does the law require it to be handled in such a manner.

- No need to establish separate procedures since the SRC provides requisite stringency level for components as well as system as a whole.

- Court did not cite 86.1823(e) in its opinion.

- 1823(e) goes beyond CAA testing requirements in requiring manufacturers to make a qualitative evaluation of component durability.

- Afton's use of defect reports as evidence of widespread ineffectiveness of component durability is flagrant misinterpretation of the reports. These reports summarize manufacturing problems, installation of incorrect components, or components not functioning as intended. No amount of durability testing on design intent systems would uncover such issues. The defect reporting threshold of 25 known occurrences is not necessarily indicative of systematic problem, exceedance of standards or even an emissions increase.

- Best way to address impact of fuel additives on component durability is through the regulations under CAA 211 for fuel additives

- EPA regulations have never imposed requirements that manufacturers conduct tests to evaluate component durability.

- Component-by-component durability testing not feasible for certification.

Afton Response comments (Aug 5):

- Agrees with industry claim that SRC sets the threshold stringency for emission control system as a whole and supports that EPA clarify this.

- Disagrees that EPA has never imposed a test requirement for component durability. Prior to RDP, AMA useful life driving was the test. With RDP, the requirement was for mfrs. to demonstrate full-life durability for all emission related components. CAP 2000 clearly contains a requirement for component durability testing.

- Agree with mfr that durability of a system is a function of the durability of its components and confirms concerns about merit of relying exclusively on thermal aging of cat and O₂ sensor. Not clear how bench aging cat is sufficient to assess the many other components of a system.

IV. What are the differences between component durability and emissions deterioration?

For the purpose of emission certification, EPA evaluates component durability to determine whether emission control system components are designed to operate properly for the full useful life in actual use. More specifically, component durability is a

identifying and repairing or replacing failed emission components in use. However, they also serve the important function of alerting manufacturers and the Agency of potential design or manufacturing problems that need to be addressed and resolved so that they are prevented in future model years.

demonstration that the emission control components will not break and will continue to operate as described in the Application for Certification during the minimum maintenance interval prescribed in 40 CFR 86.1834–01. The factors that can effect emissions control components fall into three general categories: In-use exposure, design flaws and production factors. In-use exposure is the expected normal wear and tear resulting from exposure to the elements and the vehicle's operating environment. Design flaws result in the unintentional failure of a component as a result of a poor design. Production factors consist of manufacturing problems and installation problems (e.g., installation of incorrect parts or improper installation of correct parts on the assembly line). The assurance needed at the time of emission certification is that the components are designed to operate properly for the full useful life in actual use. The certification process, because it occurs pre-production, cannot predict problems that may occur during the manufacturing or installation of emission components. EPA has other mechanisms in place (such as defect reporting and other in-use programs) which help to identify and correct manufacturing or installation problems. The component durability process is designed to provide EPA with adequate information to make the required pre-production certification decision.

In contrast to component durability, EPA's emission deterioration procedures, finalized in a separate action are designed to provide a quantitative prediction of how the emissions of a vehicle will deteriorate over time. The deterioration factor (DF) is a measure of the deterioration. Successful completion of the emission deterioration combined with adequate demonstration of component durability informs EPA that vehicles are likely to comply with emission standards for their useful life. Although some of the emission components may not actually be installed on the vehicle during the required emissions deterioration testing during a bench aging procedure (which ages only the catalytic converter and oxygen sensor), the results of this procedure (e.g. the deterioration factors) are applied to an entire vehicle, including any and all emission control components and systems that will be used.

V. Statutory Authority

Section 206(a)(1) of the Clean Air Act states that the Administrator shall test, or require to be tested in such a manner as he deems appropriate, any new motor

vehicle or new motor vehicle engine submitted by a manufacturer to determine whether such vehicle or engine conforms with the emission standard regulations. 42 U.S.C. 7521(a)(1). Section 206(d) states that the Administrator shall by regulation establish methods and procedures for making tests under this section. 42 U.S.C. 7525(d). If such a vehicle conforms with the regulations prescribing establishing emissions standards, the Administrator shall issue a certificate of conformity. 42 U.S.C. 7525(a). The statute also requires that the vehicle conform to the standard for its useful life. 42 U.S.C. 7521(a)(1).

VI. How has EPA evaluated component durability in the past in deciding to issue a certificate under CAA section 206?

Issuance of a certificate of conformity is based on EPA determining whether the vehicle or group of vehicles will conform to the applicable emissions standards over the applicable useful life period. EPA has traditionally evaluated two forms of durability in making this pre-production determination—emissions deterioration and component durability. For many years EPA relied on the whole vehicle mileage accumulation process, used to evaluate emissions deterioration, to also evaluate component durability. When EPA later allowed a manufacturer to accelerate aging of a vehicle under RDP, EPA required submission of reliability data showing that all emission related components were designed to operate properly for the useful life of the vehicles in actual use. See 40 CFR 86.094–13(e)(7)(ii). Under CAP 2000, EPA required the manufacturer to determine, using good engineering judgement, that all emission-related components are designed to operate properly for the full useful life of the vehicle in actual use. While the manufacturer did not need to submit the underlying engineering evaluation with its certification application, EPA reserved the right to evaluate the basis underlying this engineering determination. 40 CFR 86.1823–01(e), 86.1824–01(d), 86.1825–01(e), 86.1826–01(c).

EPA continues to believe that the durability demonstration for purposes of certification should consist of two elements: emission deterioration and component durability.⁸ Therefore, EPA will evaluate component durability at the certification stage as part of ensuring

that a new motor vehicle will meet the emissions standards for its useful life.

VII. Is EPA required to use testing to evaluate component durability?

Section 206(a)(1) clearly requires that EPA either conduct or require manufacturers to conduct testing as part of the certification process. At the same time, this section does not preclude EPA from also relying on information other than that derived from testing. This provision provides significant discretion to EPA to determine the appropriate mix of information from required testing and information from other sources for use in determining whether a vehicle or group of vehicles will be expected to comply with the emissions standards for their useful lives.

In this case, EPA is clearly requiring a significant amount of emissions durability testing to be performed for purposes of certification. The required testing is focused on obtaining information useful to determine emissions deterioration. EPA believes that the kind of emissions durability testing required by EPA will provide information that is highly useful in determining how the emissions performance of the emissions control system can be expected to deteriorate over the useful life of the vehicle. The issue in this proposal concerns whether additional or different durability testing should also be required to obtain information to evaluate component durability, or whether it is appropriate to require manufacturers to develop information concerning component durability in a manner other than requiring testing of component durability. EPA believes that CAA section 206(a)(1), which limits required testing to testing “in such manner as [the Administrator] deems appropriate,” provides discretion in these circumstances on whether and how EPA requires testing to obtain information to evaluate component durability as part of the certification process. 42 U.S.C. 7521(a)(1).

EPA recognizes that there are various ways that information can be obtained on component durability for purposes of pre-production certification. One method that EPA has used in the past involves requiring whole vehicle mileage accumulation to test component durability, as was done under the AMA program. However whole vehicle mileage accumulation provides only a limited kind of information on component durability, basically a simple pass-fail test that is not very probative of component durability. Another method that EPA has used in the past involves requiring the

⁸ 69 FR 17532 (April 2, 2004).

manufacturer to conduct an engineering analysis to evaluate component durability for the entire emissions control system. This allows the evaluation of a wide variety of different types of information, including information ranging from real world in-use experience to performance information on a supplier's products and the supplier's quality control practices and can include computer modeling of design performance. Actual physical testing of a product or system may make up only a small part and perhaps no part at all of the information used to perform such an engineering evaluation. EPA believes that in many ways that kind of engineering evaluation, tailored to the parts and systems at issue, can provide a more in-depth and comprehensive evaluation and result in a better real world prediction of in-use durability than a simple pass-fail type of test using whole vehicle mileage accumulation on a pre-production prototype vehicle.

Given the potential benefit for in-use emissions control in using such an engineering evaluation approach, EPA believes it is reasonable and within the discretion provided by section 206(a)(1) to consider an option requiring a manufacturer to conduct such an engineering evaluation of component durability, and not require the manufacturer to perform a specified test for component durability. This engineering evaluation would then be combined with the results of testing performed to evaluate emissions deterioration, as well as any other relevant information, in making the conformity determination required for issuance of a certificate. Under this engineering evaluation option, EPA would not specify a test procedure under section 206(d) for component durability, as EPA is not requiring component durability testing. EPA believes the requirement of section 206(d) only applies where EPA requires testing to be conducted under section 206(a)(1), as it does for evaluation of emissions deterioration.

EPA is also considering requiring manufacturers to conduct a limited amount of whole vehicle aging to test component durability. Both options are discussed in more detail below.

VIII. What options are being considered by EPA?

EPA is today proposing three options to address component durability. Based upon further comments received, EPA intends to finalize one of these options.

A. Retain the Good Engineering Judgement Determination on Component Durability

In this option, EPA would retain the approach taken in the component durability regulations contained in the original CAP 2000 regulations (40 CFR 86.1823–01(e), 86.1824–01(d), 86.1825–01(e), and 86.1826–01(c)). Under CAP 2000, EPA required the manufacturer to determine, using good engineering judgement, that all emission-related components are designed to operate properly for the full useful life of the vehicle in actual use. While the manufacturer did not need to submit the underlying engineering evaluation with its certification application, EPA reserved the right to evaluate the basis underlying this engineering judgement determination (40 CFR 86.1844(g)(1)).

EPA's experience indicates that the basis for past determinations of component durability good engineering judgement came from a wide variety of sources. In some cases, the determination has been based on accelerated customer fleet vehicles or other durability mileage data, component bench testing, engineering analysis data, computer modeling data, purchase agreements, component specifications, or other information. However, it was never based on testing alone. Even though the basis for the good engineering judgement may include reliance on a limited amount of testing, in general, the preponderance of the data is derived from sources other than testing.

EPA's requirement to make the good engineering judgement determination does not constitute a requirement to do testing. Under this option, EPA would not specify what information manufacturers must rely on as a basis for making the good engineering judgement determination. Even though some of the information may be a result of some testing, EPA does not consider this a requirement to conduct testing, since testing is not required as a basis for the good engineering judgement statement and typically is, at most, a limited part of the engineering determination. Because testing is not required, EPA is not required to "establish methods and procedures for making tests by regulation," and section 206(d) does not apply. 42 U.S.C. 7525(d).

B. Good Engineering Judgement Determination Combined With Whole Vehicle Testing for Worst-Case Vehicle Configuration

This option would require manufacturers to continue to make the

good engineering judgement determination, as discussed above in option A, but would also require manufacturers to conduct a limited amount of whole vehicle aging. This option would include the requirement to perform full useful life mileage accumulation, using either the EPA Standard Road Cycle (included in final rulemaking issued concurrently with this SNPRM), or a modified or alternative cycle approved by EPA. In this option EPA would allow any whole mileage accumulation cycle which EPA has approved for emission deterioration to be used for demonstrating component durability.

The vehicle's OBD system is designed to monitor most emission control components and report faults by illuminating malfunction indicator light (MIL). Consequently, EPA is proposing that the OBD light will be used to detect emission control component failures during mileage accumulation. The manufacturer must record any OBD MIL illumination during the course of the mileage accumulation and also record readiness codes and active fault codes on the OBD system proceeding and following each FTP test conducted. As a further demonstration of component durability, EPA is proposing that the vehicle demonstrate compliance with all applicable FTP standards following mileage accumulation.

The same vehicle used for the component durability demonstration could also be used for emission deterioration purposes for either exhaust or evaporative emissions. Under this option, manufacturers would choose a vehicle expected to be "worst case" for emission component durability. Manufacturers would be allowed to apply the component durability demonstration from that vehicle to other vehicles across other test groups having components similar enough that the vehicle tested would be reasonably considered worst case (known as "carry across"). EPA would also permit manufacturers to "carry over" a component durability demonstration from a previous model year to subsequent model years, when appropriate. Although EPA does not view it as essential, some limited whole-vehicle testing in addition to good engineering judgement determination would provide a limited amount of additional component durability information using the entire vehicle emission control system operated in an integrated manner. This information would enhance the data received from the good engineering requirements that already come from a wide variety of sources. EPA would continue to

augment its evaluation of component durability with an assessment of the information from the defect reports, IUV data, recall data, etc.

We are limiting the whole-vehicle testing to a "worst case" configuration rather than requiring it for all durability groups⁹ to limit the additional durability test burden to manufacturers, recognizing that EPA believes the whole vehicle aging provides only a limited benefit on top of that obtained from good engineering judgement determinations. One of the benefits of allowing bench-aging in evaluating emissions deterioration is that emission deterioration testing can be done much quicker than with whole-vehicle testing. Whole vehicle testing can take up to four months to complete, whereas bench aging can be completed within several weeks. The CAP 2000 rulemaking and the emissions deterioration regulations issues separately from this notice, provide highly valuable information on emission deterioration in a manner that minimizes the testing burden on manufacturers. Requiring whole-vehicle testing for all durability groups would effectively defeat this aspect of CAP 2000 for many manufacturers, since those manufacturers that use bench aging would also be required to perform whole-vehicle testing, dramatically increasing their testing burden and it would provide only limited additional benefit in evaluating component durability.

Because most of the emission control technologies and components used by manufacturers are very similar in design and function among their different vehicle models, we are confident that whole-vehicle test data from a "worst case" component durability vehicle in conjunction with the information from the manufacturer's good engineering assessment will be sufficient for EPA to make a determination as to whether a manufacturer's durability plan is acceptable. Since the emission control components are similar in design and function, one of the most significant differences between vehicle models is the location of the components on the vehicle. The worst case vehicle may likely be the vehicle that has "packaging" constraints where some components have to be located on the

⁹Manufacturers divide their motor vehicles into groups called "durability groups" which include vehicles which are likely to exhibit similar exhaust emission deterioration over their useful lives, based on those characteristics of current-technology vehicles that most significantly affect the deterioration of emission control over time. Durability groups are based on engine type, fuel type, fuel system, catalyst construction, type of precious metals used in the catalyst, and relative engine/catalyst size and loading rates.

vehicle in placements that may make them more susceptible to damage, wear, or failure.

C. Good Engineering Judgement Determination Combined With Whole Vehicle Testing for Vehicle Configurations With New Types of Components or Technology

This option would be identical to option B above except that instead of testing the "worst case" vehicle, the manufacturer would only test a vehicle when a new type of component or a new technology was being introduced. A new type of component or technology would be defined as a component or technology that has not been previously used in production by that manufacturer.¹⁰ A manufacturer would have to get approval from EPA before determining whether a component would be considered new. New components or technologies not yet used on production vehicles but that have been used on prototype or development vehicles would be subject to the whole-vehicle mileage accumulation and testing.

Requiring whole-vehicle testing for new types of technology would limit the testing to the vehicles where typically less is known about component durability. The information provided from the good engineering assessment would be used generally to assess component durability and this option would require additional information on component durability from whole-vehicle testing for technologies or components that are new to a manufacturer, where they typically have less data or information to evaluate component durability.

IX. Request for Comments

EPA requests comments on each of these proposed options, in terms of their technical and legal merits. In particular, comments are requested on the following topics:

- The burden of Options B and C on regulated entities, including supporting data for those conclusions, where possible.
- The extent to which Options B and C provide any additional environmental benefit over Option A.
- Whether whole-vehicle mileage accumulation and related emissions testing provides an adequate demonstration of component durability, and what other options exist for demonstrating component durability prior to certification.

¹⁰An example of a new type of component or technology would be a manufacturer switching from vacuum-based EGR to electronic EGR.

• Any comment which augments those already submitted to the Docket for this rulemaking.

• Whether the options are consistent with section 206 of the CAA.

X. What are the environmental and economic impacts?

A. Environmental Impacts

No quantifiable environmental impacts are anticipated by this proposed rule. Having appropriate procedures to address component durability in the certification process helps to ensure that the benefits already claimed in the regulations promulgating those standards are more likely to be realized. However, even absent this proposal, there are other requirements in place which help to ensure that manufacturers make durable emissions components: customer satisfaction, In-Use Verification Program (IUV), and, EPA recall authority among others.

B. Economic Impacts

Under option A, there would be no economic impact. Manufacturers would be allowed to continue using their good engineering judgment to determine component durability. For options B and C there would be some economic impact. Some manufacturers use whole-vehicle testing exclusively. For those manufacturers, there would be no need to perform any additional whole-vehicle testing for component durability purposes. Other manufacturers use a combination of whole-vehicle testing and bench testing. These manufacturers could choose to test their "worst case" vehicle or any new type of emission control components or technologies as part of their already existing whole-vehicle test program. Thus, there would be no additional testing costs for them.

For those manufacturers who perform bench testing exclusively, there would be some economic impact. For option B, we would only require a manufacturer to perform whole-vehicle testing for the "worst case" vehicle configuration. Therefore, our cost estimate for option B is based on testing a single vehicle. We believe this same logic would apply for option C where a manufacturer is only required to perform whole-vehicle testing for new types of emission control components or technologies. We feel that for option C, a manufacturer would only be required to test a single vehicle as well. Our estimate of total annual cost of whole-vehicle testing for component durability is based on a single vehicle tested over the Standard Road Cycle for a useful life of 120,000 miles with periodic FTP emission tests. We estimated two FTP tests for the

minimum estimate and six FTP tests for the maximum estimate with costs ranging from \$800 to \$1,200 per FTP test. We did not include any Supplemental Federal Test Procedure (SFTP) tests.

Table X. B-1 presents the total annual cost for industry to perform whole-vehicle testing on a "worst case" vehicle or a vehicle equipped with a new type of emission control component or technology. We did not include any small volume manufacturers in our estimate. For a more conservative estimate, we included all manufacturers regardless of whether they currently perform whole-vehicle testing for emission deterioration. The estimated annual cost for industry to perform whole-vehicle testing would range from \$3,750,600 to \$5,401,200.

TABLE X.—B-1.—ESTIMATED ANNUAL COST TO INDUSTRY FOR WHOLE-VEHICLE TESTING

| Minimum cost | Maximum cost |
|--------------|--------------|
| \$3,750,600 | \$5,401,200 |

As can be seen in Table X. B-2, the estimated annual cost per manufacturer to perform whole-vehicle testing on a "worst case" vehicle or a vehicle equipped with a new type of emission control component or technology would range from \$178,600 to \$257,200.¹¹

TABLE X.—B-2.—ESTIMATED ANNUAL COST PER MANUFACTURER FOR WHOLE-VEHICLE TESTING

| Minimum cost | Maximum cost |
|--------------|--------------|
| \$178,600 | \$257,200 |

EPA has requested comment on the potential burden associated with the options it considered to require a minimum amount of whole-vehicle mileage accumulation. (See Sec. IV. above).

¹¹ These numbers were derived from the CAP 2000 rulemaking and can be found in the Support Document on the EPA Web site at <http://www.epa.gov/otaq>. We choose to use the more conservative 1999 dollar estimates, since the Producer Price Index (PPI) for 2004 actually decreased from the 1999 index value. The index used can be found on the U.S. Department of Labor Web site at <http://www.data.bls.gov>. Series Id: PCU336110336110.

XI. What are the opportunities for public participation?

A. Copies of This Proposal and Other Related Information

1. Docket

EPA has established an official public docket for this action under Docket ID No. OAR-2002-0079. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing by referencing Docket No. OAR-2002-0079 at the EPA Air Docket Section, (see **ADDRESSES** section above). You may submit comments electronically, by mail, or through hand delivery/courier as described below. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Section V.B.3 Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

2. Electronic Access

You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing

in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

B. Submitting Comments on This Proposal

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late."

EPA is not required to consider these late comments.

1. Electronically

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

a. EPA Dockets

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at <http://www.epa.gov/edocket>, and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "Quick Search," and then key in Docket ID No. OAR-2002-0079. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

b. E-mail

Comments may be sent by electronic mail to hormes.linda@epa.gov, Attention Docket ID No. OAR-2002-0079. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

c. Disk or CD ROM

You may submit comments on a disk or CD ROM that you mail to the mailing address identified in section I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. By Mail

Send your comments to: Air Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. OAR-2002-0079.

3. By Hand Delivery or Courier

Deliver your comments to: EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC., Attention Docket ID No. OAR-2002-0079. Such deliveries are only accepted during the Docket's normal hours of operation from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

4. By Facsimile

Fax your comments to: (202) 566-1741, Attention Docket ID. No. OAR-2002-0079.

5. Submitting Comments With Proprietary Information

Commenters who wish to submit proprietary information for consideration should clearly separate such information from other comments by (1) labeling proprietary information "Confidential Business Information" and (2) sending proprietary information directly to the contact person listed (see **FOR FURTHER INFORMATION CONTACT**) and not to the public docket. This helps insure that proprietary information is not inadvertently placed in the docket. If a commenter wants EPA to use a submission labeled as confidential business information as part of the basis for the final rule, then a non-confidential version of the document, which summarizes the key data or information, should be sent to the docket.

Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR Part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, the submission may be made available to the public without notifying the commenters.

C. Public Hearing

Anyone wishing to present testimony about this proposal at the public hearing (see **DATES**) should notify the general

contact person (see **FOR FURTHER INFORMATION CONTACT**) no later than five days prior to the day of the hearing. The contact person should be given an estimate of the time required for the presentation of testimony and notification of any need for audio/visual equipment. Testimony will be scheduled on a first come, first serve basis. A sign-up sheet will be available at the registration table the morning of the hearing for scheduling those who have not notified the contact earlier. This testimony will be scheduled on a first come, first serve basis to follow the previously scheduled testimony.

EPA requests that approximately 50 copies of the statement or material to be presented be brought to the hearing for distribution to the audience. In addition, EPA would find it helpful to receive an advanced copy of any statement or material to be presented at the hearing at least one week before the scheduled hearing date. This is to give EPA staff adequate time to review such material before the hearing. Such advanced copies should be submitted to the contact person listed.

The official records of the hearing will be kept open for 30 days following the hearing to allow submission of rebuttal and supplementary testimony. All such submissions should be directed to the Air Docket Section, Docket No. OAR-2002-0079 (see **ADDRESSES**). The hearing will be conducted informally, and technical rules of evidence will not apply. A written transcript of the hearing will be placed in the above docket for review. Anyone desiring to purchase a copy of the transcript should make individual arrangements with the court reporter recording the proceedings.

XII. What Are the Administrative Requirements for This Proposed Rule?

A. E.O. 12866: Regulatory Planning and Review

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

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, Local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA has determined that this proposed rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

Today's action proposes three different options under consideration for component durability testing. If option A is finalized, this action would not impose any new information collection burden. However, if options B or C were finalized, new information collection requirements would be imposed. The information collection requirements for options B or C in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 783.49.

The information being collected is to be used by EPA to ensure that new light-duty vehicles and light-duty trucks comply with applicable emissions standards through certification requirements including whole-vehicle testing for emission component durability assurance.

The annual public reporting and recordkeeping burden for this collection of information is estimated to average 88 hours per response, with collection required annually. The estimated number of respondents is 21. The total annual cost of the program is estimated to be \$3,750,600 per year and includes no annualized capital costs, \$101,640 in operating and maintenance costs, at a total of 1,848 hours per year.

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.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this rule, which includes this ICR, under Docket ID number. Submit any comments related to the ICR for this proposed rule to EPA and OMB. See "Addresses" section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after January 17, 2006, a comment to OMB is best assured of having its full effect if OMB receives it by February 16, 2006. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that manufactures automobiles as defined by NAIC code 336111. Based on Small Business Administration size standards, a small business for this NAIC code is defined as a manufacturer having less than 1000 employees; (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 proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The requirements are only applicable to manufacturers of motor vehicles, a group which does not contain a substantial number of small entities. Out of a total of approximately 80 automotive manufacturers subject to today's proposal, EPA estimates that approximately 15-20 of these could be classified as small entities based on SBA size standards. EPA's CAP 2000 compliance regulations include numerous regulatory relief provisions for such small entities. Those provisions remain in effect and are not impacted by today's proposal. Thus, we have determined that small entities will not experience any economic impact as a result of this proposal. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

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 action on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and proposed rules with "Federal mandates" that may result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. Before promulgation an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the proposed rule an explanation why that alternative was not adopted.

Before we establish any regulatory requirement that may significantly or uniquely affect small governments, including tribal governments, we must develop, under section 203 of the UMRA, a small government agency

plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of 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.

EPA believes this proposed rule contains no federal mandates for state, local, or tribal governments. Nor does this rule have federal mandates that may result in the expenditures of \$100 million or more in any year by the private sector as defined by the provisions of Title II of the UMRA. Nothing in the proposed rule would significantly or uniquely affect small governments.

E. Executive Order 13132 (Federalism)

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule will impose no direct compliance costs on states. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

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." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the

relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. The requirements proposed by this action impact private sector businesses, particularly the automotive and engine manufacturing industries. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Children's Health Protection

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 E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. This final rule is not subject to E.O. 13045 because it is based on technology performance and not on health or safety risks.

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

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

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, 12(d) (15 U.S.C. 272), directs the EPA to use voluntary consensus

standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rule does not involve consideration of any new technical standards. The durability test procedures that EPA is proposing are unique and have not been previously published in the public domain.

List of Subjects in 40 CFR Part 86

Environmental protection, Air pollution control, Motor vehicle pollution, Confidential business information, Reporting and recordkeeping requirements.

Dated: December 29, 2005.

Stephen L. Johnson,
Administrator.

For the reasons set out in the preamble, part 86 of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

Draft Regulatory Language for Option A

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 S—General Compliance Provisions for Control of Air Pollution From New and In-use Light-duty Vehicles, Light-duty Trucks, and Complete Otto-cycle Heavy-duty Vehicles

2. Amend § 86.1823-08 to revise paragraph (g) to read as follows:

§ 86.1823-08 Durability demonstration procedures for exhaust emissions.

* * * * *

(g) *Emission component durability.* The manufacturer shall use good engineering judgment to determine that all emission-related components are designed to operate properly for the full useful life of the vehicles in actual use.

* * * * *

3. Amend § 86.1824-08 to revise paragraph (h) to read as follows:

§ 86.1824–08 Durability demonstration procedures for evaporative emissions.

* * * * *

(h) *Emission component durability.* The manufacturer shall use good engineering judgment to determine that all evaporative emission-related components are designed to operate properly for the full useful life of the vehicles in actual use.

* * * * *

4. Amend § 86.1825–08 to revise paragraph (h) to read as follows:

§ 86.1825–08 Durability demonstration procedures for refueling emissions.

* * * * *

(h) *Emission component durability.* The manufacturer shall use good engineering judgment to determine that all emission-related components are designed to operate properly for the full useful life of the vehicles in actual use.

* * * * *

5. Amend § 86.1826–01 to revise paragraph (c) to read as follows:

§ 86.1826–01 Assigned deterioration factors for small volume manufacturers and small volume test groups.

* * * * *

(c) *Emission component durability.* The manufacturer shall use good engineering judgment to determine that all emission-related components are designed to operate properly for the full useful life of the vehicles in actual use.

Draft Regulatory Language for Option B

6. Amend § 86.1823–08 to revise paragraph (g) to read as follows:

§ 86.1823–08 Durability demonstration procedures for exhaust emissions.

* * * * *

(g) *Emission component durability.* Manufacturers must determine that all exhaust emission-related components are designed to operate properly for the full useful life of the vehicles in actual use. The manufacturer must demonstrate emission component durability using the following procedures.

(1) The manufacturer must determine using good engineering judgement the vehicle (or vehicles) that are worst case for component durability. In making this determination the manufacturer must evaluate their entire product line. For the vehicles that will be represented, the manufacturer must consider at a minimum all the following information:

(i) The past in-use history of component durability for the emission related parts;

(ii) The effect of the vehicle environment (temperature, flow rate,

exhaust constituents, vibration, exposure to elements etc.) on the durability of the part;

(iii) How sensitive in-use emission compliance is to the potential failure of a particular part; and

(iv) If the design of the part is new (without proven in-use component durability and emission compliance).

(2) For the vehicle (or vehicles) identified as worst case in paragraph (g)(1) of this section, the manufacturer must conduct full useful life mileage accumulation on a whole vehicle with all emission control hardware installed and operating. The mileage accumulation procedure used must meet the requirements of either paragraph (c) or paragraph (e) (1) of this section. The mileage accumulation must be conducted either on the road or on a vehicle dynamometer; it may not be conducted on an engine dynamometer for this purpose.

(3) The manufacturer must conduct at least one FTP test following completion of full useful life mileage accumulation. Up to three FTP tests may be conducted. If more than one test is conducted the emission results are averaged. Prior to conducting the testing the manufacturer must assure that all OBD readiness codes are set (completed). Up to 100 miles of off-cycle mileage accumulation may be conducted to achieve the completion of all OBD monitoring.

(4) The manufacturer must record any OBD illumination during the course of the mileage accumulation and must record readiness codes and active fault codes on the OBD system preceding and following each test conducted under the provisions of paragraph (g)(3) of this section.

(5) If the OBD light becomes illuminated during the course of mileage accumulation, the manufacturer must investigate the cause of the OBD illumination and record the active fault code that caused illumination of the light.

(6) To demonstrate acceptable component durability:

(i) The test results (or the average of multiple test results) must comply with all applicable emission standards; and

(ii) The OBD system must not set any valid active fault codes that pertain to emission related parts or systems during the course of mileage accumulation, including before and after testing.

* * * * *

7. Amend § 86.1824–08 to revise paragraph (h) to read as follows:

§ 86.1824–08 Durability demonstration procedures for evaporative emissions.

* * * * *

(h) *Emission component durability.* Manufacturers must determine that all evaporative emission-related components are designed to operate properly for the full useful life of the vehicles in actual use. The manufacturer must demonstrate emission component durability using the following procedures.

(1) The manufacturer must determine using good engineering judgement the vehicle (or vehicles) that are worst case for component durability. In making this determination the manufacturer must evaluate their entire product line. For the vehicles that will be represented, the manufacturer must consider at a minimum all the following information:

(i) The past in-use history of component durability for the emission related parts;

(ii) The effect of the vehicle environment (temperature, flow rate, exhaust constituents, vibration, exposure to elements etc.) on the durability of the part;

(iii) How sensitive in-use emission compliance is to the potential failure of a particular part; and

(iv) If the design of the part is new (without proven in-use component durability and emission compliance).

(2) For the vehicle (or vehicles) identified as worst case in paragraph (g)(1) of this section, the manufacturer must conduct full useful life mileage accumulation on a whole vehicle with all emission control hardware installed and operating. The mileage accumulation procedure used must meet the requirements of either paragraph (c) or paragraph (e)(1) of this section. The mileage accumulation must be conducted either on the road or on a vehicle dynamometer; it may not be conducted on an engine dynamometer for this purpose.

(3) The manufacturer must conduct at least one evaporative 2-day test following completion of full useful life mileage accumulation. Up to three tests may be conducted. If more than one test is conducted the emission results are averaged. Prior to conducting the testing the manufacturer must assure that all OBD readiness codes are set (completed). Up to 100 miles of off-cycle mileage accumulation may be conducted to achieve the completion of all OBD monitoring.

(4) The manufacturer must record any OBD illumination during the course of the mileage accumulation and must record readiness codes and active fault codes on the OBD system preceding and following each test conducted under the provisions of paragraph (g)(3) of this section.

(5) If the OBD light becomes illuminated during the course of mileage accumulation, the manufacturer must investigate the cause of the OBD illumination and record the active fault code that caused illumination of the light.

(6) To demonstrate acceptable component durability:

- (i) The test results (or the average of multiple test results) must comply with all applicable emission standards; and
- (ii) The OBD system must not set any valid active fault codes that pertain to emission related parts or systems during the course of mileage accumulation, including before and after testing.

* * * * *

8. Amend § 86.1825-08 to revise paragraph (h) to read as follows:

§ 86.1825-08 Durability demonstration procedures for refueling emissions.

* * * * *

(h) *Emission component durability.* Manufacturers must determine that all refueling emission-related components are designed to operate properly for the full useful life of the vehicles in actual use. The manufacturer must demonstrate component durability using the following procedures.

(1) The manufacturer must determine using good engineering judgement the vehicle (or vehicles) that are worst case for refueling component durability. In making this determination the manufacturer must evaluate their entire product line. For the vehicles that will be represented, the manufacturer must consider at a minimum all the following information:

(i) The past in-use history of component durability for the emission related parts;

(ii) The effect of the vehicle environment (temperature, flow rate, exhaust constituents, vibration, exposure to elements etc.) on the durability of the part;

(iii) How sensitive in-use emission compliance is to the potential failure of a particular part; and

(iv) If the design of the part is new (without proven in-use component durability and emission compliance).

(2) For the vehicle (or vehicles) identified as worst case in paragraph (g)(1) of this section, the manufacturer must conduct full useful life mileage accumulation on a whole vehicle with all emission control hardware installed and operating. The mileage accumulation procedure used must meet the requirements of either paragraph (c) or paragraph (e)(1) of this section. The mileage accumulation must be conducted either on the road or on a vehicle dynamometer; it may not be

conducted on an engine dynamometer for this purpose.

(3) The manufacturer must conduct at least one refueling test following completion of full useful life mileage accumulation. Up to three tests may be conducted. If more than one test is conducted the emission results are averaged. Prior to conducting the testing the manufacturer must assure that all OBD readiness codes are set (completed). Up to 100 miles of off-cycle mileage accumulation may be conducted to achieve the completion of all OBD monitoring.

(4) The manufacturer must record any OBD illumination during the course of the mileage accumulation and must record readiness codes and active fault codes on the OBD system preceding and following each test conducted under the provisions of paragraph (g)(3) of this section.

(5) If the OBD light becomes illuminated during the course of mileage accumulation, the manufacturer must investigate the cause of the OBD illumination and record the active fault code that caused illumination of the light.

(6) To demonstrate acceptable component durability:

- (i) The test results (or the average of multiple test results) must comply with all applicable emission standards; and
- (ii) The OBD system must not set any valid active fault codes that pertain to emission related parts or systems during the course of mileage accumulation, including before and after testing.

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Draft Regulatory Language for Option C

9. Amend § 86.1823-08 to revise paragraph (g) to read as follows:

§ 86.1823-08 Durability demonstration procedures for exhaust emissions.

* * * * *

(g) *Emission component durability.* Manufacturers must determine that all exhaust emission-related components are designed to operate properly for the full useful life of the vehicles in actual use. The manufacturer must demonstrate emission component durability using the following procedures.

(1) The manufacturer must determine using good engineering judgement the vehicle (or vehicles) that use a new component or technology for component durability. In making this determination the manufacturer must evaluate their entire product line. For the vehicles that will be represented, the manufacturer must consider at a minimum all the following information:

(i) If the design of the part is new (without proven in-use component durability and emission compliance);

(ii) The effect of the vehicle environment (temperature, flow rate, exhaust constituents, vibration, exposure to elements etc.) on the durability of the part; and

(iii) How sensitive in-use emission compliance is to the potential failure of a particular part.

(2) For the vehicle (or vehicles) identified as worst case in paragraph (g)(1) of this section, the manufacturer must conduct full useful life mileage accumulation on a whole vehicle with all emission control hardware installed and operating. The mileage accumulation procedure used must meet the requirements of either paragraph (c) or paragraph (e)(1) of this section. The mileage accumulation must be conducted either on the road or on a vehicle dynamometer; it may not be conducted on an engine dynamometer for this purpose.

(3) The manufacturer must conduct at least one FTP test following completion of full useful life mileage accumulation. Up to three FTP tests may be conducted. If more than one test is conducted the emission results are averaged. Prior to conducting the testing the manufacturer must assure that all OBD readiness codes are set (completed). Up to 100 miles of off-cycle mileage accumulation may be conducted to achieve the completion of all OBD monitoring.

(4) The manufacturer must record any OBD illumination during the course of the mileage accumulation and must record readiness codes and active fault codes on the OBD system preceding and following each test conducted under the provisions of paragraph (g)(3) of this section.

(5) If the OBD light becomes illuminated during the course of mileage accumulation, the manufacturer must investigate the cause of the OBD illumination and record the active fault code that caused illumination of the light.

(6) To demonstrate acceptable component durability:

- (i) The test results (or the average of multiple test results) must comply with all applicable emission standards; and
- (ii) The OBD system must not set any valid active fault codes that pertain to emission related parts or systems during the course of mileage accumulation, including before and after testing.

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10. Amend § 86.1824-08 to revise paragraph (h) to read as follows:

§ 86.1824-08 Durability demonstration procedures for evaporative emissions.

* * * * *

(h) *Emission component durability.* Manufacturers must determine that all evaporative emission-related components are designed to operate properly for the full useful life of the vehicles in actual use. The manufacturer must demonstrate emission component durability using the following procedures.

(1) The manufacturer must determine using good engineering judgement the vehicle (or vehicles) that use a new component or technology for component durability. In making this determination the manufacturer must evaluate their entire product line. For the vehicles that will be represented, the manufacturer must consider at a minimum all the following information:

(i) If the design of the part is new (without proven in-use component durability and emission compliance);

(ii) The effect of the vehicle environment (temperature, flow rate, exhaust constituents, vibration, exposure to elements etc.) on the durability of the part; and

(iii) How sensitive in-use emission compliance is to the potential failure of a particular part.

(2) For the vehicle (or vehicles) identified as worst case in paragraph (g)(1) of this section, the manufacturer must conduct full useful life mileage accumulation on a whole vehicle with all emission control hardware installed and operating. The mileage accumulation procedure used must meet the requirements of either paragraph (c) or paragraph (e) (1) of this section. The mileage accumulation must be conducted either on the road or on a vehicle dynamometer; it may not be conducted on an engine dynamometer for this purpose.

(3) The manufacturer must conduct at least one evaporative 2-day test following completion of full useful life mileage accumulation. Up to three tests may be conducted. If more than one test is conducted the emission results are averaged. Prior to conducting the testing the manufacturer must assure that all OBD readiness codes are set (completed). Up to 100 miles of off-cycle mileage accumulation may be

conducted to achieve the completion of all OBD monitoring.

(4) The manufacturer must record any OBD illumination during the course of the mileage accumulation and must record readiness codes and active fault codes on the OBD system preceding and following each test conducted under the provisions of paragraph (g)(3) of this section.

(5) If the OBD light becomes illuminated during the course of mileage accumulation, the manufacturer must investigate the cause of the OBD illumination and record the active fault code that caused illumination of the light.

(6) To demonstrate acceptable component durability:

(i) The test results (or the average of multiple test results) must comply with all applicable emission standards; and

(ii) The OBD system must not set any valid active fault codes that pertain to emission related parts or systems during the course of mileage accumulation, including before and after testing.

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11. Amend § 86.1825-08 to revise paragraph (e) to read as follows:

§ 86.1825-08 Durability demonstration procedures for refueling emissions.

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(e) *Emission component durability.* Manufacturers must determine that all refueling emission-related components are designed to operate properly for the full useful life of the vehicles in actual use. The manufacturer must demonstrate component durability using the following procedures.

(1) The manufacturer must determine using good engineering judgement the vehicle (or vehicles) that use a new component or technology for component durability. In making this determination the manufacturer must evaluate their entire product line. For the vehicles that will be represented, the manufacturer must consider at a minimum all the following information:

(i) If the design of the part is new (without proven in-use component durability and emission compliance);

(ii) The effect of the vehicle environment (temperature, flow rate, exhaust constituents, vibration, exposure to elements etc.) on the durability of the part; and

(iii) How sensitive in-use emission compliance is to the potential failure of a particular part.

(2) For the vehicle (or vehicles) identified as worst case in paragraph (g)(1) of this section, the manufacturer must conduct full useful life mileage accumulation on a whole vehicle with all emission control hardware installed and operating. The mileage accumulation procedure used must meet the requirements of either paragraph (c) or paragraph (e) (1) of this section. The mileage accumulation must be conducted either on the road or on a vehicle dynamometer; it may not be conducted on an engine dynamometer for this purpose.

(3) The manufacturer must conduct at least one refueling test following completion of full useful life mileage accumulation. Up to three tests may be conducted. If more than one test is conducted the emission results are averaged. Prior to conducting the testing the manufacturer must assure that all OBD readiness codes are set (completed). Up to 100 miles of off-cycle mileage accumulation may be conducted to achieve the completion of all OBD monitoring.

(4) The manufacturer must record any OBD illumination during the course of the mileage accumulation and must record readiness codes and active fault codes on the OBD system preceding and following each test conducted under the provisions of paragraph (g)(3) of this section.

(5) If the OBD light becomes illuminated during the course of mileage accumulation, the manufacturer must investigate the cause of the OBD illumination and record the active fault code that caused illumination of the light.

(6) To demonstrate acceptable component durability:

(i) The test results (or the average of multiple test results) must comply with all applicable emission standards; and

(ii) The OBD system must not set any valid active fault codes that pertain to emission related parts or systems during the course of mileage accumulation, including before and after testing.

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