circuit by October 29, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

F. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 808(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act (SBREFA) EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in the Federal Register. This rule is not a ''major rule'' as defined by section 804(2) of the APA as amended. Pursuant to 5 U.S.C. 808(2) as added by SBREFA, this rule may take effect prior to the date of its submission to Congress because EPA for good cause has found that providing for notice and public procedure on this rule is impracticable, unnecessary, and contrary to the public interest.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: June 21, 1996.

David A. Ullrich,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart X—Michigan

2. Section 52.1170 is amended by adding paragraph (c)(107) to read as follows:

§ 52.1170 Identification of plan.

* * * * *

(c) * * *

(107) On May 16, 1996, the State of Michigan submitted a revision to the Michigan State Implementation Plan (SIP). This revision is for the purpose of establishing a gasoline Reid vapor pressure (RVP) limit of 7.8 pounds per square inch (psi) for gasoline sold in Wayne, Oakland, Macomb, Washtenaw, Livingston, St. Clair, and Monroe counties in Michigan. This revision will only be effective from July 1, 1996, to September 15, 1996.

(i) Incorporation by reference.

(a) House Bill No. 4898; signed and effective November 13, 1993.

(b) Michigan Complied Laws, Motor Fuels Quality Act, Chapter 290, Sections 642, 643, 645, and 646, 647, and 649 all effective November 13, 1993.

(c) Michigan Complied Laws, Weights and Measures Act of 1964, Chapter 290, Sections 613, 615; all effective August 28, 1964.

(ii) Additional materials.

(a) Letter from Michigan Governor John Engler to Regional Administrator Valdas Adamkus, dated January 5, 1996.

(b) Letter from Michigan Director of Environmental Quality Russell Harding to Regional Administrator Valdas Adamkus, dated May 14, 1996.

(c) State report titled ''Evaluation of Air Quality Contingency Measures for Implementation in Southeast Michigan,'' submitted to the EPA on May 14, 1996.

[FR Doc. 96–21982 Filed 8–29–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 86

[AMS–FRL–5602–3]

RIN 2060–AC65

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines: Regulations Requiring On-Board Diagnostic (OBD) Systems—Acceptance of Revised California OBD II Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: This final rulemaking revises requirements associated with on-board diagnostic (OBD) systems. The federal OBD rulemaking, published February 19, 1993, allowed for compliance with California OBD II requirements to satisfy federal OBD requirements through the 1998 model year. The California Air Resources Board has recently revised their OBD II requirements. This rulemaking promulgates appropriate revisions to federal OBD regulations such that compliance with the recently revised OBD II requirements will satisfy federal OBD. This rulemaking does not require that manufacturers comply with OBD II anti-tampering provisions. OBD systems in general provide substantial ozone benefits.

EFFECTIVE DATE: This final rule is effective October 29, 1996.

ADDRESSES: Materials relevant to this rulemaking are contained in Docket No. A–90–35, and are available for public inspection and photocopying between 8 a.m. and 5:30 p.m. Monday through Friday. The telephone number is (202) 260–7548 and the facsimile number is (202) 260–4400. A reasonable fee may be charged by EPA for copying docket material.

FOR FURTHER INFORMATION CONTACT: Todd Sherwood, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105, telephone (313) 668–4405, or Internet e-mail at ''sherwood.todd@epamail.epa.gov.''

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are those which manufacture new motor vehicles and engines. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	New motor vehicle and engine manufacturers.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your product is regulated by this action, you should carefully examine the applicability criteria in § 86.094–17 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular product, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Electronic Copies of Rulemaking Documents

Electronic copies of the preamble and the regulatory text of this final rulemaking are available via the Internet on the Office of Mobile Sources (OMS) Home Page (http://www.epa.gov/OMSWWW/). Users can find OBD related information and documents through the following path once they have accessed the OMS Home Page: ''Automobiles,'' ''I/M & OBD,'' ''On-Board Diagnostics Files.''

Electronic copies of the preamble and the regulatory text of this final

rulemaking are also available on the Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network Bulletin Board System (TTN BBS). Users are able to access and download TTN BBS files on their first call. After logging onto TTN BBS, to navigate through the BBS to the files of interest, the user must enter the appropriate command at each of a series of menus. The steps required to access information on this rulemaking are listed below. The service is free, except for the cost of the phone call.

TTN BBS: 919–541–5742 (1,200–14,400 bps, no parity, eight data bits, one stop bit). Voice help: 919–541–5384 Internet address: TELNET ttnbbs.rtpnc.epa.gov Off-line: Mondays from 8–12 Noon ET.

1. Technology Transfer Network Top Menu: GATEWAY TO TTN TECHNICAL AREAS (Bulletin Boards)
2. TTN TECHNICAL INFORMATION AREAS: OMS—Mobile Sources Information
3. OMS BBS === MAIN MENU FILE TRANSFERS: Rulemaking & Reporting
4. RULEMAKING PACKAGES: Inspection & Maintenance
5. Inspection & Maintenance Rulemaking Areas: File Area #2...On-Board Diagnostics

At this stage, the system will list all available OBD Review files. To download a file, select a transfer protocol which will match the terminal software on your computer, then set your own software to receive the file using that same protocol.

If unfamiliar with handling compressed (i.e., ZIP'd) files, go to the TTN topmenu, System Utilities (Command: 1) for information and the necessary program to download in order to unZIP the files of interest after downloading to your computer. After getting the files you want onto your computer, you can quit TTN BBS with the <G>oodbye command.

Table of Contents

I. Introduction and Background

On February 19, 1993, the EPA promulgated a final rulemaking (58 FR 9468, February 19, 1993) requiring manufacturers of light-duty vehicles (LDV) and light-duty trucks (LDT) to install on-board emission control diagnostics (OBD) systems on such vehicles beginning in model year 1994. The regulations promulgated in that final rulemaking require that manufacturers install OBD systems which monitor emission control components for any malfunction or deterioration causing exceedances of certain emission thresholds, and alert the vehicle operator to the need for repair. That rulemaking also requires that, when a malfunction occurs, diagnostic information must be stored in the vehicle's computer to assist the mechanic in diagnosis and repair.

Additionally, that rulemaking makes an allowance for manufacturers to satisfy the federal OBD requirements through the 1998 model year by installing systems satisfying the California OBD II requirements pertaining to those model years. This allowance means that manufacturers could concentrate on designing one system for OBD compliance and installing that system nationwide during allowable model years. As EPA regulations cannot be revised except through EPA rulemaking, the OBD II requirements allowed under this provision were, and have continued to be, those existing on the date of publication of the federal OBD final rulemaking. This means that subsequent changes made to the OBD II requirements by the California Air Resources Board (ARB) may be inconsistent and potentially unacceptable for federal OBD compliance.

On March 23, 1995, EPA published a direct final rule revising specific federal OBD provisions, including a provision that would allow manufacturers to comply with federal OBD requirements by optionally complying with more recent OBD II regulations. EPA believed that the March 23 direct final rule would not be controversial. In that direct final rule, EPA stated that, ''If notice is received that any person or persons wish to submit adverse comments regarding some, but not all of the actions taken in this rulemaking, then EPA shall withdraw this final action and publish a proposal only with regard to the actions for which notice has been received.'' EPA stated that it would make such a withdrawal if adverse comment was received by April 24, 1995.

EPA received adverse comment from the Motor and Equipment Manufacturers Association (MEMA). This adverse comment was placed in the public docket for viewing. The comments submitted by MEMA were adverse with regard to the revision of 40 CFR 86.094–17(j) that would allow manufacturers the option of complying with the recently revised California OBD II requirements (California Air Resources Board Mail-Out #95–03). (MEMA had initially objected to other specific provisions of the direct final rule, but MEMA withdrew these objections in a letter signed May 18, 1995.) Therefore, EPA subsequently removed the provision of the March 23 direct final rule that pertained to optional compliance with the revised OBD II requirements of ARB Mail-Out #95–03 (60 FR 37945, July 25, 1995). As a result, the language of the prior final rule published on February 19, 1993 (58 FR 9468) allowing compliance with California OBD II requirements was reinstated in § 86.094–17(j). EPA then reproposed the provision allowing manufacturers to meet the federal OBD requirements by complying with revised California OBD II requirements. The proposal did not, however, require that manufacturers meet the anti-tampering provisions in California's OBD II regulations. (60 FR 55521, November 1, 1995).

II. Requirements of this Final Rulemaking

This final rulemaking allows manufacturers to comply with federal OBD requirements by optionally complying with the revised and recently adopted California OBD II regulations. The allowance for optional compliance with California OBD II has already been established in the federal OBD program and was incorporated into the federal OBD final rulemaking in February 1993. However, since that time, the ARB has made several revisions to the OBD II regulations.

Because the Agency cannot simply accept the revised OBD II without undergoing the federal regulatory process, any optional compliance with California OBD II under the preexisting federal regulations had to be done according to the OBD II regulations as they existed in February 1993 (ARB Mail Out #92–56, November, 1992). However, the ARB has determined that several manufacturers would have difficulty complying with the OBD II regulations as they existed in February 1993. The most notable requirements that currently pose difficulties are those for engine misfire detection under all positive torque engine speeds and conditions and full OBD II implementation on alternative fueled vehicles. Additionally, most manufacturers have indicated difficulty meeting other aspects of the OBD II regulations due to, for example, the complexity of the computer software requirements, and unpredictable driver actions such as resting a foot on the gas

pedal while stopped at a traffic light. It is these additional difficulties that have prompted ARB to provide a ''deficiency'' allowance in their revised OBD II regulations whereby manufacturers can certify as OBD II compliant despite some reasonably acceptable and unplanned deficiency in the OBD system.

As a result of the ARB revisions to OBD II, and to remain consistent with the original intent of providing for optional compliance with OBD II for federal OBD purposes, and because EPA has determined that OBD systems complying with the revised OBD II requirements fully satisfy the intent of the 1990 Clean Air Act Amendments and federal OBD regulations, this final rulemaking will provide the same option but will require that manufacturers choosing this option comply with the more recent OBD II regulations contained in ARB Mail Out #95–34.

In the proposed rulemaking, EPA proposed allowing manufacturers to comply with federal OBD requirements by optionally complying with more recent OBD II regulations, specifically those contained in ARB Mail Out #95–03, made publicly available January 19, 1995. In this final rulemaking, the applicable OBD II regulations are contained in Mail Out #95–34, September 26, 1995. Mail Out #95–34 is identical in content to Mail Out #95–03, the only differences being slight editorial changes and reference to an updated version of a Society of Automotive Engineers (SAE) recommended practice (i.e., SAE J1939) that is not applicable to light-duty vehicles or light-duty trucks and therefore is not applicable under the provisions of this final rulemaking.

As a result of this final rule, any federal vehicles complying with federal OBD by optionally complying with California OBD II are allowed the same deficiencies as allowed under the OBD II provisions. This is consistent with revisions deemed necessary by EPA and subsequently made to federal OBD requirements through a direct final rulemaking published in March of 1995 (60 FR 15242, March 23, 1995). Note, however, that a manufacturer requesting certification of a deficient OBD II system must receive EPA acceptance of any deficiency independently of an acceptance made by ARB. The Agency will use the same criteria specified by the ARB in the OBD II regulation, (footnote: Those criteria being the extent to which the requirements are satisfied overall on the vehicle applications in question, the extent to which the resultant diagnostic system design will be more effective than earlier OBD systems, and a demonstrated good-faith effort to meet the requirements in full by evaluating and considering the best available monitoring technology) except that EPA will not provide deficiency allowances for lack of catalyst monitors or oxygen sensor monitors because the Clean Air Act specifically requires these monitors no later than the 1996 model year. The Agency will make every effort to determine the acceptability of OBD II deficiency requests in concert with ARB staff to avoid the potential for conflicting determinations. However, the extent to which the agencies can make concurrent and coordinated findings will rely heavily on the manufacturer, who will be expected to provide any necessary information to both agencies in parallel rather than pursuing deficiency determinations on a separate basis.

III. Public Participation

On November 1, 1995, EPA published a notice of proposed rulemaking (NPRM) which set forth proposed requirements for complying with federal OBD regulations by optionally demonstrating compliance with the revised California OBD II regulations. On December 13, 1995, a public hearing was held. The period for submission of comments on the NPRM was scheduled to close on January 16, 1996.

The comments received in response to the NPRM have not been extensive, and concentrate primarily on the issue of anti-tampering provisions. More specifically, the comments speak to the appropriateness of the anti-tampering provisions contained in the California OBD II regulations but intentionally excluded from any federal OBD compliance requirements. Comments were also received on the allowance of optional OBD II compliance for federal OBD purposes indefinitely, rather than through only the 1998 model year.

Comments were received from original equipment manufacturers, automotive aftermarket manufacturers and service providers, and one automotive consultant. The comments along with EPA's analyses and responses are discussed in the following section. A formal written ''Response to Comments'' document has not been prepared in association with this rulemaking as all pertinent issues are sufficiently discussed in this preamble.

IV. Discussion of Issues

A. General Comments on the Proposal

Summary of Proposal: The proposal allowed demonstration of compliance with revised California OBD II requirements (Mail Out #95–03) as satisfying federal OBD requirements through the 1998 model year.

Summary of Comments: The American Automobile Manufacturers Association (AAMA) fully supports the proposed regulatory action, stating that it will help by limiting the burden on manufacturers associated with the extremely technologically-challenging development of enhanced on-board diagnostic systems. The Association of International Automobile Manufacturers (AIAM) also stated its support, as did American Suzuki Motor Corporation and Michael Jay Grossman, an automotive certification consultant. Each of these commenters also stated that EPA should allow compliance against ARB Mail Out #95–34 rather than Mail Out #95–03, as was proposed.

Analysis of Comments: EPA agrees that Mail Out #95–34 should be used rather than the proposed Mail Out #95–03. Mail Out #95–34 is identical in content to Mail Out #95–03, the only differences being slight editorial changes (the removal of strikeout and underlined text differentiating old from new text) and reference to an updated version of a SAE recommended practice (i.e., SAE J1939) that is not applicable to light-duty vehicles or light-duty trucks and therefore is not applicable under the provisions of this final rulemaking.

EPA Decision: The final regulatory language will refer to ARB Mail Out #95–34.

B. California OBD II Anti-Tampering Provisions

Summary of Proposal: The proposal allowed demonstration of compliance with revised California OBD II requirements (Mail Out #95–03) as satisfying federal OBD requirements through the 1998 model year, except that compliance with the tampering protection provisions of the California OBD II requirements was not required to satisfy federal OBD.

Summary of Comments: Representatives of certain organizations within the automotive aftermarket made the following comments: (1) EPA should defer any decision in this proceeding until EPA has rendered a decision on California's request for a waiver of preemption under section 209 for its OBD II regulations; (2) EPA's incorporation of California OBD rules is an unlawful delegation of its powers; (3) EPA may not certify vehicles containing the anti-tampering devices required under the California OBD II regulations, because such devices violate sections 202(m) (4) and (5) and 207 of the Act; (4) the anti-tampering provisions of the

California OBD II regulations violate the Semiconductor Chip Protection Act; (5) the exclusion of the anti-tampering provisions from this rulemaking is inadequate, because as long as the anti-tampering regulations are required in California, manufacturers will use such devices in all their vehicles; (6) the anti-tampering provisions are unnecessary and eliminate competition in the repair of vehicles; (7) the anti-tampering provisions of the California OBD II regulations impose significant economic impact on the automotive aftermarket.

AAMA commented that it believes that both EPA and ARB have the general legal authority to require anti-tampering measures. Therefore, AAMA can see no viable cause for not proceeding with the NPRM as proposed.

Analysis of Comments: (1) Regarding deferment of this rulemaking until the OBD waiver proceeding is completed, EPA has been processing the OBD waiver final decision at the same time it has been processing this final rule. EPA intends to complete the OBD waiver decision either prior to, at the same time of, or shortly after, the completion of this rule. However, EPA does not believe that the decisions necessary for completion of this rulemaking need to be delayed until after the waiver decision in completed. As discussed below, the issues raised by the aftermarket in this proceeding and the OBD II waiver proceeding are more appropriately dealt with in that proceeding, and are not necessary for completion of this rulemaking. Should the issues raised by the aftermarket be resolved in favor of the automotive aftermarket, that resolution will carry over into EPA's broader motor vehicle program, including the certification of any vehicle that complies with the requirements promulgated in this rulemaking.

(2) Regarding the contention that EPA has unlawfully delegated its powers, EPA disagrees with this allegation. As the comments acknowledge, EPA has gone through a complete notice and comment rulemaking and found that the regulations that it incorporates today are consistent with the Act and that it is reasonable and appropriate for EPA to allow manufacturers to meet EPA's requirements by showing compliance with California's OBD II regulations, excluding its anti-tampering provisions. This is not delegation of power, but the acknowledgment that other entities besides EPA may devise reasonable methods for meeting particular requirements of the Act. These entities are not making decisions in place of EPA. EPA's decision to incorporate OBD II requirements is independent of California's initial decision to require OBD II in California. Commenters' line of reasoning would seem to require that EPA purposely ignore any sets of procedures drafted by another organization, (e.g., a state or a voluntary industry organization like SAE), no matter how reasonable, simply because EPA did not think of the procedures first. The restrictions on delegation of powers in no way require that result.

(3 and 4) The comments allege that California's anti-tampering provisions violate certain provisions of the Clean Air Act and other federal law. The comments, however, never explain why such allegations are relevant to this rulemaking. The regulations EPA promulgates today explicitly exclude California's anti-tampering provisions from the federal requirements. EPA is taking no action in this rulemaking that has any effect on manufacturers legal requirement or ability to voluntarily equip vehicles with tampering protection measures. To the extent manufacturers were permitted to do so prior to this rulemaking, they can do so after the rulemaking. To the extent the Clean Air Act prevents them from equipping vehicles with tampering protection measures, nothing in this rulemaking allows manufacturers to circumvent the Clean Air Act's provisions. The issue of whether the California OBD II anti-tampering provisions violate the Clean Air Act is simply irrelevant to this rulemaking, because this rulemaking does not require manufacturers to meet the anti-tampering provisions. As discussed above, EPA will be reviewing the comments the aftermarket has provided on these issues in the California OBD II waiver proceeding. The comments are relevant in that proceeding, at least to a certain extent, because in that proceeding, EPA is specifically reviewing the consistency of California's OBD II provisions, including the anti-tampering provisions, with section 202(a) of the Act.

(5) Regarding whether exclusion of the anti-tampering provisions is sufficient for the needs of the commenters, the appropriate issue is again whether the comments are relevant to this proceeding. The commenters admit in their comments, as well as in a letter to the Administrator dated April 30, 1996, that manufacturers will install the anti-tampering devices on their vehicles, and in fact are currently doing so, even in the absence of these regulations. Thus, the presence or absence of these regulations is irrelevant to whether manufacturers voluntarily equip vehicles with tampering protection measures. As noted above, EPA will deal with the issues raised by commenters in venues where such issues are relevant.

(6 and 7) The practicality, cost, and reasonableness of the anti-tampering provisions are likewise irrelevant to this proceeding because the anti-tampering provisions are not required by this proceeding.

EPA Decision: The regulatory language need not be changed from that proposed, with the exception of reference to ARB Mail Out #95–34 rather than #95–03. Should the anti-tampering provisions of the California OBD II regulations be deemed unlawful via the waiver process or other means, they will be removed from the OBD II regulations by the Air Resources Board and certification approval of vehicles containing anti-tampering measures consistent with those provisions will cease by both EPA and ARB.

C. Acceptance of California OBD II Beyond the 1998 Model Year

Summary of Proposal: The proposal allowed demonstration of compliance with revised California OBD II requirements (Mail Out #95–03) as satisfying federal OBD requirements through the 1998 model year.

Summary of Comments: Michael Jay Grossman suggested that EPA allow small volume manufacturers (<10,000 U.S. sales per year) the optional compliance against the California OBD II regulations beyond the 1998 model year, rather than eliminating this option beginning in the 1999 model year. Mr. Grossman reasons that such an allowance will present no loss of federal OBD program benefits due to the extremely small number of small volume manufacturer vehicles in the overall vehicle population.

Analysis of Comments: Mr. Grossman's suggestion was made by several commenters during development of the February 1993, federal OBD final rulemaking, although the comments then were not necessarily limited to small volume manufacturers. The same arguments against such a policy apply now as applied then. This alternative was neither proposed by the Agency, nor is it an attractive alternative from the Agency's perspective. The federal regulations contain enforcement approaches consistent with past EPA policies which rely on performance evaluations, rather than specific design requirements, to encourage innovative control strategies and improvements in technology. Also, having effectively two separate regulations mandating the same type of program is unnecessarily inefficient to enforce.

Further, the current option for California OBD II demonstration puts EPA in the position of making mandatory regulatory revisions in the event ARB revises the OBD II regulations. EPA regulations cannot incorporate a moving target and, therefore, every regulatory revision by ARB requires a corresponding revision to federal regulations should the ARB revision be deemed appropriate for federal purposes. This is evidenced by the reality of today's rulemaking, which is being done only because of ARB's recent revisions to OBD II. Upon the effective date of today's rulemaking, the federally acceptable OBD II requirements will be those in Mail Out #95–34, and will not be those contained in any potential future California mail outs pertaining to OBD II.

Barring passage of the National Low Emission Vehicle regulations and subsequent agreement among all stakeholders to voluntarily sign onto its requirements, EPA can see no reason to go forth with this suggestion. EPA sees merit in undertaking efforts to harmonize federal OBD requirements with the California OBD II requirements, but will explore other potential options as opposed to that suggested by Mr. Grossman.

EPA Decision: EPA will take no action in this final rulemaking to accommodate this commenter's suggestion. Therefore, no changes to the proposed regulatory language will be made. As a result, through the 1998 model year, EPA will enforce OBD requirements against either the California OBD II requirements as they exist in Mail out #95–34 or the federal OBD requirements, depending on the set of requirements to which the vehicle has been certified. Beginning with the 1999 model year, full compliance with the federal OBD requirements will be required for all vehicles covered by this rulemaking. This will assure designs fully meeting the goals of the federal OBD program, not only for preproduction certification but also during in-use operation.

As stated, EPA is exploring options to harmonize federal OBD requirements with the California OBD II requirements. EPA believes that effort will result in harmonized OBD system requirements along with enforcement approaches and regulatory philosophies consistent with each agency's respective goals. EPA also believes that effort will alleviate the concerns expressed by Mr. Grossman.

V. Cost Effectiveness

This final rulemaking alters an existing provision by allowing optional compliance with the most recent ''Revised'' California OBD II requirements, as opposed to the November 1992, ''Original'' OBD II requirements, for the purposes of federal OBD compliance. With three exceptions, the revised OBD II requirements provide regulatory relief relative to the original OBD II requirements. Those exceptions are: (1) More stringent catalyst monitoring requirements for 1998 model year low emission vehicles (LEV), requirements that would not apply to federal Tier I vehicles; and, (2) more stringent evaporative emission monitoring requirements for 2000 model year vehicles, requirements that begin beyond the 1998 model year cutoff of the OBD II compliance option; and, (3) more stringent anti-tampering provisions, requirements intentionally excluded from federal OBD compliance demonstration. Therefore, because this final rulemaking alters an existing provision, and that alteration provides regulatory relief, there are no additional costs to original equipment manufacturers associated with this specific final action.

The automotive aftermarket industry has stated that the provision of this final rulemaking will result in substantial costs to that industry. As they argue it, these costs will be incurred because the anti-tampering measures required under the California OBD II regulations will present more difficulty for the automotive aftermarket in carrying out their business of reverse engineering original equipment manufacturer (OEM) parts and designing replacement or specialty parts. However, the anti-tampering measures are intentionally excluded from federal OBD compliance requirements, even when choosing the optional OBD II compliance demonstration. Therefore, OEMs are, in effect, voluntarily incorporating anti-tampering measures into their federal vehicles, and would arguably do so absent the requirement under the California OBD II regulation. Consequently, EPA cannot understand how the provisions of this final rulemaking are responsible for any potential increased costs on the automotive aftermarket, outside those costs mandated under the Clean Air Act Amendments of 1990 which require all 1994 and later model year vehicles to incorporate OBD systems into their designs.

The costs and emission reductions associated with the federal OBD program were developed for the February 19, 1993, final rulemaking. The change being made today does not affect the costs and emission reductions published as part of that rulemaking.

VI. Administrative Requirements

A. Administrative Designation

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

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

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

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

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

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

B. Reporting and Recordkeeping Requirements

This final rulemaking does not change the information collection requirements submitted to and approved by OMB in association with the OBD final rulemaking (58 FR 9468, February 19, 1993; and, 59 FR 38372, July 28, 1994).

C. Impact on Small Entities

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. This rule will not have a significant adverse economic impact on a substantial number of small businesses. This final rulemaking will provide regulatory relief to both large and small volume automobile manufacturers by maintaining consistency with California OBD II requirements. It will not have a substantial impact on such entities. This final rulemaking will not have a significant impact on businesses that manufacture, rebuild, distribute, or sell automotive parts, nor those involved in automotive service and repair, as the revisions affect only requirements on automobile manufacturers.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

E. Unfunded Mandates Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, or $100 million or more. Under section 205, EPA must select the most cost effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the final approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

List of Subjects in 40 CFR Part 86

Environmental protection, Administrative practice and procedure, Air pollution control, Gasoline, Motor vehicles, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: August 22, 1996.

Carol M. Browner,

Administrator.

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

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

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

Authority: 42 U.S.C. 7401 et seq.

Subpart A—[Amended]

2. Section 86.094–17 is amended by revising paragraph (j) to read as follows:

§ 86.094–17 Emission control diagnostic system for 1994 and later light-duty vehicles and light-duty trucks.

* * * * *

(j) Demonstration of compliance with California OBD II requirements (Title 13 California Code § 1968.1), as modified pursuant to California Mail Out #95–34 (September 26, 1995), shall satisfy the requirements of this section through the 1998 model year except that compliance with Title 13 California Code § 1968.1(d), pertaining to tampering protection, is not required to satisfy the requirements of this section.

* * * * *

[FR Doc. 96–21946 Filed 8–29–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[GEN Docket No. 90–314; FCC 96–340]

Omnipoint Communications New York MTA Frequency Block A; Establishment of New Personal Communications Services

AGENCY: Federal Communications Commission.

ACTION: Final Rule.

SUMMARY: By this action, the Commission denies a petition for declaratory ruling filed by The Wireless Communications Council (WCC). The Commission finds that WCC has not demonstrated the existence of a controversy or uncertainty sufficient to warrant exercise of the Commission's discretion to issue a declaratory ruling. The intended effect of this action is to clarify when it is appropriate for the Commission to issue a declaratory ruling regarding whether a party awarded a pioneer's preference has made substantial use of its pioneering technology.

EFFECTIVE DATE: August 30, 1996.

FOR FURTHER INFORMATION CONTACT: Rodney Small or Charles Iseman, Office of Engineering and Technology, at (202) 418–2452 or (202) 418–2444, respectively.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order (MO&O) in GEN Docket 90–314, FCC 96–340, adopted August 9, 1996, and released August 23, 1996. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision also may be purchased from the Commission's duplication contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

Summary of MO&O

1. In the Third Report and Order (Third R&O) in GEN Docket No. 90–314 (the broadband Personal Communications Services (PCS) proceeding), 59 FR 9419 (February 28, 1994), the Commission awarded pioneer's preferences to American Personal Communications (APC), Cox Enterprises, Inc. (Cox), and Omnipoint Communications, Inc. (Omnipoint). The Commission directed the Wireless Telecommunications Bureau (Bureau) to condition the broadband PCS licenses received by APC, Cox, and Omnipoint upon each licensee building a system that substantially uses the design and technologies upon which its preference award is based. Specifically, the Commission stated that this condition would apply in the service area for which the preference is being granted and for the initial required five-year build-out period specified in the rules for broadband PCS.

2. Omnipoint was awarded a pioneer's preference for having designed and manufactured a 2 GHz spread spectrum handset and associated base station equipment, and for proposing a viable service with the flexibility to be implemented in a variety of environments with capabilities useful to subscribers. This preference granted Omnipoint the right, if otherwise qualified, to use a 30 megahertz channel block (Block A, 1850–1865 MHz and 1930–1945 MHz) in the Major Trading Area that includes northern New Jersey (New York MTA). On December 13, 1994, the Bureau granted a pioneer's preference license to Omnipoint, on condition that ''Omnipoint * * * shall construct a * * * system * * * that substantially uses the design and technology upon which the pioneer's preference award * * * was based,'' and on condition that Omnipoint retain control of the license for three years or until it has met the five-year build-out requirement, whichever is the first to occur.

3. On January 16, 1996, WCC submitted a petition for declaratory ruling, urging the Commission to clarify the ''substantial use'' condition, as