mountaineers on the dangers they may face climbing in the park, how to prepare and equip themselves for the climb, other safety related issues and requirements concerning resource protection issues such as litter removal and human waste disposal.

On September 13, 1995, the NPS published the proposed regulation that will require mountain climbers to register a minimum of 60 days before any climb on Mount McKinley and Mount Foraker (60 FR 47513). The comment period closed on November 13, 1995. No comments were received during the comment period. When this rule becomes final, it will replace the interim rule that was published on March 31, 1995, in the Federal Register. (60 FR 16579).

Drafting Information

The primary authors of this final rule are Dennis Burnett, Washington Office of Ranger Activities, National Park Service and Brenda Bussard of Denali National Park and Preserve, National Park Service.

Paperwork Reduction Act

This final rule does not contain collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995.

Compliance With Other Laws

This rule was not subject to Office of Management and Budget review under Executive Order 12866. The Department of the Interior determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) The economic effects of this rulemaking are local in nature and negligible in scope.

The NPS has determined that this final rule will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce incompatible uses which compromise the nature and character of the area or causing physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, the regulation is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental guidelines in 516 DM 6 (49 FR 21438). As such, neither an Environmental Assessment (EA) nor an Environmental Impact Statement (EIS) has been prepared.

List of Subjects in 36 CFR Part 13

Alaska, National Parks, reporting and recordkeeping requirements.

In consideration of the foregoing, 36 CFR Chapter I, Part 13 is amended as follows:

PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA

1. The authority citation for part 13 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 462(k), 3101 *et seq.; § 13.65(b) also issued under 16 U.S.C. 1a–2(h), 1361, 1531.*

Subpart C—Special Regulations—Specific Park Areas in Alaska

2. Section 13.63 is amended by revising paragraph (f) to read as follows:

§ 13.63 Denali National Park and Reserve.

* * * * *

(f) *Mountain climbing.* Climbing on Mount McKinley or Mount Foraker without registering, on a form provided by the Superintendent, at least 60 days in advance of any climb is prohibited.

Dated: February 6, 1996.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 96–4162 Filed 2–22–96; 8:45 am]

BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[A–94–13; FRL–5425–8]

RIN 2060–AE07

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Nonconformance Penalties for 1996 Model Year Emission Standards for Heavy-Duty Vehicles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule announces the availability of nonconformance penalties (NCPs) for the Light-Duty Truck 3 (LDT3) particulate matter (PM) standard taking effect in the 1996 model year. The availability of these NCPs will allow manufacturers of LDT3 whose vehicles or engines fail to conform with the 1996 PM standard, but do not exceed a designated upper limit, to be issued a certificate of conformity upon payment of a monetary penalty. The associated upper limit for the LDT3 PM standard will be the previous standard of 0.13 grams per mile (g/mi).

A concurrent, but separate rulemaking addresses the availability of NCPs for the 1998 and later model year oxides of nitrogen (NO_X) standard for Heavy-Duty Diesel Engines (HDDEs), the 1996 and later model year NO_X standard for LDT3 and the 1996 urban bus PM standard.

EFFECTIVE DATE: This rule will become effective March 25, 1996.

ADDRESSES: Public Docket: Copies of materials relevant to this rulemaking proceeding are contained in Public Docket A–94–13 at the Air Docket of the US Environmental Protection Agency, Room M1500, 401 M Street, SW, Washington, DC 20460, and are available for review in Room M1500 between the hours of 8:00 a.m. and 5:30 p.m. on weekdays. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Orehowsky, Manufacturers Operations Division (6405–J), US Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, telephone (202) 233–9292.

SUPPLEMENTARY INFORMATION:

I. Statutory Authority

Section 206(g) of the Clean Air Act (the Act), 42 U.S.C. 7525(g), requires EPA to issue a certificate of conformity for HDEs or Heavy-Duty Vehicles (HDVs) which exceed an applicable section 202(a) emissions standard, but do not exceed an upper limit associated with that standard, if the manufacturer pays an NCP established by rulemaking. Congress adopted section 206(g) in the Clean Air Act Amendments of 1977 as a response to perceived problems with technology-forcing heavy-duty emissions standards. (It should be noted, however, that the existence of NCPs does not change the criteria under which the standards have been and will be set under section 202.) Following *International Harvester* v. *Ruckelshaus*, 478 F.2d 615 (D.C. Cir. 1973), Congress realized the dilemma that technology-forcing standards were likely to cause. If strict standards were maintained, then some manufacturers, ''technological laggards,'' might be unable to comply initially and would be forced out of the marketplace. NCPs were intended to remedy this potential problem. The laggards would have a temporary alternative that would permit them to sell their engines or vehicles by payment of a penalty. This penalty is based in part, on the money saved from

the production of noncomplying engines, would protect conforming manufacturers from the competitive disadvantage of making more costly engines which comply with technology forcing standards.

Under section 206(g)(1) of the Clean Air Act, NCPs may be offered for HDVs or HDEs. The penalty may vary by pollutant and by class or category of vehicle or engine.

HDVs are defined by section 202(b)(3)(C) of the Clean Air Act as vehicles in excess of 6,000 pounds gross vehicle weight rating (GVWR). The light-duty truck (LDT) classification includes trucks that have a GVWR of 8,500 lbs or less. Therefore, certain LDTs may be classified as HDVs. Historically, LDTs between 6,001 and 8,500 pounds GVWR have been considered Heavy Light Duty Trucks (HLDTs). Based on various new requirements established by the Clean Air Act Amendments of 1990, HLDTs have been further subdivided into groups by weight.

The HLDTs are divided at 5750 lbs Adjusted Loaded Vehicle Weight (ALVW) which is the average of the curb weight and the GVWR. The HLDTs that are up through 5750 lbs ALVW are called Light Duty Trucks 3 (LDT3). Those above 5750 lbs ALVW but less than or equal to 8500 lbs GVWR are Light Duty Trucks 4, or LDT4. The LDT3 and LDT4 subclasses make up the HLDT vehicle class. Since NCPs are only offered for heavy duty vehicles or engines, this notice addresses only emission standards for light duty trucks of the LDT3 and LDT4 categories.

Section 206(g)(3) of the Clean Air Act requires that NCPs:

(1) Account for the degree of emission nonconformity;

(2) Increase periodically to provide incentive for nonconforming manufacturers to achieve the emission standards; and

(3) Remove the competitive disadvantage to conforming manufacturers.

Section 206(g) authorizes EPA to require testing of production vehicles or engines in order to determine the emission level on which the penalty is based. If the emission level of a vehicle or engine exceeds an upper limit of nonconformity established by EPA through regulation, the vehicle or engine would not qualify for an NCP under section 206(g) and no certificate of conformity could be issued to the manufacturer. If the emission level is below the upper limit but above the standard, that emission level becomes the ''compliance level,'' which is also the benchmark for warranty and recall liability; the manufacturer who elects to pay the NCP is liable for vehicles or engines that exceed the compliance level in-use, unless, for the case of HLDTs, the compliance level is below the in-use standard. The manufacturer does not have in-use warranty or recall liability for emissions levels above the standard but below the compliance level.

II. Background

A. The Generic Nonconformance Penalty Rule

The generic NCP rule (Phase I) established three basic criteria for determining the eligibility of emission standards for nonconformance penalties in any given model year. See 40 CFR 86.1103–87. First, the emission standard in question must become more difficult to meet. This can occur in two ways, either by the emission standard itself becoming more stringent, or due to its interaction with another emission standard that has become more stringent.

Second, substantial work must be required to meet the emission standard. EPA considers ''substantial work'' to mean the application of technology not previously used in that vehicle or engine class/subclass, or a significant modification of existing technology, to bring that vehicle/engine into compliance. EPA does not consider minor modifications or calibration changes to be classified as substantial work.

Third, a technological laggard must be likely to develop. A technological laggard is defined as a manufacturer who cannot meet a particular emission standard due to technological (not economic) difficulties and who, in the absence of NCPs, might be forced from the marketplace. EPA will make the determination that a technological laggard is likely to develop, based in large part on the above two criteria. However, these criteria are not always sufficient to determine the likelihood of the development of a technological laggard. An emission standard may become more difficult to meet and substantial work may be required for compliance, but if that work merely involves transfer of well-developed technology from another vehicle class, it is unlikely that a technological laggard would develop.

The above three criteria were used to determine eligibility for NCPs in Phase II of the NCP rulemaking (50 FR 53454, December 31, 1985), in Phase III of the NCP rulemaking (55 FR 46622, November 5, 1990) concerning the 1991 model year HDE standards, and in Phase IV of the NCP rulemaking (58 FR 68532, December 28, 1993) concerning HDVs and HDEs subject to the 1994 and later model year emission standards for particulate matter (PM).

As in the previous NCP rules, EPA is specifying values for the following parameters in the NCP formula for each standard: COC_{50}, COC_{90}, MC_{50}, and F. The NCP formula is the same as that promulgated in the Phase I rule.

COC_{50} is an estimate of the industry wide average incremental cost per engine (references to engines are intended to include vehicles as well) associated with meeting the standard for which an NCP is offered, compared with meeting the upper limit. COC_{50} is based on typical engine technology, as nearly as EPA can identify it. As in the previous NCP rules, costs include additional manufacturer costs and additional owner costs. The other NCP rules did not include certification costs in the calculation of COC_{50}, and none will be allowed in this document because both complying and noncomplying manufacturers must incur certification costs.

COC_{90} is EPA's best estimate of the 90th percentile incremental cost per engine associated with meeting the standard for which an NCP is offered, compared with meeting the associated upper limit. COC_{90} is based on a near worst case technology, as nearly as EPA can identify it. COC_{90}, like COC_{50}, includes both manufacturer and owner costs, but not certification costs.

MC_{50} is an estimate of the industry wide average marginal cost of compliance per unit of reduced pollutant associated with the least cost effective emission control technology installed to meet the new standard. MC_{50} is measured in dollars per g/BHP-hr for HDEs and in dollars per gram per mile (g/mi) for LDTs.

F is a factor used to derive MC_{90}, the 90th percentile marginal cost of compliance with the NCP standard for engines in the NCP category. MC_{90} is defined as being the slope of the penalty rate curve near the standard and is equal to MC_{50} multiplied by F. For this rulemaking, as was the case in the previous NCP rules, EPA has determined that no reasonable estimate of MC_{90} can be made based on existing marginal cost data and has thus set F at a presumptive value of 1.2. This approach was generally supported by commentaries on the past NCP rulemakings.

B. Notice of Proposed Rulemaking

In the Notice of Proposed Rulemaking (NPRM) (59 FR 43074, August 22, 1994), EPA identified the Tier I Heavy Light

Duty Trucks (HLDT) standards becoming effective in 1996, the 1996 Urban Bus PM standard of 0.05 g/bhp-hr, and the 1998 Heavy Duty Engine (HDE) NO_X standard of 4.0 g/bhp-hr as new standards for which it has statutory authority for considering NCPs. EPA then applied the three generic NCP criteria to each of those emission standards.

The Agency identified the 1996 LDT3 PM standard of 0.10 g/mi as satisfying the required NCP criteria and, therefore, proposed to make NCPs available for that standard. The Agency also proposed upper limits for that standard and numerical values to be used in the calculation of the NCP for the associated vehicles.

EPA did not propose NCPs for the other new standards because they did not meet all three of the generic NCP criteria.

NCPs were not considered for the Tier 1 ''in-use'' standards since NCPs are a mechanism to allow manufacturers to certify engine families, not to assist manufacturers in complying with ''in-use'' standards.

C. Final Rule—Availability of NCPs

1. Standard for Which NCPs Will Be Offered

a. 1996 Tier 1 PM Standard for Diesel LDT3

EPA recognizes that the new PM standard of 0.10 g/mi at full useful life represents an increase in stringency over the prior standard of 0.13 g/mi at full useful life for diesel-fueled LDT3, satisfying the first eligibility criterion. Based on discussions with General Motors, the only current manufacturer of diesel-fueled vehicles in this class, EPA believes that the addition of catalytic converter technology to these engines will probably not bring them into compliance with the new standard. Significant work will be required for another technology, such as a Variable Geometry Turbocharger, to be adapted for use on these vehicles. This is especially true when considering the interrelationship of the NO_X and PM emissions of diesel-fueled engines, as stated above. For these reasons, EPA believes that a technological laggard may develop and is offering NCPs for diesel-fueled LDT3 at the full useful life for the new PM standard. The proposed penalty rates are discussed below.

2. Standards for Which NCPs Were Not Proposed

a. 1996 Tier 1 PM Standard for Non-Diesel Fueled LDT3

There is no previous PM standard for non-diesel fueled LDT3. Thus the new PM standard of 0.10 g/mi at full useful life represents an increase in stringency. However, non-diesel fueled vehicles emit very low levels of particulate matter and will not require any additional emission control technology to meet this standard. Thus, substantial work is not required and there is not a likelihood that a technological laggard will develop. Therefore, EPA did not propose NCPs for these vehicles.

b. 1996 Tier 1 Non-Methane Hydrocarbon (NMHC) Standard for LDT3

Since there is no NMHC standard for earlier model year LDT3, the new NMHC standard represents an increase in stringency over the THC standard for previous model years, satisfying the first eligibility criterion. EPA acknowledges that one manufacturer has indicated that it may have difficulty complying with this standard. Based on the manufacturer's planned strategy, however, EPA does not believe that substantial work, as described above, will be necessary to meet the new standard for either the intermediate useful-life level of 0.32 g/mi or the full useful-life level of 0.46 g/mi, since it does not represent a major modification of existing technology. EPA also does not believe that a technological laggard is likely to develop, based on discussions with vehicle manufacturers. For these reasons, EPA did not propose NCPs for this standard.

c. 1996 Tier 1 CO Standard for LDT3

EPA recognizes that the new CO standard of 6.4 g/mi at full useful life represents an increase in stringency over the prior standard of 10 g/mi at full useful life for LDT3, satisfying the first eligibility criterion. Based on 1993 model year certification levels, only one manufacturer is currently producing LDT3 vehicles which would not meet the new standard at full useful life. Since this manufacturer does not anticipate difficulty in meeting the new CO standards, EPA does not believe that a technological laggard is likely to develop. The half useful-life standard of 4.4 g/mi is considered by EPA and manufacturers to be less difficult to meet than the full useful life standard. For these reasons, EPA did not propose NCPs for these standards.

d. 1996 Tier 1 Non-Methane Hydrocarbon (NMHC) Standard for LDT4

There is no NMHC standard for earlier model year LDT4. Both EPA and vehicle manufacturers believe that the NMHC standard represents an increase in stringency over the THC standard for previous model year LDT4, satisfying the first eligibility criterion. The same manufacturer that expressed concern in meeting the NMHC standard for LDT3 has similar concerns in meeting this standard and will use a similar strategy to lower the emissions. For the same reasons stated in the above discussion of the NMHC standard for LDT3, EPA did not propose NCPs for the NMHC standard at either the intermediate or the full useful life.

e. 1996 Tier 1 CO Standard for LDT4

EPA recognizes that the new CO standard of 7.3 g/mi at full useful life represents an increase in stringency over the prior standard of 10 g/mi at full useful life for LDT4, satisfying the first eligibility criterion. Based on discussions with current manufacturers of affected vehicles, EPA believes that manufacturers will not have difficulty in meeting the new standard. Since there are no 1993 model year LDT4 with CO certification levels higher than the new standard at full useful life, EPA does not believe that a technological laggard is likely to develop. The half useful-life standard of 5.0 g/mi is generally considered by EPA and manufacturers to be less difficult to meet than the full useful life standard of 7.3 g/mi. For these reasons, EPA did not propose NCPs for these standards.

f. 1996 Tier 1 NO_X Standard for LDT4

EPA recognizes that the new NO_X standard of 1.53 g/mi at full useful life represents an increase in stringency over the prior standard of 1.7 g/mi at full useful life for LDT4, satisfying the first eligibility criterion. Based on discussions with current manufacturers of affected vehicles, and based on the fact that there were no model year 1993 LDT4 certified which would exceed the new standard at full useful life, EPA believes that substantial work, as described above, will not be required of manufacturers and that a technological laggard is not likely to develop. The half useful-life standard for non-diesel vehicles of 1.10 g/mi is generally considered by EPA and manufacturers to be less difficult to meet than the full useful life standard. For these reasons, EPA did not propose NCPs for the new LDT4 NO_X standards.

g. 1996 Tier 1 PM Standard for LDT4

EPA recognizes that the new PM standard of 0.12 g/mi at full useful life represents an increase in stringency over the prior standard of 0.13 g/mi at full useful life for LDT4, satisfying the first eligibility criterion. As in the case of non-diesel LDT3, no work should be required to meet the new PM standard

for non-diesel LDT4. And based on discussions with the single, current manufacturer of diesel-fueled LDT4 vehicles and on 1993 model year certification levels, EPA does not believe that a technological laggard is likely to develop or that substantial work, as described above, will be required to meet the new PM standard. For these reasons, EPA did not propose NCPs for the new LDT4 PM standard.

3. Standards Addressed in a Concurrent NCP Rulemaking

a. 1996 Tier 1 NO_X Standard for LDT3
b. 1996 Urban Bus PM Standard
c. 1998 HDDE NO_X Standard

EPA's analysis of the issues concerning NCPs for these standards and EPA's response to comments received in this rulemaking on these standards are contained in a Direct Final Rule published elsewhere in this Federal Register notice. The Direct Final Rule approves NCPs for the above, three standards.

III. Summary and Analysis of Comments

Written comments were received from five entities during the comment period: General Motors Corporation, Detroit Diesel Corporation, Engine Manufacturers' Association, Navistar, and Mack Truck.

A. Availability of Nonconformance Penalties and Penalty Rates

Heavy Light Duty Trucks 3 PM Standard

General Motors agrees with EPA's conclusion that NCPs are justified for the new LDT3 PM standard. GM stated that the proposed penalty rates were not reasonable for two reasons. First, GM stated ''the basic technology determined to be necessary to achieve the emission improvement required by the standard includes technology (oxidizing catalyst) that is already being used to achieve the current PM standard. Thus, the oxidizing catalyst costs included in the penalty rate determinations needs to be removed and the penalty rates modified to include only the other technology believed needed to achieve the 1996 PM standard.'' EPA agreed with this suggestion since GM is the only manufacturer in this market segment. Since GM was not able to specify what technology would be needed to meet the standard, the penalty rates in this Final Rule reflect EPA's best determination of the technology believed necessary for a manufacturer already using catalyst technology, but still unable to attain the standard.

EPA believes that vehicles unable to achieve the standard with catalyst technology will need to rely on variable geometry turbocharger technology, improved oil control, and additional work in optimizing engine calibrations.

Second, GM argues that since the new Tier 1 standard effectively increases the test weight used in testing vehicles of this class, this fact should be accounted for in determining the penalty rates and the upper limit for the LDT3 PM NCP. While EPA believes the said effect to be plausible, it is likely a relatively small effect. And, in the absence of any manufacturer-supplied data in support of that claim, this component was not considered in determining the NCPs for this Final Rule.

IV. Penalty Rates

This rule is the most recent in a series of NCP rulemakings. The discussion of penalty rates in the Phase IV rulemaking (58 FR 68532, December 28, 1993), Phase III rulemaking (55 FR 46622, November 5, 1990), the Phase II rulemaking (50 FR 53454, December 31, 1985) as well as the Phase I rulemaking (50 FR 35374, August 30, 1985) are incorporated by reference.

The derivation of the 1996 Tier 1 LDT3 PM standard cost parameters are described in a support document entitled ''Calculation of Nonconformance Penalty Rates for 1996 and Later Model Year LDT3 Particulate Matter (PM), LDT3 Oxides of Nitrogen (NO_X), 1996 and Later Model Year Urban Bus Particulate Matter (PM), and 1998 and Later Model Year HDDE Oxides of Nitrogen (NO_X) Standards,'' which is available in the public docket for this rulemaking. The associated upper limit of 0.13 g/mi PM, the previous PM standard, was determined as per section 86.1104–91 of the Code of Federal Regulations.

V. Administrative Designation and Regulatory Analysis

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA 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.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a ''significant regulatory action.'' This regulation will not have an annual effect on the economy in excess of $100 million and will not cause a major increase in the price of HDEs above those that would otherwise occur from compliance with the emission standards themselves. This regulation is intended to assist manufacturers that are having difficulty developing and marketing vehicles which comply with the 1996 Tier 1 PM standard for LDT3. Without this rule, a manufacturer experiencing difficulty in complying with this new emission standard (after the use of credits) has only two alternatives: fix the nonconforming engines for the associated model years or not sell them at all. NCPs provide manufacturers with additional time to bring their engines into conformity.

In addition, NCPs are calculated to deprive nonconforming manufacturers of any cost savings and competitive advantages stemming from marketing a nonconforming engine. Thus, NCPs will not have significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

VI. Economic Impact

Because the use of NCPs is optional, manufacturers have the flexibility and will likely choose whether or not to use NCPs based on their ability to comply with emissions standards. If a HDE manufacturer elects not to use NCPs, the manufacturer and its customers will not incur any additional costs related to NCPs.

NCPs remedy the potential problem of having a manufacturer forced out of the marketplace due to that manufacturer's inability to conform to new, strict emission standards in a timely manner. Without NCPs, a manufacturer which has difficulty certifying HDEs in conformance with emission standards or whose engines fail a SEA has only two alternatives: fix the nonconforming engines, perhaps at a prohibitive cost, or prevent their introduction into commerce. The availability of NCPs provides manufacturers with a third alternative: continue production and introduce into commerce upon payment

of a penalty for an engine that exceeds the standard until an emission conformance technique is developed.

Therefore, NCPs represent a regulatory mechanism that allows affected manufacturers to have increased flexibility. A decision to use NCPs may be a manufacturer's only way to continue to introduce HDEs into commerce. Hence, NCPs may be considered to have no adverse economic impact.

VII. Environmental Impact

When evaluating the environmental impact of this rule, one must keep in mind that, under the Clean Air Act, NCPs are a consequence of enacting new, more stringent emissions requirements for heavy duty engines. Emission standards are set at a level that most, but not necessarily all, manufacturers can achieve by the model year in which the standard becomes effective. Following *International Harvester* v. *Ruckelshaus*, 478 F.2d 615 (D.C. Cir. 1973), Congress realized the dilemma that technology-forcing standards were likely to cause, and allowed manufacturers of heavy-duty engines to certify nonconforming vehicles/engines upon the payment of an NCP, under certain conditions. This mechanism would allow a manufacturer(s) who cannot meet technology-forcing standards immediately to continue to manufacture these nonconforming engines while they tackle the technological problems associated with meeting new emission standard(s). Thus, as part of the statutory structure to force technological improvements without driving manufacturers out of the market, NCPs provide flexibility that fosters long-term emissions improvement through the setting of lower emission standards at an earlier date than could otherwise be possible. By design, NCPs encourage the technological laggard that is using NCPs to reduce emission levels to the more stringent standard as quickly as possible.

VIII. Compliance With Regulatory Flexibility Act

Under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., the Administrator is required to either perform a regulatory flexibility analysis or certify that this regulation will not have a significant impact on a substantial number of small business entities. None of the affected manufacturers could be classified as small. Moreover, as already discussed, the NCP program can be expected to benefit manufacturers.

Some small entities do exist as manufacturers' contractors for the testing of engines for Production Compliance Audits (PCAs). It is EPA's practice to conduct PCA scheduling (namely, tests per day limitations) in such a way as to consider the staff and manpower capabilities of such contractors and avoid any problems. The result is that these entities are not adversely affected. Thus, I certify that this rule will not have any adverse economic impact on a substantial number of small entities.

IX. Information Collection Requirements

This rule requires that manufacturers perform certain record keeping and submit certain reports to EPA. The Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq., provides that reporting and recordkeeping requirements be approved by OMB before they can be enforced by EPA. The information collection requirements in this proposed rule have been addressed in previous rulemaking and approved by OMB (OMB control no. 2060–0132). However, any person wishing to comment on these requirements is invited to do so. Comments on these requirements should be submitted to Chief, Information Policy Branch, Mail Code 2136, U.S. Environmental Protection Agency, 401 M St., S.W., Washington, DC 20460 and to Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, 726 Jackson Place, NW, Washington, DC 20503, marked ''Attention: Desk Officer for EPA.''

X. 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, EPA 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 in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternative and adopt the least costly, most cost effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling official of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The rule imposes no enforceable duties on any of these governmental entities or the private sector. In addition, the UMRA excludes from the definition of ''Federal private sector mandate'' duties that arise from participation in a voluntary Federal program. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

List of Subjects in 40 CFR Part 86

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

Dated: February 12, 1996.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, 40 CFR part 86, 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: Secs. 202, 203, 206, 207, 208, 215, 216, 217, 301(a), Clean Air Act as amended (42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, 7552, and 7601(a)).

2. Section 86.1105–87 of subpart L is amended by revising paragraph (e),

adding paragraph (g) and adding and reserving paragraph (h) to read as follows:

§ 86.1105–87 Emission standards for which nonconformance penalties are available.

* * * * *

(e) The values of COC_{50}, COC_{90}, and MC_{50} in paragraphs (a) and (b) of this section are expressed in December 1984 dollars. The values of COC_{50}, COC_{90}, and MC_{50} in paragraphs (c) and (d) of this section are expressed in December 1989 dollars. The values of COC_{50}, COC_{90}, and MC_{50} in paragraph (f) of this section are expressed in December 1991 dollars. The values of COC_{50}, COC_{90}, and MC_{50} in paragraphs (g) and (h) of this section are expressed in December 1994 dollars. These values shall be adjusted for inflation to dollars as of January of the calendar year preceding the model year in which the NCP is first available by using the change in the overall Consumer Price Index, and rounded to the nearest whole dollar in accordance with ASTM E29–67 (reapproved 1980), Standard Recommended Practice for Indicating Which Places of Figures are to be Considered Significant in Specified Limiting Values. The method was approved by the director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This document is available from ASTM, 1916 Race Street, Philadelphia, PA 19103, and is also available for inspection as part of Docket A–91–06, located at the Central Docket Section, EPA, 401 M Street, SW, Washington, DC or at the office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC. This incorporation by reference was approved by the Director of the Federal Register on January 13, 1992. These materials are incorporated as they exist on the date of the approval and a notice of any change in these materials will be published in the Federal Register.

* * * * * *

(g) Effective in the 1996 model year, NCPs will be available for the following emission standard:

(1) Light-duty truck 3 diesel-fueled vehicle at full useful life (as defined in § 86.094–2) particulate matter emission standard of 0.10 g/mi.

(i) The following values shall be used to calculate an NCP for the standard set forth in § 86.094–9(a)(1)(ii) in accordance with § 86.1113–87(a):

(A) COC_{50}: $441.

(B) COC_{90}: $1,471.

(C) MC_{50}: $14,700 per gram per mile.

(D) F: 1.2.

(ii) The following factor shall be used to calculate the engineering and development component of the NCP for the standard set forth in § 86.094–9(a)(1)(ii) in accordance with § 86.1113–87(h): 0.093.

(2) [Reserved]

(h) [Reserved]

[FR Doc. 96–4040 Filed 2–22–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 86

[A–94–13; FRL–5425–9]

RIN 2060–AE07

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Nonconformance Penalties for 1996 and 1998 Model Year Emission Standards for Heavy-Duty Vehicles and Engines—Part II

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This final rule makes nonconformance penalties (NCPs) available for the 1998 and later model year Heavy-Duty Engine (HDE) oxides of nitrogen (NO_X) standard for Heavy-Duty Diesel Engines (HDDEs), the 1996 and later model year Light-Duty Truck 3 (LDT3) NO_X standard, and the 1996 and later model year Urban Bus particulate matter (PM) standard. The availability of NCPs will allow manufacturers whose vehicles or engines fail to conform with these emission standards, but do not exceed a designated upper limit, to be issued a certificate of conformity upon payment of a monetary penalty. The associated upper limit will be the previous standard (5.0 grams per brake horsepower-hour (g/BHp-hr) NO_X for HDDEs, 1.7 grams per mile (g/mi) NO_X for LDT3s, and 0.07 g/BHp-hr PM for urban buses).

A final rule published elsewhere in this Federal Register document addresses other emission standards for which NCPs have been considered and establishes NCPs for the 1996 PM standard for LDT3.

EFFECTIVE DATE: This final rule will be effective April 23, 1996 unless notice is received by March 25, 1996 that adverse or critical comments will be submitted or that an opportunity to submit such comments at a public hearing is requested. If such comments or a request for a public hearing are received by the Agency, EPA will then publish a subsequent Federal Register document withdrawing from this action only those items which are specifically listed in those comments or in the request for a public hearing.

ADDRESSES: Public Docket: Copies of materials relevant to this rulemaking proceeding are contained in Public Docket A–94–13 at the Air Docket of the US Environmental Protection Agency, Room M1500, 401 M Street, SW, Washington, DC 20460, and are available for review in Room M1500 between the hours of 8:00 a.m. and 5:30 p.m. on weekdays. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Orehowsky, Manufacturers Operations Division [6405–J], US Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, telephone (202) 233–9292.

SUPPLEMENTARY INFORMATION: EPA believes that the use of a direct final rule is appropriate because the changes made are expected to be non-controversial. The direct final rule will allow the Agency to finalize such changes in a timely manner, allowing NCPs to be available before the start of production of affected vehicles.

I. Statutory Authority

Section 206(g) of the Clean Air Act (the Act), 42 U.S.C. 7525(g), requires EPA to issue a certificate of conformity for HDEs or Heavy-Duty Vehicles (HDVs) which exceed an applicable section 202(a) emissions standard, but do not exceed an upper limit associated with that standard, if the manufacturer pays an NCP established by rulemaking. Congress adopted section 206(g) in the Clean Air Act Amendments of 1977 as a response to perceived problems with technology-forcing heavy-duty emissions standards. (It should be noted, however, that the existence of NCPs does not change the criteria under which the standards have been and will be set under section 202.) Following *International Harvester* v. *Ruckelshaus*, 478 F.2d 615 (D.C. Cir. 1973), Congress realized the dilemma that technology-forcing standards were likely to cause. If strict standards were maintained, then some manufacturers, ''technological laggards,'' might be unable to comply initially and would be forced out of the marketplace. NCPs were intended to remedy this potential problem. The laggards would have a temporary alternative that would permit them to sell their engines or vehicles by payment of a penalty. This penalty is based in part, on the money saved from the production of non complying engines, would protect conforming manufacturers from the competitive disadvantage of making more costly