

from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: March 13, 2006.

**James B. Gulliford,**

*Regional Administrator, Region 7.*

[FR Doc. 06-3035 Filed 3-29-06; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 86

[OAR-2006-0160; FRL-8049-5]

RIN 2060-AN67

#### Control of Air Pollution from New Motor Vehicles: Amendments to the Tier 2 Motor Vehicle Emission Regulations; Proposed Rule

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** EPA is proposing to make minor amendments to the existing Tier 2 motor vehicle regulations (65 FR 6698, February 10, 2000, hereinafter referred to as the Tier 2 rule). These proposed minor amendments are consistent with our intention, under the original Tier 2 rule, to provide interim compliance flexibilities for clean diesels in the passenger car market. While the automotive industry has made rapid advancements in light-duty diesel emissions control technologies and will, as a result, be able to produce diesel vehicles that can comply with the primary regulatory requirements of the Tier 2 program, diesel vehicles still face some very limited technological challenges in meeting the full suite of Tier 2 requirements. This action would provide two voluntary, interim alternative compliance options for a very limited set of standards for oxides of nitrogen (NO<sub>x</sub>), including only high altitude and high speed/high acceleration conditions. These temporary alternative compliance options are designed to be environmentally neutral, as manufacturers choosing them would then be required to meet more stringent standards in other aspects of the Tier 2 program. The alternative compliance options would last for only three model years, during which time advancements in diesel emissions control technologies would be further developed.

In the "Rules and Regulations" section of this **Federal Register**, we are making these technical amendments as a direct final rule without prior proposal because we view these technical amendments as noncontroversial revisions and anticipate no adverse comment. We have explained our reasons for these technical amendments in the preamble to the direct final rule. If we receive no adverse comment, we would not take further action on this proposed rule. If we receive adverse comment, we would withdraw the portions of the direct final rule receiving such comment and those portions would not take effect. We would address all public comments in a subsequent final rule based on this proposed rule. We would not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

**DATES:** If we do not receive a request for a public hearing, written comments are due May 1, 2006. Requests for a public hearing must be received by April 14, 2006. If we do receive a request for a public hearing, it would be held on May 1, 2006, starting at 10 a.m. In that case, the public comment period would close on June 28, 2006.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2006-0160, by one of the following methods:

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

- Mail: Public Docket No. A-97-10, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

**Instructions:** Direct your comments to Docket ID No. EPA-HQ-OAR-2006-0160. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured

and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

#### FOR FURTHER INFORMATION CONTACT:

Todd Sherwood, U.S. EPA, National Vehicle and Fuel Emissions Laboratory, Assessment and Standards Division, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone (734) 214-4405, fax (734) 214-4816, e-mail [sherwood.todd@epa.gov](mailto:sherwood.todd@epa.gov).

**SUPPLEMENTARY INFORMATION:** EPA is proposing to make minor amendments to the existing Tier 2 motor vehicle regulations (65 FR 6698, February 10, 2000, hereinafter referred to as the Tier 2 rule). These minor amendments are consistent with our intention, under the original Tier 2 rule, to provide interim flexibilities for clean diesels in the passenger car market. This action would provide two voluntary alternative compliance options for a very limited set of standards for oxides of nitrogen (NO<sub>x</sub>) (high altitude and high speed/hard acceleration). The alternative compliance options would last for only three model years, during which time advancements in diesel emissions control technologies would be further developed.

In the “Rules and Regulations” section of this **Federal Register**, we are making these minor amendments as a direct final rule without prior proposal because we view these amendments as noncontroversial revisions and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule. This proposal incorporates by reference all of the reasoning, explanation, and regulatory text from the direct final rule. For further information, including the regulatory text for this proposal, please refer to the direct final rule that is located in the “Rules and Regulations” section of this **Federal Register** publication. The direct final rule will be effective on June 28, 2006 unless we receive adverse comment by May 1, 2006, or if we receive a request for a public hearing by

April 14, 2006. If we receive no adverse comment, we will take no further action on this proposed rule.

#### Access to Rulemaking Documents Through the Internet

Today’s action is available electronically on the date of publication from EPA’s Federal Register Internet Web site listed below. Electronic copies of this preamble, regulatory language, and other documents associated with today’s proposed rule are available from the EPA Office of Transportation and Air Quality Web site listed below shortly after the rule is signed by the Administrator. This service is free of charge, except any cost that you already incur for connecting to the Internet.

EPA Federal Register Web site: <http://www.epa.gov/fedrgstr/EPA-AIR/> (either select a desired date or use the Search feature).

EPA Office of Transportation and Air Quality Web site for Tier 2 Vehicle and Gasoline Sulfur Program Amendments: <http://www.epa.gov/tier2/amendments.htm>.

Please note that changes in format, page length, etc., may occur due to computer software differences.

#### Regulated Entities

Entities potentially affected by this action are those that manufacture and sell motor vehicles in the United States. The table below gives some examples of entities that may have to comply with the regulations. However, since these are only examples, you should carefully examine these and other existing regulations in 40 CFR part 80. If you have any questions, please call the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Category	NAICS codes <sup>a</sup>	SIC codes <sup>b</sup>	Examples of potentially regulated entities
Industry .....	336111 336112	3711 .....	Automobile and light truck manufacturers.

<sup>a</sup>North American Industry Classification System (NAICS).

<sup>b</sup>Standard Industrial Classification (SIC) system code.

## I. Overview of Alternative Compliance Options

In the “Rules and Regulations” section of this **Federal Register**, we are making two minor amendments to the Tier 2 program as a direct final rule without prior proposal. As noted above, we are doing this because we view these minor amendments as noncontroversial and anticipate no adverse comment. We have explained our reasons for making these minor amendments in the preamble to the direct final rule. This proposal incorporates by reference all of the reasoning, explanation, and regulatory text from the direct final rule. For further information, including the regulatory text for this proposal, please refer to the direct final rule that is located in the “Rules and Regulations” section of this **Federal Register** publication.

## II. Statutory and Executive Order Reviews

### A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency is required to determine whether this regulatory action would be “significant” and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The order defines a “significant regulatory action” as any

regulatory action that is likely to result in a rule that may:

- Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,
- Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, we have determined that this proposed rule is not a “significant regulatory action.”

### B. Paperwork Reduction Act

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

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a

Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA’s regulations in 40 CFR are listed in 40 CFR part 9.

### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small

organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A motor vehicle manufacturer with fewer 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, we certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This proposed rule would not have any adverse economic impact on small entities. Today's rule revises certain provisions of the Tier 2 rule (65 FR 6698, February 10, 2000), such that regulated entities have more flexibility in complying with the requirements of the Tier 2 rule. More specifically, today's action provides alternative compliance options that relax very limited elements of the Tier 2 standards in return for greater stringency in other, broader elements of the standards. 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 actions on state, local, and tribal governments, and the private sector. Under section 202 of the UMRA, we generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may

result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more for any single year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and to adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative that is not the least costly, most cost-effective, or least burdensome alternative if we provide an explanation in the final rule of why such an alternative was adopted.

Before we establish any regulatory requirement that may significantly or uniquely affect small governments, including tribal governments, we must develop a small government plan pursuant to section 203 of the UMRA. Such a plan must provide for notifying potentially affected small governments, and enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant Federal intergovernmental mandates. The plan must also provide for informing, educating, and advising small governments on compliance with the regulatory requirements.

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

We have determined that this rule does not contain a federal mandate that may result in estimated expenditures of more than \$100 million to the private sector in any single year. This action has the net effect of providing alternative compliance options within the Tier 2 rule. Therefore, the requirements of the UMRA do not apply to this action.

#### *E. Executive Order 13132: Federalism*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires us to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." The phrase "policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the states, on the relationship between the national

government and the states, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, we may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or we consult with state and local officials early in the process of developing the proposed regulation. We also may not issue a regulation that has federalism implications and that preempts state law, unless we consult with state and local officials early in the process of developing the proposed regulation.

Section 4 of the Executive Order contains additional requirements for rules that preempt state or local law, even if those rules do not have federalism implications (*i.e.*, the rules would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government). Those requirements include providing all affected state and local officials notice and an opportunity for appropriate participation in the development of the regulation. If the preemption is not based on express or implied statutory authority, we also must consult, to the extent practicable, with appropriate state and local officials regarding the conflict between state law and federally protected interests within the Agency's area of regulatory responsibility.

This rule does not have federalism implications. It would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule provides alternative compliance options for complying with existing rules that adopted national standards to control vehicle emissions and gasoline fuel sulfur levels. The requirements of the rule would be enforced by the federal government at the national level. Thus, the requirements of Section 6 of the Executive Order do not apply to this rule.

#### *F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled "Consultation and Coordination with

Indian Tribal Governments” (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This proposed rule does not have tribal implications, as specified in Executive Order 13175. Today’s rule does not uniquely affect the communities of American Indian tribal governments since the motor vehicle requirements for private businesses in today’s rule would have national applicability. Furthermore, today’s rule does not impose any direct compliance costs on these communities and no circumstances specific to such communities exist that would cause an impact on these communities beyond those discussed in the other sections of today’s document. Thus, Executive Order 13175 does not apply to this rule.

*G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

Executive Order 13045, “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be “economically significant” as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, section 5–501 of the Executive Order directs us to evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rule is not subject to the Executive Order because it is not an economically significant regulatory action as defined by Executive Order 12866. Furthermore, this rule does not concern an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children.

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

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), section 12(d) of Public Law 104–113, directs us to use voluntary consensus standards in our regulatory activities unless it would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) developed or adopted by voluntary consensus standards bodies. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

This rule references technical standards adopted by us through previous rulemakings. No new technical standards are established in today’s rule. The standards referenced in today’s rule involve the measurement of gasoline fuel parameters and motor vehicle emissions.

**III. Statutory Provisions and Legal Authority**

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

**List of Subjects in 40 CFR Part 86**

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

Dated: March 21, 2006.

**Stephen L. Johnson,**  
*Administrator.*

[FR Doc. 06–2980 Filed 3–29–06; 8:45 am]

**BILLING CODE 6560–50–P**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**Endangered and Threatened Wildlife and Plants; Notice of Availability of Genetics Data and Extension of Comment Period for the Proposed Delisting of the Preble’s Meadow Jumping Mouse (*Zapus hudsonius preblei*)**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; extension of comment period.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the availability of two recently published reports and the underlying data which present additional analysis data regarding the Preble’s meadow jumping mouse (*Zapus hudsonius preblei*). In order to ensure the public has full access to and an opportunity to comment on all available information on the proposed rule to delist the Preble’s meadow jumping mouse, we are extending the public comment period until May 18, 2006. Comments previously submitted need not be resubmitted as they have already been incorporated into the public record and will be fully considered in the final decision and rule.

**DATES:** The public comment period that was reopened until April 18, 2006 (71 FR 8556) is extended until May 18, 2006. Any comments that are received after the closing date may not be considered in the final decision on the proposal.

**ADDRESSES:** Documents and data relative to this proposed rule are available at <http://mountain-prairie.fws.gov/preble/> or <http://mountain-prairie.fws.gov/preble/PEER/PEERindex.htm>. If you wish to comment, you may submit your comments and materials concerning the proposal by one of several methods:

1. You may submit written comments to Field Supervisor, Colorado Field Office, Ecological Services, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225.

2. You may hand deliver comments to our Colorado Field Office at 134 Union Blvd., Suite 670, Lake Plaza North, Lakewood, Colorado 80228, or send via facsimile (fax 303–236–4005).

3. You may send comments via electronic mail (e-mail) to [FW6\\_PMJM@fws.gov](mailto:FW6_PMJM@fws.gov). See the Public Comments Solicited section below for file format and other information about electronic filing.

The complete file for the finding and proposed rule is available for inspection, by appointment, during normal business hours, at the above address.

**FOR FURTHER INFORMATION CONTACT:** Susan Linner, Field Supervisor, at the Colorado Field Office (see **ADDRESSES** section) or telephone (303) 236–4774. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.