

authorities, and subsequent developments), the return position will generally satisfy the reasonable basis standard even though it may not satisfy the substantial authority standard as defined in § 1.6662-4(d)(2). In addition, the reasonable cause and good faith exception, as set forth in § 1.6664-4, may provide relief from the penalty, even if a return position does not satisfy the reasonable basis standard.

\* \* \* \* \*

Par. 4. In § 1.6662-4, the second sentence in paragraph (d)(2) is revised to read as follows:

**§ 1.6662-4 Substantial understatement of income tax.**

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \* The substantial authority standard is less stringent than the more likely than not standard (the standard that is met when there is a greater than 50-percent likelihood of the position being upheld), but more stringent than the reasonable basis standard as defined in § 1.6662-3(b)(3). \* \* \*

\* \* \* \* \*

Par. 5. In 1.6662-7, paragraph (d) is revised to read as follows:

**§ 1.6662-7 Omnibus Budget Reconciliation Act of 1993 changes to the accuracy-related penalty.**

\* \* \* \* \*

(d) *Reasonable basis.* For purposes of §§ 1.6662-3(c) and 1.6662-4 (e) and (f) (relating to methods of making adequate disclosure), the provisions of § 1.6662-3(b)(3) apply in determining whether a return position has a reasonable basis.

Par. 6. Section 1.6664-0 is amended by:

1. Revising the entry for paragraph (c)(2) of § 1.6664-4.

2. Removing the entries for paragraphs (c)(1)(iii), (c)(2)(i), and (c)(2)(ii) of § 1.6664-4.

The revision reads as follows:

**§ 1.6664-0 Table of contents.**

\* \* \* \* \*

**§ 1.6664-4 Reasonable cause and good faith exception to section 6662 penalties.**

\* \* \* \* \*

(c) \* \* \*

(2) Advice defined.

\* \* \* \* \*

Margaret Milner Richardson,  
*Commissioner of Internal Revenue.*

[FR Doc. 96-28558 Filed 11-8-96; 8:45 am]

BILLING CODE 4830-01-U

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 85**

[FRL-5649-4]

**Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses; Additional Update of Post-Rebuild Emission Levels in 1997**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** Today's notice of proposed rulemaking describes proposed amendments to the current regulations regarding EPA's Urban Bus Retrofit/Rebuild Program. Today's proposed rule would allow one additional year for equipment manufacturers to certify equipment that might influence compliance under Option 2 of the program. Such a revision will remove the incentive to switch compliance options by guaranteeing the two options remain equivalent, as EPA originally intended. In the absence of such a revision to the program regulations, the two compliance options will not remain equivalent as EPA intended, and urban buses may not be utilizing the "best retrofit technology \* \* \* reasonably achievable" as Congress required. In addition, urban areas, many of which are not in compliance with National Ambient Air Quality Standards (NAAQS) for PM, will not realize the full PM benefits of this program.

**DATES:** Written comments on this proposal will be accepted until December 12, 1996, or 30 days after the date of a public hearing, if one is held.

EPA will hold a public hearing on this proposal on December 6, 1996 if it receives a request by November 22, 1996. EPA will cancel this hearing if no one requests to testify. Members of the public should call the contact person indicated below to notify EPA of their

interest in testifying at the hearing. Interested parties may call the contact person to determine whether the hearing will be held.

Further information on the public hearing and the submission of comments can be found under "Public Participation" in the Supplementary Information" section of today's document.

**ADDRESSES:** Interested parties may submit written comments (in duplicate, if possible) to Public Docket No. A-91-28 (Category VII) at the address listed below.

Interested parties may contact the person listed in **FOR FURTHER INFORMATION CONTACT** to determine the time and location of the public hearing, if one is requested. A court reporter will be present to make a written transcript of the proceedings and a copy will be placed in the public docket following the hearing.

Materials relevant to this proposed rulemaking are contained in Public Docket A-91-28 (Category VII). This docket is located in room M-1500, Waterside Mall (Ground Floor), U.S. Environmental Protection Agency, 401 M Street SW, Washington, D.C. 20460. Dockets may be inspected from 8 a.m. until 5:30 p.m., Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged by the EPA for copying docket materials.

**FOR FURTHER INFORMATION CONTACT:** Tom Stricker, Engine Programs and Compliance Division (6403-J), U.S. Environmental Protection Agency, 401 M Street SW, Washington, D.C. 20460. Telephone: (202) 233-9322.

**SUPPLEMENTARY INFORMATION:**

**Regulated Entities**

Entities potentially regulated by this proposed action consist of the same entities currently regulated by existing Retrofit/Rebuild Requirements of 40 CFR Part 85, Subpart O, and include urban transit operators in Metropolitan Statistical Areas (MSA's) and Consolidated Metropolitan Statistical Areas (CMSA's) with 1980 populations of 750,000 or more, and equipment manufacturers who voluntarily seek equipment certification pursuant to the program regulations. Regulated categories and entities include:

Category	Examples of regulated entities
Industry .....	Equipment manufacturers who voluntarily seek equipment certification pursuant to the program regulations.
Transit operators ...	Transit bus operators in Metropolitan Statistical Areas (MSA's) and Consolidated Metropolitan Statistical Areas (CMSA's) with 1980 populations of 750,000 or more, who operate 1993 and earlier model year urban buses, or who rebuild or replace such bus engines.

This table is not meant to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the type 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 facility or company is regulated by this action, you carefully examine the existing urban bus retrofit/rebuild regulations contained in 40 CFR Part 85, Subpart O, and the preamble to the final rule (58 FR 21359, April 23, 1993). If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

## I. Introduction

Section 219(d) of the Clean Air Act requires EPA to promulgate regulations that require certain 1993 and earlier model year urban buses, having engines which are replaced or rebuilt after January 1, 1995, to comply with an emission standard or control technology reflecting the best retrofit technology and maintenance practices reasonably achievable.

On April 21, 1993, EPA published final Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses (58 FR 21359). The Urban Bus Retrofit/Rebuild Program requires affected operators of urban buses to choose between two compliance options. Option 1 establishes particulate matter (PM) emissions requirements for each urban bus in an operator's fleet whose engine is rebuilt or replaced. Option 2 is a fleet averaging program that sets out specific annual target levels for average PM emissions from urban buses in an operator's fleet. The two compliance options are designed to yield equivalent emissions reductions for approximately the same cost.

In the final rule, EPA stated that it would review the retrofit/rebuild equipment that was certified by July 1, 1994, and again by July 1, 1996, and publish the post-rebuild PM emission levels for urban bus engines affected by the program. These post-rebuild levels are to be used by transit operators choosing to comply with Option 2 for calculating their fleet emission levels. In two previous Federal Register notices (59 FR 45626, September 2, 1994, and 60 FR 42763, August 16, 1996), EPA published post-rebuild PM levels based on equipment that was certified as of these two dates. Today's notice proposes, as described below, that EPA review certified equipment for a third time and publish the post-rebuild PM

emissions levels accordingly, based on equipment certified as of July 1, 1997.

## II. Background

### A. Compliance Options

EPA promulgated the final rule regarding the Urban Bus Retrofit/Rebuild Program on April 23, 1993 (58 FR 21359). In short, the rule requires operators of 1993 and earlier model year urban buses, in MSA's and CMSA's with a 1980 population of 750,000 or more, to comply with one of two program options.

Option 1 is a performance based program requiring that affected urban buses meet a 0.10 g/bhp-hr PM standard at the time of engine rebuild or replacement, if equipment has been certified by EPA for six months as meeting the 0.10 g/bhp-hr standard for less than a life cycle cost limit of \$7,940 (in 1992 dollars). (EPA chose to allow a six month lead time before requiring such equipment to allow transit operators to plan their budgeting and procurement activities, and to help ensure an adequate supply of parts are available from equipment manufacturers.) If equipment is not certified as meeting the 0.10 g/bhp-hr standard for under the life cycle cost limit, then affected buses must receive equipment which reduces PM emissions by 25 percent, if such equipment has been certified by EPA for six months as meeting the 25 percent reduction standard for less than a life cycle cost limit of \$2,000 (in 1992 dollars). If no equipment is certified to meet either the 0.10 g/bhp-hr standard, or the 25 percent reduction standard, then the affected bus engine must be rebuilt to the original engine configuration, or to an engine configuration certified to have a PM level lower than that of the original engine.

Option 2 is an averaging based program requiring that affected urban bus operators meet an annual average fleet PM level, rather than requiring that each individual rebuilt engine meet a specific PM level. The transit operator must reduce PM emission from its buses to a level low enough to meet an annual average target level for the fleet (TLF). The TLF is calculated for each calendar year of the program, beginning in calendar year 1996, and is based on EPA's determination of the projected PM emission level for each engine model in the affected fleet, and on assumed engine rebuild and retirement schedules. The actual fleet level attained (FLA) must remain equal to, or below, the TLF for each year of the program. The FLA is a fleet weighted average PM level based on the "actual"

PM level of each affected engine. The "actual" PM level of each affected engine is determined by the PM certification level of the equipment used to retrofit the engine. If no retrofit equipment is installed on the engine, or if no retrofit equipment is certified for the engine, then the PM level is based on EPA's determination of the projected PM emission level for the engine model.

EPA established the pre-rebuild PM levels for each engine model in the final rule. The pre-rebuild PM level for an engine model is based on new-engine certification data, if available, for that engine model. Otherwise, the level is based on EPA's estimate of such emissions based on data from similar engine models. In addition, EPA projected post-rebuild PM levels for each engine model based on the expectation that retrofit equipment would be certified for certain engine models and would achieve certain reductions. EPA recognized that these projections may not accurately reflect future equipment certification, and that transit operators may not be able to comply if the TLF were based on unrealistic PM levels. Therefore, the final rule contained requirements that EPA revise the post-rebuild PM levels based on equipment that was actually certified.

When determining when it would revise the post-rebuild PM levels, EPA considered several factors. First, EPA had to estimate the time frame during which equipment manufacturers would likely certify equipment for this program. For example, revising the post-rebuild PM levels in 1995, and again in 1999, would be meaningless if certification activity ceased in 1994. Second, EPA wanted to ensure that Option 2 remained comparable in terms of cost, lead time, and emissions benefit, to Option 1. Third, EPA wanted to ensure Option 2 remained a workable and feasible compliance option.

EPA assumed that certification activity under this program would likely be completed by 1996. The retrofit program only affects 1993 and earlier model year urban buses, which will only be in operation until around 2008. In order to recuperate development costs, EPA expected equipment manufacturers to certify equipment as early as possible, and for the most popular engine models. In fact, some retrofit kits already existed and were in use prior to the publication of the final rule, and EPA expected those equipment manufacturers to seek certification immediately after the rule was published.

With early certification activity expected, a revision of post-rebuild PM

levels prior to the start of the program (January 1, 1995) was determined appropriate. In addition, with certification activity expected to be completed by 1996, a second revision of the post-rebuild levels in mid-1996 was also determined appropriate. Limiting the number of revisions to the post-rebuild PM levels was important to provide stability in the averaging program and make it a viable compliance option. Having more than two revisions could lead to a "moving target" for transit operators. Selection of the specific dates for the two revisions is discussed below.

Under Option 1, transit operators are not required to use equipment until six months after it is certified as meeting both emissions and cost requirements. This lead time is vital to transit operators to effectively plan their budgeting and procurement activities. Similarly, under Option 2, EPA believes six months of lead time are also appropriate. As a result, EPA determined that the first revision of post-rebuild PM levels would be based on equipment certified as of July 1, 1994. This date would allow inclusion of equipment certified early, and would also allow Option 2 transit operators six months prior to the program start date to plan their budgeting and procurement activities in order to meet the TLF for 1996 (TLF<sub>96</sub>). (Although the first TLF calculation for Option 2 is effective for calendar 1996 (TLF<sub>96</sub>), transit operators will likely take actions beginning January 1, 1995 to ensure compliance with TLF<sub>96</sub> on January 1, 1996.) EPA determined the second (and final) revision to post-rebuild PM levels would be based on equipment certified as of July 1, 1996.

This date would allow six months of lead time for transit operators to plan their budgeting and procurement activities in order to meet TLF<sub>98</sub>. (Again, transit operators will likely take actions beginning January 1, 1997 to ensure compliance with TLF<sub>98</sub> on January 1, 1998). In addition, by revising the post-rebuild PM levels after certification activity was complete, EPA could be assured that buses would be using the "best retrofit technology \* \* \* reasonably achievable" as Congress required.<sup>1</sup>

In addition to the timing of the post-rebuild PM level revisions, EPA was also concerned about the content of the revisions. From an environmental standpoint, the lowest PM level certified for an engine model would be the most desirable post-rebuild PM level to include in the revision. However, low

emitting technologies could be quite costly. Under Option 1, transit operators are not required to use technology unless it can meet certain cost limits. In order to maintain equity between Option 1 and Option 2 programs, the final rule requires that certified equipment must meet the life cycle cost limits of Option 1 in order to be considered for inclusion in the Option 2 revisions of post-rebuild PM levels. Among the certified equipment that meets the Option 1 cost limits, the numerically lowest PM certification level for a given engine model will establish the revised post-rebuild PM level for that engine model.

Default provisions were also included in the final rule in the event equipment meeting cost limits were not certified.

#### *B. Current Status of Program*

Certification activity under the retrofit program has lagged substantially behind the schedule anticipated by EPA. In fact, when EPA published revised post-rebuild levels based on equipment certified as of July 1, 1994 (59 FR 45626, September 2, 1994), no equipment had been certified. That revision included no updated post-rebuild PM levels, but instead is based on default provisions of the final rule (40 CFR 85.1403(c)(1)(iii)(B)(5)). The first approval of a certification for this program occurred on May 31, 1995 (60 FR 28402), almost a year after the post-rebuild levels were revised the first time. Although six retrofit kits have been certified by EPA as of August 1996, no equipment has been certified as meeting the 0.10 g/bhp-hr PM standard for under the life cycle cost limit of \$7,940 (in 1992 dollars). Therefore, the recent revision to the post-rebuild PM levels were based on 25 percent reduction equipment, or on no equipment (for those engine models for which no equipment was certified as meeting emissions and cost requirements).

Not only has EPA's assumption that certification activity would begin early proven incorrect, but more importantly, EPA's assumption that certification activity would be complete by mid-1996 has proven incorrect. EPA is currently processing several applications for certification, including one aimed at meeting the 0.10 g/bhp-hr PM standard for less than the life cycle cost limit of \$7,940 (in 1992 dollars). Several more equipment manufacturers have made initial contact with EPA regarding certification of equipment, including additional technologies aimed at meeting the 0.10 g/bhp-hr standard. Consistent with the current program regulations, none of the potentially

promising retrofit technologies certified after the July 1, 1996 final post-rebuild PM level revision can influence compliance under Option 2.

#### *C. Potential Inequity Between Compliance Options*

As discussed above, technologies certified after the final post-rebuild PM revision of July 1996 cannot influence compliance under Option 2. In other words, under the current regulations, transit operators choosing to comply with Option 2 would never be required to reduce their fleet PM levels below those PM levels contained in the recent post-rebuild level revision based on equipment certified as of July 1, 1996. However, consistent with the final program regulations, transit operators choosing to comply with Option 1 would be required to use equipment certified to the 0.10 g/bhp-hr standard, even if the standard is triggered after July 1, 1996. The result is that Option 1 could become a much more stringent compliance option. Given the level of current certification activity, and the continued interest from equipment manufacturers, eventual certification of a 0.10 g/bhp-hr technology, and thus the likelihood of program inequity, is likely.

As discussed above, EPA intended the two compliance options to be equivalent in terms of cost, emissions reduction and lead time. However, future certification of technology which triggers the 0.10 g/bhp-hr standard could result in Option 2 being much less costly than Option 1. Further, Option 1 would yield significantly more PM reductions. The root cause of this inequity is that equipment certification activity will continue longer than originally anticipated. If the current program regulations are not amended, then transit operators, the majority of whom EPA currently believes are complying with Option 1, will have a great incentive to switch to Option 2. Obviously, PM reductions would be significantly reduced in those cities where transit operators switch to Option 2. Furthermore, such a loophole is in direct conflict with the Clean Air Act language that urban buses use the "best retrofit technology \* \* \* reasonably achievable".

#### *III. Description of Today's Proposal*

EPA is proposing to amend the current program regulations to include an additional revision of post-rebuild PM levels based on equipment certified as of July 1, 1997. EPA is currently in receipt of one equipment certification application intended to meet the 0.10 g/bhp-hr standard for less than the life cycle cost limit of \$7,940 (in 1992

<sup>1</sup> Clean Air Act Section 219(d), 42 U.S.C. 7554(d).

dollars), and expects to receive more in the near future. As such, one additional year is expected to allow ample time for equipment manufacturers to certify 0.10 g/bhp-hr technology for those engine models for which equipment could reasonably be certified.

The purpose and effect of today's proposed action is simple and straightforward. First, the purpose of today's proposal is to close an unintended compliance loophole in the original regulations. Unless EPA amends the current regulations, certification of a 0.10 g/bhp-hr technology which meets cost limits will likely cause eligible transit operators choosing to comply with Option 1 to switch to Option 2 to avoid potentially high equipment costs. Under this scenario, a mass-switch to Option 2 will result in PM reductions which fall short of those expected from this program, and would negate the benefits of certifying the 0.10 g/bhp-hr technology. However, if post-rebuild PM levels are revised in mid-1997 to include any eligible 0.10 g/bhp-hr technology, there will be no incentive for transit operators to switch to Option 2. If 0.10 g/bhp-hr is included in the revised post-rebuild PM levels, the Option 2 TLF for future calendar years will be substantially reduced, effectively requiring Option 2 transit operators to use 0.10 g/bhp-hr technology or retire a substantial number of buses early in order to comply with the TLF. In effect, both Option 1 and Option 2 would require the use low-emitting technology.

EPA believes today's proposal is consistent with intent of the original regulations and with the intent of Congress. As discussed above, EPA originally intended Option 1 and Option 2 to be equivalent in terms of emissions reductions, costs, lead time, and stability. Moreover, this proposed revision would ensure that EPA's requirements reflect the "best retrofit technology and maintenance practice reasonably achievable" as required under section 219(d) and intended by EPA's initial regulations.

Clearly, failure to amend the regulations as proposed will result in vastly differing PM reductions between the options as transit operators using Option 2 will avoid using low-emitting technology. On the contrary, amending the regulations as proposed will result in both options essentially requiring the use of low-emitting technology, and should result in similar PM reductions.

Regarding costs, EPA originally intended that the cost of the two options be comparable, such that both options were truly viable choices for transit operators. Today's proposal will ensure

that the two options remain consistent in terms of cost. Note that today's proposal does not result in any additional costs to transit operators not previously contemplated in the original rulemaking. EPA is not proposing any changes to the life cycle cost requirements or the requirement to use certified equipment.

Today's proposal does not change the six month lead time that transit operators would be allowed to plan their budgeting and procurement strategies. EPA is proposing to base the final revision of post-rebuild PM levels on equipment certified as of July 1, 1997, which is six months prior to the date on which transit operators would likely begin taking actions to ensure compliance with TLF<sub>99</sub>.

Finally, regarding program stability, EPA believes today's proposal is consistent with the original regulations, and in addition, provides further stability beyond the original regulations. EPA originally limited the number of post-rebuild PM level revisions to two in order to avoid a "moving target" for transit operators. Too much instability would likely discourage transit operators from considering Option 2 as a viable compliance option. As discussed previously in today's notice, EPA determined that revisions of post-rebuild PM levels would be based on equipment certified as of July 1, 1994, and again as of July 1, 1996. The primary reason these dates were determined appropriate at the time of the original rulemaking is that EPA believed equipment certification would begin as soon as the final rule was published on April 23, 1993, and would be completed by mid-1996. Discussions with industry and comments from the public gave no indication that certification activity would not follow this assumed schedule. In fact, retrofit kits already existed and were being used by transit operators when the final rule was published.

For a variety of reasons, certification activity has lagged behind the schedule anticipated by EPA, so much so that no equipment had been certified as of July 1, 1994. The first revision of post-rebuild PM levels resulted in no revision at all. The recent revision based on equipment certified as of July 1, 1996 did contain several updated post-rebuild PM levels. In effect, adding a third revision based on equipment certified as of July 1, 1997 would be just the second revision of any substance. In this regard, the stability of Option 2 is still maintained as EPA originally intended. Furthermore, EPA expects that option switching that might occur without an additional post-rebuild PM

level revision could be more disruptive to program stability than today's proposal.

EPA believes today's proposed action is consistent with Congress' intent that urban buses utilize the "best retrofit technology \* \* \* reasonably achievable." Clearly, low-emitting equipment such as equipment which meets a 0.10 g/bhp-hr standard would represent the best retrofit technology. The fact that transit operators will only be required to use such equipment if it meets certain life cycle cost limits means that such equipment will be reasonably achievable. The fact that EPA miscalculated the time table on which low emitting technology would be developed by a year or less does not itself imply that such technology is not reasonably achievable.

EPA solicits comments on this proposal and its effect on the Urban Bus Retrofit/Rebuild Program, transit operators and equipment manufacturers. In particular, EPA solicits comments on the need to add a third revision of post-rebuild PM levels, the timing of a third revision, the consistency of today's proposal with the original regulations, the need to address the potential compliance loophole that may exist, how to ensure the same compliance loophole issue addressed by today's proposal does not happen again in the future, and any other aspects of the proposed action.

#### IV. Environmental Impact

The environmental impacts expected to result from the retrofit/rebuild program are outlined in the final Regulatory Support Document (RSD) for the original rulemaking and can be found in public docket A-91-28 (see ADDRESSES section above). Today's proposed action would not result in any additional emissions reductions beyond those outlined in the RSD. However, today's action would help ensure these expected reductions are actually achieved by closing an unintended compliance loophole. If transit operators are allowed to take advantage of the potential loophole in the current program, PM reductions will not be achieved at the level EPA originally anticipated. In addition, to the extent that transit operators can avoid installing low-emitting technology on buses, such buses will not reflect the "best retrofit technology \* \* \* reasonably achievable" as Congress required.

#### V. Economic Impact

Today's proposed action would have no additional economic impact compared to the economic impact

described in original regulations finalized on April 23, 1993. While failure to take the proposed action could result in reduced costs for those transit operators who could take advantage of the loophole, no additional costs unaccounted for in the original regulations would be imposed on any transit operators as a result of today's proposed action. The costs associated with this program have already been determined to be reasonable and the program to be cost-effective.

## VI. Public Participation

### A. Comments and the Public Docket

EPA solicits comments on all aspects of this proposal from all interested parties since it is our desire to ensure full public participation in arriving at final decisions. Wherever applicable, complete supporting data and analyses should be submitted to allow EPA to make the maximum use of comments. Commenters are encouraged to provide specific suggestions for changes to any of the proposal. All comments should be directed to the EPA Air Docket No. A-91-28 (Category VII) (See **ADDRESSES**).

### B. Public Hearing

EPA will hold a public hearing on this proposal on December 6, 1996 if it receives a request by November 22, 1996. EPA will cancel this hearing if no one requests to testify. Members of the public should call the contact person indicated above to notify EPA of their interest in testifying at the hearing. Interested parties may call the contact person after November 22, 1996 to determine whether the hearing will be held and the time and location of the hearing.

## VII. Administrative Designation and Regulatory Analysis

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), EPA must determine whether a 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, 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 entitlement, grants, user fees,

or loan programs or the rights and obligations of recipients thereof;

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

EPA has 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.

## VIII. Impact on Small Entities

The Regulatory Flexibility Act requires Federal agencies to consider potentially adverse impacts of proposed federal regulations upon small entities. In instances where significant impacts are possible on a substantial number of these entities, agencies perform a proposed Regulatory Flexibility Analysis.

I certify that there will not be a significant adverse impact on a substantial number of small business entities due to the proposed revision of the urban bus retrofit/rebuild program. The urban bus operators affected by the program regulations are generally not small businesses. In addition, EPA determined the original regulations relating to the urban bus retrofit/rebuild program did not have an adverse impact on a substantial number of small entities. Today's proposed revision does not impose any new costs above those included in the original rulemaking. Today's action will affect only a few businesses using the retrofit fleet averaging program and will likely have an effect solely on a small portion of the businesses' fleet. There may be benefit to those small business entities that manufacture retrofit/rebuild equipment, since urban bus operators may be required to use such equipment.

## IX. Reporting and Recordkeeping Requirements

Under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., EPA must obtain OMB clearance for any activity that will involve collecting substantially the same information from 10 or more non-Federal respondents. The regulatory revisions proposed in today's notice do not include any provisions for the collection of information from non-Federal respondents.

## X. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (signed into law on March 22, 1995) requires that EPA prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State,

local, and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year. Section of the Unfunded Mandates Reform Act requires EPA to establish a plan for obtaining input from and informing, educating and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act EPA, must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. EPA must select from those alternatives the least costly, most costly, most cost effective, or least burdensome alternative that achieves the objectives of the rule, unless EPA explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

## List of Subjects in 40 CFR Part 85

Environmental protection, Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Warranties.

Dated: November 1, 1996.

Carol M. Browner,  
Administrator.

For the purposes set out in the preamble, part 85 of title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

## PART 85—[AMENDED]

1. The authority citation for part 85 is revised to read as follows:

Authority: 42 U.S.C. 7401-7671q.

## Subpart O—[Amended]

2. Section 85.1403 is proposed to be amended by revising paragraph (c)(1)(iii)(C) and adding paragraph (c)(1)(iii)(D) to read as follows:

### § 85.1403 Particulate standard for pre-1994 model year urban buses effective at time of engine rebuild or engine replacement.

\* \* \* \* \*

(c) \* \* \*  
(1) \* \* \*  
(iii) \* \* \*

(C) For TLF calculations for calendar year 1998, post-rebuild particulate emission levels for a specific engine model shall be equal to the following:

(I) 0.10 g/bhp-hr, for any engine model (other than those indicated in paragraph (c)(1)(iii)(C)(4) of this section) for which equipment has been certified by July 1, 1996 as meeting the emission and cost requirements of paragraph (b)(1) of this section for all affected urban bus operators;

(2) For any engine model for which no equipment has been certified by July 1, 1996 as meeting the requirements of paragraph (b)(1) of this section for all affected urban bus operators, but for which equipment has been certified by July 1, 1996 as meeting the emission and cost requirements of paragraph (b)(2) of this section for all affected urban bus operators, the post-rebuild particulate emission level shall equal the lowest emission level (greater than or equal to 0.10 g/bhp-hr) certified for any such equipment;

(3) For any engine model for which no equipment has been certified by July 1, 1996 as meeting the requirements of either paragraph (b)(1) or paragraph (b)(2) of this section, the post-rebuild particulate emission level shall equal the pre-rebuild particulate level;

(4) For any engine model with a pre-rebuild particulate level below 0.10 g/bhp-hr, the post-rebuild particulate emission level shall equal the pre-rebuild particulate level; and

(5) Notwithstanding paragraph (c)(1)(iii)(C)(3) of this section, if by July 1, 1996, no equipment has been certified to meet the emission requirements of paragraph (b)(1) or paragraph (b)(2) of this section for any of the engine models listed in the table at paragraph

(c)(1)(iii)(A) of this section, then the post-rebuild particulate levels shall be the pre-rebuild particulate levels specified in the table at paragraph (c)(1)(iii)(A) of this section.

(D) For TLF calculations for calendar year 1999 and thereafter, post-rebuild particulate emission levels for a specific engine model shall be equal to the following:

(1) 0.10 g/bhp-hr, for any engine model for which equipment has been certified by July 1, 1997 as meeting the emission and cost requirements of paragraph (b)(1) of this section for all affected urban bus operators;

(2) For any engine model for which no equipment has been certified by July 1, 1997 as meeting the requirements of paragraph (b)(1) of this section for all affected urban bus operators, for which equipment has been certified by July 1, 1997 as meeting the emission and cost requirements of paragraph (b)(2) of this section for all affected urban bus operators, the post-rebuild particulate emission level shall equal the lowest emission level (greater than or equal to 0.10 g/bhp-hr) certified for any such equipment;

(3) For any engine model for which no equipment has been certified by July 1, 1997 as meeting the emission and cost

requirements of paragraph (b)(1) or paragraph (b)(2) of this section for all affected urban bus operators, the post-rebuild particulate emission level shall equal the pre-rebuild particulate level;

(4) For any engine model with a pre-rebuild particulate level below 0.10 g/bhp-hr, the post-rebuild particulate emission level shall equal the pre-rebuild particulate level;

(5) Notwithstanding paragraph (c)(1)(iii)(D)(3) of this section, if by July 1, 1997, no equipment has been certified for any of the engine models listed in the table at paragraph (c)(1)(iii)(A) of this section, then the post-rebuild particulate levels shall be as indicated in the table at paragraph (c)(1)(iii)(A) of this section; and

(6) Notwithstanding paragraph (c)(1)(iii)(D)(3) of this section, if by July 1, 1997, equipment has been certified to meet the emissions requirements of paragraph (b)(1) or paragraph (b)(2) of this section for any of the engine models listed in the table at paragraph (c)(1)(iii)(A) of this section, but no equipment has been certified by July 1, 1996 to meet the life-cycle cost requirements of paragraph (b)(1) or paragraph (b)(2) of this section, then the post-rebuild particulate levels shall be as specified in the following table:

Engine model	Model year sold	Pre-rebuild PM level (g/bhp-hr)	Post-rebuild PM level (g/bhp-hr)
DDC 6V92TA .....	1979-1987 .....	0.50	0.30
	1988-1989 .....	0.30	0.30
DDC 6V92TA DDECI .....	1986-1987 .....	0.30	0.30
DDC 6V92TA DDECII .....	1988-1991 .....	0.31	0.25
	1992 .....	0.25	0.25
	1993 (no trap) .....	0.25	0.25
	1993 (trap) .....	0.07	0.07
DDC Series 50 .....	1993 .....	0.16	0.16
DDC 6V71N .....	1973-1987 .....	0.50	0.50
	1988-1989 .....	0.50	0.50
DDC 6V71T .....	1985-1986 .....	0.50	0.50
DDC 8V71N .....	1973-1984 .....	0.50	0.50
DDC 6L71TA .....	1990 .....	0.59	0.59
	1988-1989 .....	0.31	0.31
DDC 6L71TA DDEC .....	1990-1991 .....	0.30	0.30
Cummins L10 .....	1985-1987 .....	0.65	0.46
	1988-1989 .....	0.55	0.46
	1990-1991 .....	0.46	0.46
	1992 .....	0.25	0.25
	1993 (trap) .....	0.05	0.05
Alternatively-fueled Engines .....	Pre-1994 .....	0.10	0.10
Other Engines .....	Pre-1988 .....	0.50	0.50
	1988-1993 .....	<sup>1</sup>	<sup>1</sup>

<sup>1</sup> Certification level.

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#### 40 CFR Parts 86 and 89

[FRL-5645-3]

RIN 2060-AG78

#### Control of Air Pollution; Amendments to Emission Requirements Applicable to New Nonroad Compression-Ignition Engines at or Above 37 Kilowatts: Provisions for Replacement Compression-Ignition Engines and the Use of On-Highway Compression-Ignition Engines in Nonroad Vehicles

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed rule (NPRM).

**SUMMARY:** This NPRM proposes to amend the regulations applicable to compression-ignition nonroad engines at or above 37 kilowatts (kW) to address two disruptive situations that have arisen regarding the implementation of regulations applicable to these nonroad engines. No air quality impact is expected from these amendments.

This NPRM proposes to allow nonroad vehicle manufacturers to use certified on-highway engines in nonroad vehicles that are constructed from on-highway vehicles or that must use public roads between job sites. These amendments also propose to allow engine manufacturers to provide uncertified replacement engines to repower pre-regulation nonroad equipment when that equipment experiences major engine failure and a suitable certified engine that will fit in the equipment is not available.

Because the rule revision is not expected to receive any adverse comments, the revision is also being issued as a direct final rule in a separate part of this Federal Register.

**DATES:** Public comments on the amendments proposed herein will be accepted until December 12, 1996 or 30 days after the date of a public hearing if one is held.

The Agency will hold a public hearing regarding these proposed

amendments on December 6, 1996 if it receives a request to testify at a hearing by November 22, 1996. The Agency will cancel this hearing if no one requests to testify. Members of the public should call the contact person indicated below to notify EPA of their interest in testifying at the hearing. Interested parties may call the contact person after November 22, 1996 to determine whether and where the hearing will be held.

**ADDRESSES:** Interested parties may submit written comments (in duplicate) for EPA consideration by addressing them as follows: EPA Air Docket (LE-131), Attention: Docket Number A-96-37, room M-1500, 401 M Street, S.W., Washington, D.C. 20460. Please contact the individual listed below before submitting comments.

Materials relevant to this rulemaking are contained in the docket listed above and may be reviewed at that location from 8:00 am until 5:30 pm Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged by EPA for photocopying.

**FOR FURTHER INFORMATION CONTACT:** John Guy, Office of Mobile Sources, Engine Programs and Compliance Division (6403J), 401 M Street S.W., Washington, D.C. 20460, 202-233-9276.

#### SUPPLEMENTARY INFORMATION:

##### Regulated Entities

Entities potentially regulated by this action are those which manufacture and use compression ignition engines of 37 kW or greater. Regulated categories and entities include:

Category	Examples of regulated entities
Industry ....	Manufacturers and users of compression ignition engines of 37 kW or greater.

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

facility is regulated by this action, you should carefully examine the criteria contained in § 89.1 of title 40 of the Code of Federal Regulations, as modified by today's action. If you have questions regarding the applicability of this action to a particular entity, consult one of the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

If no adverse comments are timely received, no further activity is contemplated in relation to this proposed rule and the direct final rule in a separate part of this Federal Register will automatically go into effect on the date specified in that rule. If adverse comments are timely received on the direct final rule, the rule will be withdrawn and all public comment received on it will be addressed in a subsequent final rule based on this proposed rule. Because the Agency will not institute a second comment period on this proposed rule, any parties interested in commenting should do so during this comment period.

For further supplemental information, the detailed rationale, and the rule revisions, see the information provided in the direct final rule in a separate part of this Federal Register.

#### List of Subjects

##### 40 CFR Part 86

Environmental protection, Administrative practice and procedure, Confidential business information, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

##### 40 CFR Part 89

Environmental protection, Administrative practice and procedure, Confidential business information, Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Warranties.

Dated: October 28, 1996.

Carol M. Browner,

Administrator.

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